



ALERTS

Transgender-Inclusive Athletics Policy Violates Title IX

June 12, 2020

Highlights

Policies regarding participation of transgender students in school sports have been found to discriminate based on gender by the Department of Education Office of Civil Rights

Cisgender female athletes in Connecticut claimed they missed opportunities to participate

Failure to remedy such policies may result in a loss of federal funding for those schools and related athletic conferences

On May 15, 2020, the U.S. Department of Education Office for Civil Rights (OCR) issued a [Letter of Impending Enforcement Action](#) regarding ongoing cases involving transgender athletes in Connecticut schools.

These cases allege a policy that allows transgender females to participate in interscholastic athletics discriminates against cisgender female student-athletes. The alleged discrimination involved denying cisgender female student-athletes opportunities to compete in state and regional meets and preventing them from receiving public recognition vital to college recruiting opportunities.

The policy, which allows transgender athletes to compete with no

RELATED PEOPLE



Mark D. Scudder

Of Counsel
Fort Wayne

P 260-425-4618
F 260-424-8316
mark.scudder@btlaw.com



Janilyn Brouwer Daub

Partner
South Bend, Elkhart

P 574-237-1139
F 574-237-1125
janilyn.daub@btlaw.com

RELATED INDUSTRIES

Education

restrictions, was put in place by the Connecticut Interscholastic Athletic Conference (CIAC) following the expansion of state anti-discrimination laws that prohibit discrimination on the basis of gender identity or expression. As a result, two transgender female students were able to compete in girls' track and achieved success at regional and state competitions.

Many cisgender female student athletes went on record stating they were denied opportunities to compete. Both the CIAC and the participating schools contend that not following the policy would be discriminatory towards transgender students and violate state law.

The OCR determined that the policy permitting cisgender male students to participate in girls' track violated Title IX, as it denied athletic benefits and opportunities to female student athletes. Further, the school districts involved in permitting transgender athletes to compete were found in violation of Title IX because their participation resulted in a competitive disadvantage for female student athletes. That claim centered on the fact that the students didn't have the ability to compete in events that were exclusively female, while male students were able to compete in events that were exclusively male.

Connecticut schools following the policy were permitted to enter into resolution agreements to remedy the violations. In connection, the OCR issued the Letter of Impending Enforcement Action threatening to remove federal funding from the CIAC and participating school districts.

While this enforcement action is only against the Connecticut schools and athletic conference, it has the potential to impact schools nationwide. Any state with similar policies – those that impose no restrictions on transgender athlete participation – could find themselves facing comparable enforcement action. Schools with policies in place regarding transgender student participation in sports should consider reviewing and updating their rules to avoid similar problems.

To obtain more information, please contact the Barnes & Thornburg attorney with whom you work, or Mark Scudder at 260-425-4618 or mark.scudder@btlaw.com or Janilyn Daub at 574-237-1139 or janilyn.daub@btlaw.com. Summer associate Benjamin Perry contributed to this alert.

© 2020 Barnes & Thornburg LLP. All Rights Reserved. This page, and all information on it, is proprietary and the property of Barnes & Thornburg LLP. It may not be reproduced, in any form, without the express written consent of Barnes & Thornburg LLP.

This Barnes & Thornburg LLP publication should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own lawyer on any specific legal questions you may have concerning your situation.