

Biden Administration Seeks to Prohibit Blanket Ban on Transgender Student Athletes

April 08, 2023

Transgender athletes' participation in school sports has been an area of focus for governing bodies like the National Collegiate Athletic Association and the Connecticut Interscholastic Athletic Conference, as well as state lawmakers. Now, the Biden administration's Department of Education (DOE) has signaled its intent to expand protections for transgender students in this area.

The [proposed rule](#), released on April 6, 2023, would prohibit “one-size-fits-all” blanket bans that “categorically” bar transgender students from participating in sports consistent with their gender identity. Instead, schools will have to develop their own “eligibility criteria” for each of their sports teams. The DOE plans to implement this rule by amending the regulations for Title IX of the Education Amendments of 1972.

Under the proposed amendment, any sex-related rules that would limit or deny a transgender student's ability to participate on a team consistent with their gender identity must be justified by sport-specific criteria that enable the school to achieve “important educational objectives.” “Fairness in competition” and “preventing sports-related injury” are examples of “important educational objectives” identified by the DOE in its [fact sheet](#).

The DOE also recognized that there are differences among school sports teams depending on grade and education level. For instance, particularly in competitive high school and college athletic environments, some schools may adopt policies that limit transgender students' participation. However, the DOE noted that “it would be particularly difficult for a school to justify excluding students immediately following elementary school from participating with their gender identity.”

The proposed rule has the potential to conflict with state laws that have restricted transgender athletes' participation in school sports. However, colleges and universities will jeopardize their

federal funding if they follow any state law that flatly prohibits transgender students from participating in athletics.

The proposed rule follows the NCAA’s January 2022 decision to adopt a sport-by-sport approach to evaluating transgender athletes’ eligibility for participation in college sports. The DOE discussed the development of the NCAA’s rule at length in its notice of proposed rulemaking but was clear that institutions of higher education, “like all recipients of Federal funds, must comply with Title IX and the obligation to do so is not alleviated by any contrary athletic association rule.”

There will be a 30-day public comment period. Comments may be submitted through the [Federal eRulemaking Portal](#).

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