



HOUSE BILL 574: Fairness in Women's Sports Act.

2023-2024 General Assembly

Committee:		Date:	December 7, 2023
Introduced by:		Prepared by:	Brian Gwyn Staff Attorney
Analysis of:	S.L. 2023-109		

OVERVIEW: *S.L. 2023-109, as amended by section 18 of S.L. 2023-133 does the following:*

- *Prohibits male students from playing on middle school, high school, or collegiate athletics teams designated for females, women, or girls.*
- *Requires a student's sex to be recognized solely based on reproductive biology and genetics at birth for purposes of athletic participation.*
- *Creates a civil cause of action for students who are harmed as a result of a violation of the requirements, or who are retaliated against for reporting violations.*
- *Creates a civil cause of action for public school units and institutions of higher education that suffer harm as a result of following the requirements.*

This bill was vetoed by the Governor on July 5, 2023, and that veto was overridden by the General Assembly on August 16, 2023. This act became effective August 16, 2023, and applies beginning with the 2023-2024 school year.

CURRENT LAW:

Title IX of the Education Amendments of 1972 (Title IX)

Title IX prohibits discrimination on the basis of sex in any education program or activity receiving federal funds, except in limited situations. 20 U.S.C. §1681, *et seq.* Federal Title IX regulations do allow recipients of federal funds to "operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport." However, if no comparable sport is offered, members of a sex that has previously had limited opportunities must be allowed to try-out for the team offered unless the sport is a contact sport. 34 C.F.R. §106.41(b).

Middle and High School Interscholastic Athletics

G.S. 115C-12(23) authorizes the State Board of Education (SBE) to adopt rules governing interscholastic athletic activities conducted by local boards of education, including eligibility for student participation.

For high schools, Article 29E of Chapter 115C of the General Statutes establishes the general parameters for administering high school interscholastic athletics. G.S. 115C-407.55 authorizes the SBE to delegate to an administering organization, such as the North Carolina High School Athletic Association (NCHSAA), the authority to establish certain rules, including those related to penalties and appeals. However, the SBE does not have authority to delegate the creation of student participation or health and safety rules.

Intercollegiate Athletics at Community Colleges

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G.S. 115D-5 authorizes the State Board of Community Colleges (SBCC) to adopt and execute policies, regulations, and standards concerning the establishment, administration, and operations of community colleges. The SBCC Code establishes general parameters for operating intercollegiate athletics programs at community colleges, including a requirement that the community college be a member of the National Junior College Athletic Association (NJCAA). 1B SBCCC 600.99.

Intercollegiate Athletics at Constituent Institutions of The University of North Carolina

G.S. 116-11 generally empowers the Board of Governors of The University of North Carolina (BOG) with regulating the affairs of its constituent institutions and authorizes delegation of its authority over constituent institutions to the board of trustees or the chancellor of the institution. The BOG has delegated to the chancellors of constituent institutions the responsibility for establishing and supervising the constituent institutions' intercollegiate athletics programs, subject to policies prescribed by the BOG and the board of trustees of the constituent institution. Chapter 1100 of the UNC Policy Manual.

BILL ANALYSIS:

Middle and Secondary Public School Units

Section 1 requires middle and high school teams participating in interscholastic or intramural athletic activities to expressly designate each team by biological sex of the team participants in one of the following categories: males/men/boys, females/women/girls, or coed/mixed. Athletic teams designated for females, women, or girls cannot be open to males. A student's sex must be recognized solely based on the student's reproductive biology and genetics at birth.

This section creates the following civil causes of action:

- A student can sue for appropriate relief if the student is (i) deprived of an athletic opportunity as a result of a violation, (ii) suffers or is likely to suffer from any direct or indirect harm as a result of a violation, or is (iii) subjected to retaliation or other adverse action by a public school unit, administering organization, or other organization as a result of reporting a violation.
- Public school units, their representatives, or their employees who suffer direct or indirect harm for complying with the athletic eligibility requirements can sue for appropriate relief.

Such appropriate relief can include injunctive relief, protective order, writ of mandamus or prohibition, declaratory relief, as well as actual damages, including psychological, emotional, or physical harm, reasonable attorneys fees, and costs.

Civil actions must be initiated within two years from the date the harm occurred.

The SBE is required to monitor middle and high schools for compliance. If the SBE finds a school in violation, it must report the school to the Joint Legislative Education Oversight Committee.

Secondary Nonpublic Schools

Section 1 also applies the athletic eligibility requirements to any nonpublic school that is a member of an organization that administers interscholastic athletic activities and governs participation in interscholastic activities at the high school level. Additionally, the requirements apply to nonpublic schools not otherwise covered if the team is playing a team from any school required to follow the requirements.

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Public and Private Institutions of Higher Education

Section 2 applies the athletic eligibility requirements to intercollegiate athletics programs of constituent institutions of The University of North Carolina, North Carolina community colleges, and private colleges or universities located in North Carolina. This section does not apply to intramural sports.

Severability Clause

Section 3 provides that the validity of other provisions or applications of the act are not affected if any provision or application of the act is declared unconstitutional or invalid by the courts.

EFFECTIVE DATE: This bill was vetoed by the Governor on July 5, 2023, and that veto was overridden by the General Assembly on August 16, 2023. This act became effective August 16, 2023, and applies beginning with the 2023-2024 school year.

BACKGROUND: For middle school athletics, the SBE's [Middle/Junior High School Athletic Manual](#) only allows girls to participate on a boys' team if the school does not have a girls' team in the same sport. The manual prohibits boys from participating on "any girls' team, as defined by interpretation of the Office for Civil Rights interpretation of Title IX in 1994."

For high school athletics, NCHSAA prohibits men from participating on women's interscholastic athletic teams. Sec. 1.2.4 of the [NCHSAA handbook](#) allows students to participate in interscholastic athletics based on (i) the gender noted on a student's birth certificate or (ii) a student's gender identity, if a Gender Identity Request Form is submitted and approved.

For community college athletics, according to Section 5 of Article I of the [NJCAA Bylaws](#), women can participate with men on the same team if they are otherwise eligible and the participant community college does not have a women's team in the sport or category. Males cannot participate on women's teams. For transgender student-athletes, the NJCAA Bylaws authorize member institutions to allow student-athletes to participate if such participation is in compliance with local, state, or federal law.

For constituent institution athletics, each constituent institution of The University of North Carolina with a sanctioned sports program is a member of the National Collegiate Athletic Association (NCAA). The NCAA is in the process of implementing a [policy](#) that, beginning August 1, 2024, allows transgender student-athletes to participate on the team in accordance with their gender identity if they "provide documentation no less than twice annually (and at least once within four weeks of competition in NCAA championships) that meets the sport-specific standard (which can include testosterone levels, mitigation timelines and other aspects of sport-governing body policies) as reviewed and approved by" the NCAA Committee on Competitive Safeguards and Medical Aspects of Sports (CSMAS).