

Considerations for Developing a Transgender Policy

BY DANI MOFFIT, PHD, LAT, ATC, AND AMANDA TRITSCH, PHD, LAT, ATC
NATA LGBTQ+ ADVISORY COMMITTEE

During the 2019 legislative session, more than 200 anti-LGBTQ laws were active in state legislatures, including more than 20 bills attempting to ban participation by transgender athletes in sports, particularly transgender females.¹ One such bill went as far as banning transgender female athletes not only in the high school, but in the collegiate setting, and was signed by the governor.² This law is under fire and the state is being sued by the American Civil Liberties Union for violation of Title IX, among others.³

Instead of stigmatizing these athletes, participation in sport requires policies to be written and adhered to; however, the younger the athlete, the more challenging the policy creation. Current interscholastic transgender policies are insufficient and impractical because they tend to mirror the National Collegiate Athletic Association (NCAA) or International Olympic Committee (IOC), which were written for adults and, therefore, force medical treatment on transgender minor athletes, ignoring the scientific differences between adults and children.³

In addition to federal, state and local laws, the athletic trainer must be aware of the applicable policies and procedures created by governing bodies for athletic organizations. These often offer clear criteria outlining transgender participation in sports. One "level" of participation doesn't necessarily dictate to other levels; as an athlete moves through the tiers, the policies may change and have different requirements for the athlete.⁴

The National Federation of High Schools (NFHS) is the overarching entity for secondary schools throughout the U.S. and primarily offers regulatory guidance and administrative support. Each state and Washington, D.C., has its own state-based association and is able to set the rules and regulations for athletics specifically meeting the needs of student athletes.

At this time, NFHS has not required specific rules or regulations regarding the participation of transgender individuals in high school sports. Instead, it recommends that each state develop

districtwide policies in accordance with applicable state laws focusing on key issues facing transgender patients. This creates difficulty for the AT because each district may have its own policy although interscholastic events may occur between districts.⁴ However, it is imperative to have policies in place so the AT has the ability to better serve the student athletes in their care. More information can be found at www.nfhs.org/articles/transgender-students-participation-in-school-sports-access-to-facilities.

Washington was the first state to formally adopt a policy regarding transgender athlete participation in 2007. The policy allows students to participate "in a manner that is consistent with their gender identity, irrespective of the gender listed on a student's records." Currently, six states have no formal policy regarding participation related to gender identity, and 10 have discriminatory policies that limit participation to sex assigned at birth or proof of surgical intervention. Eighteen states and Washington, D.C., currently have inclusive policies that don't require hormonal or surgical intervention. A comprehensive list of each state's policies and their level of inclusivity can be found at www.transathlete.com/k-12.

If a policy does not currently exist in the state or school district, consider the following necessary components to develop an inclusive transgender athlete policy:

- Clear statement regarding eligibility
- How to notify school/governing association
- Challenging or reviewing eligibility
 - Clear delineation of who is included in that process
 - Specific timeline for process
 - Appeal process with timeline
- Statement of confidentiality
- Locker room/bathroom/shower accessibility
- Name and pronoun language
- Communication to ensure compliance at other schools

CASE SUMMARY

HOSPITAL ALLEGEDLY FIRES NURSE FOR WEARING MASK

These unprecedented times have produced intriguing legal situations, often involving health care professionals. Recently, health care workers were reportedly suspended in California for refusing to treat certain COVID-19 patients. In addition, according to media reports, nurses have been fired for wearing medical face masks in response to a supervisor's direct order not to wear them. In at least one case, this latter situation has resulted in the nurse filing a lawsuit against the hospital.

When COVID-19 began spreading across the United States, the nurse, who had been employed by the hospital for more than five years, was working in the cardiac care unit, an ICU unit of the hospital.

Although the nurse didn't wear a droplet isolation mask all the time, they were wearing one while putting an IV on a patient. The nurse claimed they were trying to maintain some level of barrier between them and the patient. According to the nurse, the supervisor approached them and allegedly told them to take off the mask because it could cause fear and panic among the staff and patients.

After the nurse reportedly questioned the supervisor about that assertion, the supervisor coordinated a meeting with human resources. The nurse said they provided a written statement to human resources, voicing concern about being asked to take the mask off. After submitting the statement, the nurse said they were fired and told that their health insurance would be immediately terminated.

The nurse said they didn't place the mask back on their face after being told to take it off. According to media reports, the nurse said they were protecting themselves, patients and family. The nurse's attorney asserted that the firing came at a crucial time for health care in the state and country, maintaining that it was the worst thing any employer could do during this time.

The hospital issued the following statement, "[The hospital] is unable to comment on matters related to the employment of a particular employee. However, we can assure the public that the safety of our patients, visitors and co-workers is our top priority. [The hospital] is

continued on page 08

continued on page 08


FIRED FOR WEARING FACE MASK, *continued from page 07*

following [Centers for Disease Control and Prevention] guidelines on infection prevention and infection control including the proper use of face masks and personal protection equipment.”

The nurse noted that the hospital had adopted its policy based on CDC guidelines. That policy, the nurse stated, allows hospital employees to wear masks, such as the one the nurse wanted to wear and was fired for wearing against orders of their supervisor.

The nurse’s attorney stated they were seeking \$75,000 in damages.

It is unclear what the next stages will be in this particular litigation. In theory, the case could be settled, dropped or decided at a trial.

Ultimately, if this case proceeds to trial, the essential issue will be whether the hospital had just cause to fire the nurse. 

Specific to transgender participation, both Washington and California’s policies provide the process by which a transgender student can be fully included on the gendered team of their choice.³ Creating a policy that mirrors the high standards of these two states would include the following:

1. A transgender student who seeks to play on a gendered team that doesn’t align with their birth sex must contact the school indicating such desire.
2. The school must then notify the appropriate state athletic association, which will review the request.
3. The state’s Gender Identity Eligibility Committee would review documentation from the student, peers, parents and medical professionals to confirm the gender identity expressed by the student.
4. If participation is granted, it is automatically renewed each season.
5. All documentation shall be kept confidential.³

The Gay, Lesbian & Straight Education Network has created a model high school athletics policy that is easily adaptable for school districts. This model policy allows districts to adapt to the needs of the athletes while maintaining the integrity of sport for all athletes.

A potential concern following establishment of a state or district level policy is the process regarding challenges to student athlete eligibility. Due to dramatic differences in how eligibility is

CONSIDERATIONS FOR DEVELOPING A TRANSGENDER POLICY, *continued from page 07*

determined, the process of who needs to be informed and how that information is delivered, there exists a wide range of ways to challenge participation eligibility.⁴ In New Jersey, for example, an eligibility challenge must come from a member school within the association,⁵ whereas in Nevada, “any determination made pursuant to a regulation adopted by the association may be appealed by an aggrieved pupil or school.”⁶ In essence, any student who feels they have personally suffered as a result of a transgender student participating in athletics can challenge the transgender student’s eligibility.

An inclusive policy, reflective of the commonalities and strengths of the participation policies of Massachusetts, Washington and California, should be what states strive toward.³ The policies implemented by these states include that no student shall be excluded from or discriminated against participation in interscholastic sports on account of gender identity.⁴

Role of the Athletic Trainer

In addition to providing a districtwide policy, ATs need to consider their role with transgender athletes. ATs are health care professionals and should be held to a high standard when treating all patients. One place ATs can make an impact is by creating a Safe Space facility. By increasing visibility of support through signage or Safe Space stickers, the athletic training facility demonstrates support for all athletes, transgender or not.⁸

Ethical Concerns


According to the NFHS, there are benefits of participating in athletics for youth,⁸ including better education outcomes, lower rates of mental health issues and post-high school success, among others.

A study by the Pew Research Center in late 2018 found 70 percent of all teens, not just those who identify as LGBTQ+, age 13 to 17 consider anxiety and depression a “major problem” among their peers.⁹ Nearly half of American youths struggle with a mental illness before turning 18. In a 2018 study of transgender high school-aged youth, 33 percent reported non-suicidal self-harm and 18 percent reported suicide attempts within the past year.¹⁰ This highlights the importance of patient-centered care, regardless of the patient’s identity.

ATs know that physical activity helps reduce mental health concerns. However, epidemiological research suggests there are

decreased levels of physical activity and sports participation in transgender individuals when compared with cisgender individuals.¹¹ This is usually due to poor access to inclusive environments. Many transgender athletes have negative experiences with competitive sports due to the restrictive nature of the policies surrounding participation. Some transgender people experience stigma, transphobia, prejudice, discrimination and violence as a consequence of their gender identity.¹¹ Transgender people are more likely to avoid situations when they are afraid of being harassed, identified as transgender, or “outed,” such as in clothes shops, public toilets and gyms.¹¹

Physical activity becomes an especially important variable to consider due to the reported high prevalence of depression and anxiety in the transgender population, which may be managed successfully with increased access to physical activity and sport. The Human Rights Campaign shares that LGBTQ+ youth thrive when participating in sport, including but not limited to: feeling safe in the classroom, not feeling depressed in the last week and not feeling worthless in the last week.¹² When transgender students are excluded from participation in athletics, they lose the opportunity to experience the associated positive outcomes. More importantly, these students often feel they aren’t allowed to be who they really are.

All ATs should be concerned for the patient’s health, safety and well-being. Creating a policy for transgender athletes teaches teammates, coaches and parents to learn compassion, empathy and caring. 

References:

1. ACLU (20 March, 2020). Legislation Affecting LGBT Rights Across the Country. Retrieved May 1, 2020, from <https://www.acLU.org/legislation-affecting-lgbt-rights-across-country>
2. ACLU (14 April, 2020). ACLU, Legal Voice File Lawsuit Challenging Idaho’s Law Targeting Transgender Student Athletes. Retrieved May 1, 2020, from <https://www.acLU.org/press-releases/acLU-legal-voice-file-lawsuit-challenging-idaho-law-targeting-transgender-student>
3. Acklin, K. L. (2017). “Hurdling” gender identity discrimination: the implications of state participation policies on transgender youth athletes’ ability to thrive. *Boston College Journal of Law & Social Justice*, 37(107), 107-145.
4. Ingram, B. J., Thomas, C. L. (2019). Transgender policy in sport, a review of current policy and commentary of the challenges of policy creation. *Current Sports Medicine Reports*, 18(6), 239-247.

continued on page 09