



Proposed Transgender Student–Athlete Policy Sparks Public Controversy in Minnesota

October 20, 2014

It looks like transgender students in Minnesota will have to wait a few more months to receive clarity on whether they can participate in school athletics and play on sports teams based on their preferred gender identity (instead of their assigned birth gender).

On October 3, 2014, the Minnesota State High School League (the “League”), a nonprofit association of public and private schools that offers guidance to nearly 500 Minnesota schools across the state, was scheduled to vote on a proposal (the “Proposal”) that seeks to create guidelines on how athletic directors, coaches, and school administrators should accommodate requests of transgender students to participate in school sports. However, just days after a full-page anti-transgender advertisement was published in the *Minneapolis Sunday Star Tribune*, the League approved a motion to postpone the vote until December.

According to the Proposal, a male transgender student can play on a female sports team (and vice versa) under a limited set of circumstances. Specifically,

If the administration of a member school is notified, in writing, by a student, the student’s parent(s)/legal guardian(s) that a student has a different gender identity than listed on the student’s school registration records or birth certificate and that the student wishes to participate in athletics in a manner consistent with their gender identity as provided by state statutes and federal law, schools must review the following as each participation determination is made: (1) gender identity used for school registration records; (2) documentation from medical personnel, acting within their scope of licensure, that the individual has been diagnosed with gender dysphoria and is receiving appropriate clinical treatment.

A full copy of the Proposal and can be found here: http://www.mshsl.org/mshsl/news/transgender_policy.pdf

Supporters of the Proposal, including the League’s Executive Director Dave Stead, argue that “fundamental fairness — as well as most local, state and federal rules and regulations — requires schools to provide transgender students with equal opportunities to participate in athletics.” In fact, earlier this year the U.S. Department of Education made clear that Title IX, a federal law that protects students from discrimination in any education program that receives federal financial assistance, extends to all students, regardless of sexual orientation or gender identity. Implementation of the Proposal will enable schools in Minnesota to treat transgender students fairly and in accordance with their gender identity. Zeam Porter, a transgender student at a Minnesota High school, spoke about the Proposal’s benefits at a recent public hearing. “My love for basketball

last year made me believe I could handle being on the wrong team. That was wrong," said Porter. "Constantly being misgendered and called the wrong name took away my soul. I already feel like I don't have my body. Now I am soulless."

However, the Proposal has also been met with significant opposition, especially as the League seeks to determine whether transgender student-athletes should be able to utilize locker rooms, showers, and bathroom facilities in accordance with their gender identity. For example, last month The Child Protection League took out a full-page advertisement in the *Minneapolis Sunday Star Tribune* reading, "A male wants to shower beside your 14-year-old daughter. Are YOU OK with that?" Michele Lentz, the state coordinator for The Child Protection League is specifically concerned about protecting the privacy rights of all children. "If a girl wants to play on the boy's team and a boy wants to play on the girl's team that's one thing," she said. But "you'll notice in the policy, while the privacy rights of transgender athletes must be completely respected, the rights of all other students to even be informed in advance so they can protect their own privacy is absent" said Lentz. Jason Adkins, executive director of the Minnesota Catholic Conference, is also strongly opposed to the Proposal, stating that it "fails to give any direction to schools about protecting the privacy rights of students concerned about the policy change, thus giving higher importance to the privacy and identity of some students over others."

To date, thirty-two states have adopted policies and procedures regarding transgender student-athlete participation. As a result, schools must rethink how to effectively address how transgender students can participate in athletics while balancing the rights and sensibilities of all students. Especially in light of the ever-changing federal and state laws, schools should also revisit and if necessary, revise their current policies to address the needs of transgendered students while maintaining appropriate athletic opportunities for all children.

If your institution has any further questions or concerns about education law related matters, please email James G. Ryan at jryan@cullenanddykman.com or call him at 516-357-3750 or Hayley Dryer at hdryer@cullenanddykman.com or call her at 516-357-3745.