

Legal Notes 3: Participation in Athletics and Extracurricular Activities

Understanding how to support and affirm LGBTQ+ youth in all aspects of their school experience, including participation in sports and extracurricular activities, is paramount to ensuring all youth in Florida are able to have successful and fulfilling school experiences.

In tandem with Simone Chriss from Southern Legal Counsel (simone.chriss@southernlegal.org), as well as members of our EQFL Florida School Board Attorney Advisory Group, we have created a series of "Legal Notes" to keep handy as you continue to move forward with ensuring the safety and well-being of LGBTQ+ students.

Thank you for your continued dedication to equity and support of all students.

Every Florida School Board is responsible for providing "proper attention to [the] health, safety, and other matters relating to the welfare of students." Fla. Stat. § 1001.42(8)(a). To fulfill this responsibility, schools must treat LGBTQ+ students in an affirming and respectful manner and permit access to sex-segregated activities in accordance with the student's gender identity.

Experiences and Findings of LGBTQ+ Youth

Studies have demonstrated that participation in sports results in positive outcomes such as social and physical development, psychological well-being, decreases in depression, hopelessness, and suicidal ideation, and higher self-esteem.

Research has shown that, among LGBTQ+ students in particular, participation in athletics and extracurriculars leads to higher GPA's and a greater sense of belonging at school.

The unfortunate reality is that many transgender students are currently missing out on critical aspects of social and emotional growth and development - for example, over 70% of transgender students avoid extracurricular activities as a result of feeling unsafe (GLSEN).

For transgender students, meaningful participation in sports and extracurricular activities requires access to sex-segregated spaces and activities in accordance with their gender identity (i.e. locker rooms, bathrooms, uniforms, teams, groups, clubs, and field trips).

The Legal Landscape

In Florida, all transgender students have the right to participate in high school or middle/junior high sports in accordance with their gender identity. According to the FHSAA: "All eligible students should have the opportunity to participate in interscholastic athletics in a manner that is consistent with their gender identity and expression, irrespective of the gender listed on a student's birth certificate and/or records." See Florida High School Athletic Association, Bylaws, 2020-21 Edition, at 73.

Title IX's prohibition against sex discrimination in schools includes discrimination against LGBTQ students. See *Adams v. Sch. Bd. of St. Johns Cnty.*, 968 F.3d 1286 (11th Cir. 2020); *Grimm v. Gloucester Cnty. Sch. Bd.*, No. 19-1952, 2020 WL 5034430 (4th Cir. Aug. 26, 2020). Recent legal precedent has held unequivocally that School Board policies that prohibit transgender students from accessing the restroom in accordance with their gender identity constitutes sex discrimination in violation of Title IX of the Educational Amendments of 1972 and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. While those cases involved discriminatory bathroom policies that mandated compliance with a student's sex assigned at birth, the rationale guiding the outcome of those decisions may apply to other sex-segregated activities, such as participation in athletics and extracurricular activities.

Further, Title IX explicitly prohibits sex discrimination in athletics, clubs, and extracurricular activities: "[n]o person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics...." 34 C.F.R. § 106.41(a).

Common concerns about the inclusion of transgender students in athletics leading to potential injury or disadvantage for their cisgender (not transgender) peers have long been rejected by courts, as these same concerns were once raised in attempts to justify the exclusion of cisgender girls from cisgender boys' teams, and vice versa. See, e.g., *Brenden v. Indep. Sch. Dist.*, 477 F.2d 1292, 1299-1300 (8th Cir. 1973) (rejecting that physiological differences between males and females make it impossible for them to equitably compete in athletic competition).

With regard to clubs, groups, and extracurricular activities, the Equal Access Act of 1984, rooted in principles of equal treatment and freedom of expression, requires schools to provide equal access for student-initiated groups and extracurricular clubs of all types. See 20 U.S.C. § 4071. This means schools cannot prohibit students from creating LGBTQ+ groups or clubs, commonly known as "GSA's."

Youth Rights, Safety, and Self Advocacy

Students have the right to participate in athletics on the sex-segregated team that matches their gender identity. To avoid any issues, prior to the start of the season, the parent/student may want to inform the athletic director or school administrator that the student's gender identity/expression differs from the gender marker listed on the student's school registration records and that the student wishes to participate on the sports team consistent with their gender identity.

If a student is denied participation due to their gender identity, they have the right to an appeals process and a hearing before an FSHAA gender identity eligibility committee (See FSHAA Bylaws, 2020-21 Edition, p. 73-74).

Under Title IX, schools must provide LGBTQ+ students equal access to educational programs, including athletics and extracurricular activities, even in circumstances where others (i.e. students, parents, or community) raise objections or concerns.

If a student experiences discrimination at school because they are LGBTQ+ they should contact their school's leadership, who will work with their school district attorney to remedy the issue. If further advocacy or guidance is needed, they should contact Simone Chriss at simone.chriss@southernlegal.org.

QUESTIONS? REACH OUT TO US AT:

De Palazzo, Statewide Safe and Healthy Schools, Director, de@equalityflorida.org

Ian Siljestrom, Safe and Healthy Schools Associate Director, ian@equalityflorida.org

Simone Chriss, Southern Legal Counsel, simone.chriss@southernlegal.org

Members of the EQFL School Board Attorney Advisory Group, reached via Ian or De

