

RECEIVED

By Opinion Committee at 9:59 am, Jun 22, 2021

RQ-0414-KP

FILE# ML-48961-21

I.D# 48961



CHARLES PERRY
TEXAS STATE SENATOR
DISTRICT 28

June 21, 2021

The Honorable Ken Paxton
Attorney General of Texas
Attention: Opinions Committee
P.O. Box 12548
Austin, Texas 78711-2548

Re: Whether the NCAA's policies on transgender student-athletes violate Title IX or any other state or federal laws.

Dear General Paxton:

Please accept this letter as a request for an Attorney General's opinion concerning whether the National Collegiate Athletic Association (NCAA), has violated Title IX or any other state or federal law with the enactment of its transgender student-athlete policies.

Title IX provides that: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."¹

The NCAA's policies on transgender student-athletes appear to violate Title IX by imposing different rules on biological men and biological women. Furthermore, any universities that comply with these NCAA policies appear to be forfeiting their right to the continued receipt of federal funds.

Specifically, the NCAA's policies on transgender student-athletes seem to violate Title IX and likely other state and federal laws in at least three ways.

First, the NCAA allows biological men to compete on women's sports teams, but only on the condition that they submit to one year of testosterone-suppression treatment. Biological women, on the other hand, may participate in women's sports without being subject to any such condition. This seems to constitute sex discrimination. A biological man who refuses to subject himself to testosterone-suppression treatment is banned from participating in women's sports, even though a biological woman who engages in the identical behavior is welcome to compete on women's sports teams. By establishing differing criteria for biological men and biological women who wish to

¹ 20 U.S.C. § 1681(a).

compete on women's sports teams, the NCAA appears to be discriminating on the basis of sex in violation of Title IX.

Second, the NCAA allows biological women who take testosterone treatments to compete in men's sports.² Yet if a biological man takes testosterone, it is considered a banned substance. That seems to constitute sex discrimination. The NCAA is tolerating the use of testosterone treatments by biological women and allowing them to compete in men's sports, while refusing to allow the identical behavior from a biological man. The NCAA tries to overcome this inconsistency by characterizing these allowances as medical exceptions to its testosterone ban.³ However, Title IX recipients cannot dispense medical exceptions based on criteria that discriminate between the sexes. If a biological woman requests permission to use testosterone, and her purported medical justification is that she identifies as a man, then the NCAA would likely need to offer the same medical exception to every biological man who identifies as a man.

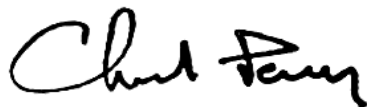
Third, the NCAA seems to have established discriminatory rules for allowing student-athletes to participate in sports teams reserved for the opposite sex. Biological men who wish to participate on women's sports teams must first submit to one year of testosterone-suppression treatment.⁴ Yet biological women who wish to participate in men's sports are not required to take any hormone treatments related to gender transition. This appears to constitute sex discrimination under Title IX, because it establishes different requirements for biological men and biological women who want to compete on an opposite-sex sports teams.

I respectfully ask that the Attorney General's Office opine on the following questions:

1. By enacting these transgender student-athlete policies, is the NCAA discriminating on the basis of sex under Title IX or any other state or federal law?
2. Are universities violating Title IX or any other state or federal law if they comply with the NCAA's transgender student-athlete policies?
3. Are universities required to comply with NCAA policies?

Thank you for your thoughtful consideration of this request.

Respectfully,



Charles Perry
Texas State Senator
Senate District 28

² See NCAA OFFICE OF INCLUSION, NCAA INCLUSION OF TRANSGENDER STUDENT-ATHLETES 13 (2011).

³ See *Id.* at 12.

⁴ See *Id.* at 13.