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Progress for Transgender Athletes: Analysis of the School Success and Opportunity Act

School Success and Opportunity Act (AB 1266)
California Code 221.5 (f)

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People who identify as transgender often feel as though they were born into the “wrong body.” Their psychological self (i.e., gender identity) differs from the social expectations attributed to their biological self (Gender Equity Resource Center, 2015). A new study released by the American Foundation for Suicide Prevention found that 41 percent of the transgender population has attempted suicide (Haas, Rodgers, & Herman, 2014).

On January 1, 2014, California became the first state to allow transgender students to participate on an athletic team based on their gender identity. Many advocates would consider this progress, as there are countless benefits to sport participation, particularly at the youth level. Researchers have consistently noted that participation in youth sport builds self-esteem and self-respect, facilitates social interaction and builds a sense of community, and teaches participants how to deal with adversity (Kids Play USA Foundation, 2015). Since the transgender population is particularly vulnerable to mental health issues, the positive effects of sport participation can provide great benefit.

The School Success and Opportunity Act allows students to remain consistent with their gender choice throughout the school day. The act states: “A pupil shall be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil’s records” (California Education Code §221.5, para. 8). In other words, if a California high school student identifies as a female, the student can play on female interscholastic athletic teams and also have increased options to fulfill physical education credits. This could include changing in the appropriate locker room or participating with the gender-identified physical education class (Molloy, 2013).

Today, there are several highly visible transgender athletes experiencing success in the sport world, such as Fallon Fox (mixed martial artist), Renee Richards (tennis), Andreas (Heidi) Krieger (shot put), Balian (Yvonne) Buschbaum (pole vault), Jaiyah Saelua (soccer), Kye (Kay-Kay) Allums (basketball), Mianne Bagger (golf), and Parinya Charolenphol

(Muay Thai boxing). These athletes serve as role models and inspiration to transgender youth. Sport can be an agent of social change, and, as such, it may provide an avenue for all individuals to express their talents (Reed, 2014).

In 2013 California discussed amending its education code to “ensure trans-students are given the same opportunities their . . . counterparts have” (Molloy, 2013, para. 1). The School Success and Opportunity Act (California Education Code §221.5) was proposed to “grant students who identify themselves as transgender the right to choose the sports teams and extracurricular activities that correspond to their gender identities” (Lazo, 2014, para. 2). Six states, including Washington and Massachusetts, have high school athletic association rules allowing students to compete on teams that correspond with their gender identities. California is the first state to create a law to guarantee that opportunity (Lovett, 2013). Thus far only a handful of transgender students have sought to play high school sports, most of whom were biological females who wished to play on boys’ teams (Lovett, 2013).

Disclaimer

The comments regarding the case presented here are generalized thoughts and not hard law. The cases in Law Review are illustrative of situations that can happen and how the courts have responded to the circumstances. The generalized thoughts may not apply or be proper in all states and jurisdictions and under all circumstances. Finally, it is important to understand that the tips provided may not apply in your state or jurisdiction.

Implications for Athletes

A small but growing number of high school students who identify themselves as transgender demand access to the same school activities that other students have the opportunity to participate in, including sports (Lovett, 2013). This new law grants these students the ability to play sports on teams where they feel safe and comfortable (Lovett, 2013) and not “broken” (Molloy, 2013). Transgender students are frequent targets of bullying and have elevated rates of depression and suicide (Lovett, 2013). Furthermore, transgender students also have elevated dropout rates, which ultimately affects their future careers and employment (Parker, 2013).

Transgender access is currently being evaluated by several other sport organizations. For instance, the National Collegiate Athletic Association (NCAA) requires male-to-female transgender athletes to complete a year of hormone therapy before being able to compete on a women’s team (Lovett, 2013). In 2010 the NCAA had its first openly transgender Division I athlete, Kye Allums of George Washington University (Zeigler, 2010). While the rest of the basketball team used the women’s locker room, an existing Washington, DC, law gave Allums the right to use gender-specific rest rooms and locker facilities that were consistent with his identity (Zeigler, 2010). Two years later, Gabriella Ludwig became one of the first athletes to participate on both a men’s and women’s NCAA college basketball team (Salem, 2012).

The International Olympic Committee initially required transgender athletes to undergo a full sex-change operation and hormone therapy before being eligible for the Olympics (Lovett, 2013). Despite a history that includes transgender athletes winning medals, to date there have been no openly transgender athletes competing in the Olympic games (Moser, 2014).

Transgender Advantage

A counterargument to this law is that it creates an unfair advantage for the transgender athlete because of the different physical attributes of males and

females (“Calif. Begins New TG Law,” 2014). In most states, a male cannot join a female athletic team if there are equivalent athletic opportunities available for the male (Frankel, 2014). Most people are aware that the main differences between men and women are related to hormones. Although testosterone and estrogen exist in both sexes, men have significantly higher levels of testosterone, and women have significantly higher levels of estrogen. Because testosterone is involved in the regulation of muscle mass and strength, biological males who identify as female may have competitive advantages over biological females. Similarly, biological females who are taking testosterone may have higher levels of the hormone than some biological males and, thus, may have a competitive advantage over some biological males (Ziegler & Huntley, 2013).

The question then becomes, if a transgender athlete takes hormones, does this give him or her a competitive advantage over physically born males and females? The jury is still out on this. To date, there is very limited data regarding the effect of transitioning on athletic performance (Devries, 2008). According to Karkazis, Jordan-Young, Davis and Camporesi (2012) assumptions made about advantages in strength and endurance, which are directly attributed to testosterone levels, are not supported by the scientific literature. Additionally, Devries (2008) illustrated that male-to-female transitioned women had similar levels of testosterone and estrogen as biological women. Therefore, once a male-to-female transgender athlete has fully transitioned, concerns over perceived competitive advantages should dissipate. Conversely, female-to-male transitioned males have higher testosterone and estrogen levels compared to physically born men.

While research supports the existence of hormone level variation in transitioned individuals, there is an absence of research concerning transitioned athletes outperforming physically born men and women on the playing field. Much more research needs to be compiled before any conclusions can be drawn. According to Devries (2008), “We may never

truly know whether transitioned athletes compete at an advantage or disadvantage as compared with physically born men and women” (p. 16).

Additional Controversy

This law has met with some resistance, especially from conservative groups who see potential problems in the locker room (“Calif. Begins New TG Law,” 2014). These groups argue that the law will expose males and females to uncomfortable situations, such as co-ed bathrooms and showers (Parker, 2013). However, many transgender students use gender-neutral bathrooms at school (Lovett, 2013). Because many Californian school districts, including the Los Angeles Unified School District, had already adopted policies similar to the law to “ensure no student is left out” (“Victory!,” 2013, para. 4), pre-existing policies should help school administrators with supporting transgender student-athletes (Parker, 2013). This bill does not force schools to create new programs or build new facilities (Molloy, 2013). A school may dedicate locker rooms and bathrooms as gender-neutral or even “invest 50 cents in a curtain” (Fuss, 2014, para. 10) to increase the comfort level of transgender athletes as well as of the general population. This cost would be considerably lower than the cost of a lawsuit. School administrators should evaluate each transgender athletic situation individually in order to create a “welcoming and caring school community” for the student (Fuss, 2014, para. 5). After a careful analysis of the situation, the school administrator can work to create a solution to meet the student’s needs.

Transgender students are a vulnerable population with mental and emotional health risks that often lead to suicide. This law will provide a safer school environment for gender identity expression while introducing transgender students to the numerous benefits of sport participation. The School Success and Opportunity Act assists in facilitating this process; however, there is still much more work that needs to be done nationwide.

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