CLIENT ALERTS & INSIGHTS

NCAA Bans Transgender Athletes from Participating in College Athletics

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On February 6, 2025 in an updated participation policy, the NCAA barred transgender athletes from competing in women's college sports. In a statement, the NCAA said that "effective immediately, only athletes assigned female at birth will be allowed to compete in women's sports. Trans[gender] athletes are permitted to practice with the women's teams and maintain access to medical care and other benefits."

The policy aligns with an executive order issued by President Trump on February 5, 2025 titled "No Men in Women's Sports," yet does not apply to transgender men seeking to participate in men's collegiate athletics. Prior to the February 6, 2025 statement, the NCAA allowed the governing body for individual sports to decide policies surrounding gender participation.

More than 530,000 student-athletes play NCAA sports. NCAA President Charlie Baker, while testifying before a Senate panel in December 2024, commented that "less than 10 of them are trans." However, Baker did not identify how many of the trans population consisted of trans men versus trans female athletes. When commenting about the new participation policy, Baker added that the change will provide "clear, consistent, and uniform eligibility standards…instead of a patchwork of conflicting state laws and court decisions."

Under President Trump's executive order, the Department of Education is ordered to investigate colleges and universities for non-compliance. Those found in violation could potentially be violating Title IX, the federal law banning sex discrimination in schools. According to BBC, the Department of Education announced on February 6, 2025 that three schools are currently under investigation "for suspected Title IX violations." The overlap between the new NCAA participation policy and Title IX is murky at best and will likely end up in further litigation.

Proponents of the ban argue that trans women have biological traits that give them an unfair advantage over cis women, despite the lack of research into this theory. However, there is significant research indicating that trans women experience more discrimination across nearly all sectors of life in the United States, including sports.

Opponents of the ban argue that given the small number of trans girls and women athletes, the latest step barring their participation is disproportionate. Those not in favor of the ban fear that this ruling is a part of a larger scheme to suppress trans rights. Nancy Armour, a sports columnist with USA Today, commented that the NCAA had longstanding policies at the sports organization allowing transgender participation.

Two colleges are suspected of allowing transgender athletes to compete in women's sports after the Title IX changes were announced by the new administration - San Jose State University and the University of Pennsylvania. The University of Pennsylvania is currently engaged in litigation filed by three former swimmers who sued the NCAA, University of Pennsylvania and others for allowing their former teammate, Lia Thomas, a transgender student-athlete, to compete against them.

States continue to weigh in on whether to apply the executive order to high school sports. For example, in Michigan, the Michigan High School Athletic Association ("MHSAA") officials have decided not to immediately reverse the implications of a 2023 state law amendment that afforded protections against discrimination on the basis of gender identity and sexual orientation (the Elliott-Larsen Civil Rights Act). Under the amended civil rights law, transgender girls are permitted to participate in sports on a case-by-case basis. MHSAA officials are awaiting "more clarity" on how the executive order interacts with state law, said Geoff Kimmerly, spokesperson for the MHSAA.

This latest NCAA activity is evidence of a distinct policy shift under the new administration and follows President Trump's executive order signed on his first day in office, calling for the federal government to officially define sex as either male or female.

As Title IX regulations and policies continue to evolve under the new administration, Benesch is here to assist your school in navigating both the regulations and enforcement policies. For assistance, please reach out to Benesch's White-Collar, Investigations, and Antitrust group for consultation. We look forward to meeting the needs of schools seeking to navigate the world of antitrust, compliance, and student-athlete relationships in this ever-changing landscape.

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