



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

2023-2024 General Assembly

Committee:		Date:	July 12, 2023
Introduced by:	Reps. Balkcom, Gillespie, Paré, K. Baker	Prepared by:	Brian Gwyn
Analysis of:	Ratified		Staff Attorney

OVERVIEW: House Bill 574 would do the following:

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

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

G.S. 115D-5 authorizes the State Board of Community Colleges to adopt and execute policies, regulations, and standards concerning the establishment, administration, and operations of community colleges. The State Board of Community Colleges Code establishes general parameters for operating intercollegiate

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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 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 Board of Governors 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 Board of Governors 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 would require 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 would not be open to males. A student's sex would be recognized solely based on the student's reproductive biology and genetics at birth.

This section would create the following civil causes of action:

- A student would be able to 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 would be able to sue for appropriate relief.

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

Civil actions would be required to be initiated within two years from the date the harm occurred.

The SBE would be 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 would also apply 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 would 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 would apply 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 would not apply to intramural sports.

Severability Clause

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

EFFECTIVE DATE: The bill would be effective when it becomes law and would apply 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 may not 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 may 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).