



***Women's Sports Policy Working Group and Champion Women
Submit These Comments to the Biden Administration's Proposed Changes
to Title IX Regulations***

May 15, 2023

It's always been unfair for men to compete against women, and it's still unfair.

Executive Summary

We are women's sports advocates: champion athletes, coaches, and sport administrators who have dedicated much of our careers to addressing sexism in sport. For the past three years, we have met at least weekly to affirm and strengthen girls' and women's legal right to separate, single-sex sports competitions.

We ask the Biden Administration to continue Title IX's fifty years of recognizing formal, government-enforced sex segregation in sport: a practice firmly grounded in science, physical reality, science and biology.

The purpose of sport categories is to exclude. The purpose of the women's sports category is to exclude men and their male-advantage. We ask the Biden Administration to resist calls for a reversal of this common sense policy, that would allow inclusion of male athletes into the female sport category. If allowed to pass, the new Regulations would repudiate established facts of male and female biology in favor of gender ideology.¹ This ideology – akin to a religion – holds that people's belief that they are male or female or neither ("nonbinary") or both ("gender fluid") should take precedence over biological facts. Adherents believe a status as transgender should grant those people access to girls and women's sports and other sex-segregated spaces.

¹ For a more thorough understanding of the philosophy of gender ideology, we recommend Helen Joyce, "Trans: When Ideology Meets Reality," September, 2021; Linda Blade, "Unsporting: How Trans Activism and Science Denial are Destroying Sport," May 2021, and Kara Dansky's "The Abolition of Sex: How the "Transgender" Agenda Harms Women and Girls," November 2021.

We ask the government to clarify that competitive sport must be formally sex-separated² because of immutable physiological sex differences that impact performance. We ask the Biden Administration to either revise the Department of Education's proposed regulations in the manner described below, or to adopt a stand-alone federal statute.

We encourage equitable and inclusive accommodations for males who identify as women; gender-fluid athletes; and nonbinary athletes, *so long as those accommodations do not diminish females' sport opportunities or financial rewards, nor females' right to fair, safe, sex-separated sports experiences.*

Throughout our comments, we use this language to communicate effectively:

- We use the words female, male, girl, boy, woman, and man to denote a person's sex, regardless of their gender identity.³
- We use the word transgender as a term for trans-identified athletes of either sex.
- We use the term trans-identified males⁴ to specify the gender identity and sex of males who wish to participate in the female competitive sports category. Trans-identified males includes "transwomen," "gender-fluid," "nonbinary," and any other gender identity that male athletes may adopt.

We mean no disrespect to transgender people who prefer different terms. Our goal is to be clear: Sex is immutable. Sex is not fluid. Males cannot transform into females. Women are adult human females.

Female Sports Are for Female Athletes. Period.

² The terms sex-segregated and sex-separated both refer to separation according to sex, regardless of an athlete's gender identity.

³ "Girls" and "women" are *not* weakened males. If a male removes his legs and is now much slower than he was pre-amputation, he is not eligible to compete in female categories. The same principle is true for males taking drugs or have surgery that may weaken them.

⁴ Transgender does not mean what transsexual used to mean. According to recent research by the [Washington Post and the Kaiser Family Foundation](#), 62 percent of trans adults identify as "trans, gender non-conforming" or "trans, nonbinary," while only 33 percent identify as a "trans man" or "trans woman." Just 31 percent have used hormone treatments, HRT, or puberty-blocking hormones, and only 16 percent have undergone "gender-affirming" surgery or another surgical treatment to change their physical appearance.⁴ This survey was conducted on adults; one can reasonably assume that schoolchildren and college students are even less likely to have used medication or undergone surgery. Therefore, the vast majority of trans-identified males (at least 84 percent) who seek to compete against female athletes have not had surgery, and at least 69 percent have not taken any medications.

1. The Proposed Regulations Recognize Female Athletes' Right to Fairness and Safety, But We Implore the Administration to Provide Objective Criteria for Female-Only Sports and Spaces.

The *Women's Sports Policy Working Group* and *Champion Women* are grateful that the Biden Administration is now recognizing that an athlete's sex and their biology are important considerations for safety and fairness for females in sport, and that the President has abandoned the idea that sex and gender identity are interchangeable. The proposed changes now recognize that "trans women are women" is a political slogan and should not be implemented into sport law, policy, or practice. These are all steps in the right direction.

But nothing in the Biden proposal expresses any interest in limiting harms to females, who would surely end up sacrificing their spots on team rosters because of these nebulous guidelines. To our dismay, the guidelines only express concern for limiting "harms to students whose opportunity to participate on a male or female team consistent with their gender identity would be limited or denied." It is crushingly sad that girls and women's inevitable losses – to their victories, to their participation opportunities; to their well-earned starting positions; and to the respect for their uniquely female strengths and capabilities – don't even receive a passing mention.

These comments from the *Women's Sports Policy Working Group* and *Champion Women* ask the Biden Administration to go further: to confirm Title IX's and the Amateur Sport Act's⁵ intention to provide females with equitable⁶ and safe opportunities in competitive sport.⁷ Under both of these statutes, official, government-sanctioned sex segregation has been formally allowed – including in the Department of Education's regulations, in case law, and in numerous Congressional testimonies – and for decades. This continued affirmation can be accomplished by revising the Department of Education's proposed regulations or by adopting a stand-alone federal statute. Either way, we ask the federal government to clarify that competitive sport must continue to be formally sex-separated⁸ because of immutable sex differences that impact performance.

⁵ 36 U.S. Code § 220501, the Ted Stevens Olympic and Amateur Sports Act.

⁶ We use the word "equitable" rather than "equal" because schools are not required to provide males and females with mirror image sports; schools are not required to offer football to females or require male gymnasts to perform on the balance beam; schools remain free to pick very different sports to offer males and females; individual, team, or contact sports, so long as males and females are provided with equality overall. But make no mistake, "equity" does not mean "less-than" - the law requires that schools provide both sexes with non-discrimination on account of their sex.

⁷ The term "competitive sport" refers to interscholastic, intercollegiate, age-group club competition, and elite contests, such as the U.S. Olympic and Paralympic movement and its developmental programs.

⁸ The terms sex-segregated and sex-separated both refer to separation according to sex, regardless of an athlete's gender identity.

2. We Support the Transgender Community and Their Desire to Identify Differently from their Biological Sex, But in Sport, Sex Matters.

We support transgender athletes' rights to identify as they see fit. We support their right to be treated as women or men or "nonbinary" or "gender fluid" without regard to sex *in other spheres of human endeavor*, where biology is not the relevant consideration, such as most employment, classrooms, housing, family law, etc. We are in agreement with the Supreme Court's *Bostock v. Clayton County* decision,⁹ regarding Title VII workplace discrimination. Bostock held that Title VII's prohibition on "sex discrimination" equated with "SOGI", or sexual orientation and gender identity gay, lesbian, gender-non-conforming, and transgender people, except in rare cases like personal care. For sport competition, gays and lesbians are not implicated in our discussion of limits on non-discrimination based on gender identity.

However, as that case notes, competitive sport is one of the few places where biological sex differences matter. Men have greater strength, size, speed, and muscle mass. Men have larger hearts, lungs, hands, feet, and skulls. Women have greater body fat, and it is distributed differently than men's body fat.¹⁰ These enormous sex differences result in performance advantages for men in almost every sport.¹¹

In sports, sex matters. Indeed, sex is the most powerful performance determinant of all, which is why formal sex segregation is ubiquitous throughout all of sport. When categories are established based on such things as age, disability, or weight, participants are *always* further divided into male/female sex categories. This Administration should not presume to know better than the whole of international sport.

Male performance advantages comprise the original and ongoing rationale for separate competitive-sport categories for women and men and Title IX's prohibition of discrimination based on sex. Female sport segregation is not based on a remedy for past discrimination. Nor is it based on sparing men's feeling by the threat of being beaten by a woman. Rather, sex segregation is practiced internationally, and is based on scientific facts. As longtime women's sports advocates, we've been repeating ourselves for over 40 years: to give girls and women equal opportunities in

⁹ *Bostock v. Clayton Cty.*, 140 S. Ct. 1731 (2020). The WSPWG and Champion Women do not confuse sexual orientation with gender identity. See also, dissent discussing this specific issue; the sex / gender identity divide, that will harm females.

¹⁰ Emma Hilton and Tommy Lundberg, "Transgender Women in The Female Category of Sport: Perspectives on testosterone suppression and performance advantage." *Sports Medicine*. 2021;51: (PMID 33289906 and doi: 10.1007/s40279-020-01389-3). This research is one of the most cited ever in academic literature. It definitively establishes that no amount of testosterone reduction can make male competition in women's categories fair or equal, even when the athlete has been on testosterone blockers for many years.

¹¹ Some equestrian, auto-racing, sailing, and marathon swimming events offer rare exceptions to the rule.

sports, they need their own teams. If the law had instead developed to permit schools to offer one team – say, a basketball team – per sport, females would be almost entirely absent from this type of educational experience. We continue to advocate for girls’ and women’s right to our own sports.

3. These Proposed Regulations Are Being Considered When Schools Are Already Impermissibly Truncating Girls’ and Women’s Sports Opportunities, Their Scholarships, Their Treatment ... DESPITE Excellent Statute, Regulations and Case Law. We Ask the Biden Administration Not to Worsen Our Plight.

The promise of Title IX has not been realized, more than 50 years after its inception. [High school girls are provided with one million fewer sports opportunities than boys. College women are denied 60,000 opportunities as compared with men.](#)¹² Every year, women lose out on over [one billion dollars in college athletic scholarship dollars.](#)¹³

- These numbers do not include the second class, less-favorable treatment of women when it comes to facilities, coaching salaries, travel, healthcare, trainers, equipment, recruiting, publicity, promotion, and other benefits of athletic programs.¹⁴
- New Name, Image, Likeness monies are already being distributed unequally, and given the lack of oversight, the financial disparity between women and men is likely to get worse.

Against this backdrop of ongoing sex discrimination against girls and women in high schools and colleges sports, we cannot now allow *more* sex discrimination: trans-identified male athletes taking participation slots or scholarship dollars that rightfully should go to females.

4. The Proposed Title IX Regulations Are Deficient in that They Do Not Offer American Schools, Families, and Athletes a Unified, Consistent Set of Objective Eligibility Rules.

Title IX’s interpretation on transgender accommodations must happen at the federal level. The issue cannot be resolved by individual states, sport governing bodies, or

¹² Women’s Sports Foundation, “50 Years of Title IX: We’re Not Done Yet,” May 4, 2022.

¹³ Champion Women, “Discrimination Against Women in College Sports Is Getting Worse,” June 23, 2020, available at: <https://titleixschools.com/>

¹⁴ See Kenny Jacoby, Steve Berkowitz and Doug Caruso, USA Today, “Title IX: Falling Short at 50, Inside the numbers: Searchable data offers glimpse into how colleges short-change women’s sports” March, 2022, available at: https://www.usatoday.com/in-depth/news/investigations/2022/03/30/title-ix-searchable-college-spending-data/7169672001/?gps-source=BRNMSVCPSXXTITLEIX&itm_source=usat&itm_medium=onsite-spike&itm_campaign=titleix-storytellingstudio-n&itm_content=static

schools. Interstate commerce would inevitably be disrupted. Sponsors, media, travel, and fans would all be disrupted. Such a hodge-podge of rules and regulations would be a logistical, financial, and legal nightmare for any student or school.

The proposed regulations would require schools and students to challenge eligibility rulings and conflicts. Neighboring schools would undoubtedly devise different rules: some will assure the women's category is reserved for females, while their competitors may adopt rules allowing any trans-identified male to compete on opposing women's teams. The physical safety risks to athletes, the school's liability safety risks, as well as the competitive unfairness of being required to compete against schools with differing rules, would be untenable. Instead, all eligibility rules must be easily understood and enforced nationally. That enforcement consistency can only be achieved with objectivity and plain language across-the-board, rather than the proposed case-by-case analysis.

- When it comes to sports participation, the definition of sex in Title IX and the Sports Act should be interpreted as an immutable biological characteristic, as it was in the 1975 Title IX regulations.¹⁵
- For reasons of fairness and safety, all competitive sports opportunities for girls and women must be reserved for females.
- At a minimum, "all competitive sports" should encompass all junior varsity and varsity sports.

5. Allowing Trans-Identified Male Athletes into the Girls' and Women's Category is Sexist. It Puts the Enforcement Burden on 11-to-22 Year-Olds, Rather Than the Adults at the Department of Education.

Sport is a multi-billion-dollar industry, yet the Biden Administration seems to believe that girls' and women's competitive sport is less significant than men's sport. First, girls' and women's sports are not the "B" team, a place for trans-identified males who are not qualified for the men's team to dominate the women's competitions. Second, the inclusion of males into women's sports sends the message that females are not deserving of their own sport category, that their teams, their wins, their accomplishments are not as inviolable as we had presumed. Third, it supposed that female physiology is akin to weakened males, rather than being celebrated for their own unique, perfect physiology. There is nothing wrong with women's physiology. Finally, "trans inclusion" only disadvantages girls and women; it never disadvantages boys or men, because girls who want to play on boys' teams never pose a competitive threat.¹⁶ This means men's sports are left to operate unchanged, while

¹⁵ 34 CFR § 106.41, available at: <https://www.law.cornell.edu/cfr/text/34/106.41> "(c) *Equal opportunity*. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes."

¹⁶ Some trans identified females have participated in the men's category after starting performance enhancing drugs like testosterone, but with enormous drops in rankings. One swimmer was a finalist in

women are being threatened with the loss of their hard-won opportunities, their scholarships, their wins, their records, their prize money, their status as role models – all taken away.

6. Trans-Identified Males Should Be Welcome In Sport, Competing With Accommodations Elsewhere.

All students should be able to participate in sports, and trans-identified males are no exception. Accommodations can include competing in the men’s category or an “open” category for everyone who is not female. Alternatively, schools and sport governing bodies could create new categories for transgender athletes who wish to compete based on their gender identity, *so long as there is no direct competition with females and no overall reduction of female athletes’ right to their share of all participation opportunities and scholarships, as guaranteed by long-standing Title IX regulations.*¹⁷ But as a rule, males must not be allowed to breach the immutable-sex boundary that legally constitutes formal, government sanctioned separate-sex sport.

7. The Term “Sex” Must Be Based on Biology and Science, Because Sex is Immutable, While Gender Identity is Not.

Sex is an immutable characteristic, protected under the U.S. Constitution. Allowing males, however they identify, to compete against women in women’s sports is sex discrimination. Legally, Title IX requires schools to apportion participation opportunities and financial aid equitably between males and females. The justification for separate-sex sport is based on humans’ biological, immutable differences; males and females cannot fairly compete against each other. It follows that the apportionment of financial aid, scholarships, prize money, and opportunities to compete must be based on immutable physical characteristics. By its very definition, gender identity is not immutable.¹⁸ A person’s identity can change; it is fluid. Indeed, some people’s gender identity is to be “gender fluid”; they declare themselves to be women one day and men the next. So biological sex – the unchangeable, immutable quality of being female or male – must be the criteria used to fairly allocate resources and opportunities in sport, rather than gender identity.

the women’s NCAA National Swimming and Diving Championships and then was in the bottom 2% on their men’s league. This swimmer was not close to qualifying for the Men’s NCAA Swimming and Diving Championships.

¹⁷ ... or a percentage substantially proportionate to their enrollment, as Prong One of the three-prong test in the Title IX Compliance Framework. 44 *Fed. Reg.* 71418 (1979), available at: <https://www2.ed.gov/about/offices/list/ocr/docs/t9interp.html>

¹⁸ Turban JL, Loo SS, Almazan AN, Keuroghlian AS, “Factors Leading to “Detransition” Among Transgender and Gender Diverse People in the United States: A Mixed-Methods Analysis,” *LGBT Health*. 2021 May-Jun, available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8213007/> “A total of 17,151 (61.9%) participants reported that they had ever pursued gender affirmation, broadly defined. Of these, 2242 (13.1%) reported a history of detransition.”

Imagine a Gender City College that fields a men's basketball team and a women's basketball team. Each team has fifteen players. So far, so good. But what if, next year, two men on the men's basketball decide they are "gender-fluid" or proclaim themselves to be transwomen?¹⁹ At tryouts for the women's team, the women's coach would likely choose both males, given male basketball players' significantly greater speed, strength, strength, and height, and the fact that coaches are richly rewarded by wins. And the men's basketball coach would easily fill that squad with another fifteen men. So now the school would offer seventeen slots for male players, and thirteen for female players.

Under the proposed Biden Title IX regulations, the two women who expected to be recognized with a place on the team would have to plead their case to Gender City College to see if it has updated its "existing policies and training materials" to adopt or apply "sex-related criteria that would limit or deny a student's eligibility to participate on a male or female athletic team consistent with their gender identity" – not overall, but specifically, "for each sport, level of competition, and grade or education level." These left-in-the-cold female basketball players would have to seek proof that using sex-based criteria (a given, under Title IX for the past fifty years) is justifiable for the sport of college basketball. Girls and women need the Biden Administration to establish firm, fact-based, objective rules.

Furthermore, the updated policies would require a school or students to show that creating a separate team for females (and excluding the gender-fluidly male players who now call themselves transwomen) is "(i) substantially related to the achievement of an important educational objective, and (ii) minimize[s] harms to students whose opportunity to participate on a male or female team consistent with their gender identity would be limited or denied."²⁰ If Gender City College has not gone to those lengths to exclude trans-identified male players from the women's team, the female players would have no recourse except to sue – a process that would likely leave them sitting on the sidelines (fuming, no doubt) for many years.

In sum, female athletes should not have to prove – or depend on their school to prove – that they need teams of their own. This is settled science – and common sense.

Trans-identified males' desires to play women's basketball or women's volleyball or women's tennis or women's swimming must not take precedence over female athletes' longstanding, Title-IX-enshrined rights to play on teams of their own.

¹⁹ Trans advocates regularly dismiss the idea that people would claim to be transgender when they are not. But as experts in sport, we can assure readers that people cheat in sport. It is expected and millions of dollars are spent ensuring opponents do not have the slightest unfair advantage.

²⁰ [Federal Register, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams, April 13, 2023.](#)

Girls and women are not biologically compatible competing against their male counterparts, and high schools and colleges are already providing males with about a quarter more opportunities to play high school and college sports.

8. Women's Sports Policy Working Group and Champion Women's Specific Policy Recommendations to Protect the Female Category:

- 1) A clear, unambiguous, unified federal policy that preserves girls' and women's competitive sport category is necessary. It must assert that all competitive sports, including varsity and junior varsity sports, must continue to be formally sex segregated.
 - The Biden administration's proposed regulations would require children to confront their school to try to get safety and fairness instituted. We cannot have nebulous, indefinite policies that put the onus of enforcement on students, their parents, or their schools. It puts less sophisticated families at a disadvantage to get justice for their daughters. Girls should not have to demand their rights to benefit from the promise of Title IX while their brothers take for granted their sports participation opportunities. Clear rules that protect females' rights must be forthcoming from the Biden Administration.
- 2) The definition of sex, as it applies to sports, should be interpreted as an immutable, biological characteristic, consistent with the long-standing 1972 Title IX statute and the 1975 Title IX regulations.
- 3) The determination of sex, for purposes of participation in interscholastic, intercollegiate, Olympic, or non-school sport, should be based on the existing annual medical clearance process for athletic participation.²¹ Standard forms from an athlete's physician that denote a person's sex have been completed for decades, with confidentiality already protected by federal law. Sex verification should never, and need never, involve physical or genital examinations or verbal challenges by school personnel.
- 4) For grades K-5, athletic activities should focus on skill-building and fun rather than competition.²² Young girls and boys can participate in coed physical education and recreational sport activities together.
 - Athletic competitions create the dividing line between coed-play and sex-segregated formats.
 - When competitions are held, they should be single-sex – or coed with balanced numbers of girls and boys on opposing teams.
 - Students who identify as transgender or nonbinary should be assigned to teams based on their sex.

²¹ For an example of a typical "Cleared for Athlete Participation" form, see e.g., <https://www-pvhs.stjohns.k12.fl.us/wp-content/uploads/sites/2/2016/07/Athletic-Partipation-Forms.pdf>

²² See e.g., Aspen Institute, Sport and Society, "40+ influential sport bodies endorsed multisport play in response to the trend toward early sport specialization. NCAA leaders wrote a column for the Aspen Institute encouraging multisport play..." Available at: <https://www.aspenprojectplay.org/about>

- 5) For grades 6 through college, athletic participation should be based on sex, not gender identity, regardless of hormonal treatments or surgeries.
 - Transgender athletes should be welcomed and encouraged to participate in interscholastic and intercollegiate sports based on their sex.
 - Schools and sport governing bodies can create accommodations for trans-identified males and female athletes who have used testosterone *so long as there is no direct competition with females and no overall reduction of female athletes' right to their percentage share, as currently defined in Title IX regulations, of all participation, scholarship, and prize-money opportunities in college and beyond.*
 - Men's and women's coaches and teams should be educated about how to provide a welcoming environment for gender-nonconforming athletes (such as females who refuse to wear makeup and males who do wear makeup, regardless of gender identity).
- 6) In all cases, females have a right to safety, privacy, and dignity in single-sex changing spaces, showering and toilet facilities.²³
- 7) Transgender athletes should be provided with separate changing, showering, and toilet facilities if they feel uncomfortable in spaces designated for their sex.
- 8) Female athletes must not be allowed to take performance-enhancing drugs while competing in the female categories.
- 9) Trans-identified males should not be eligible to compete in the female category, regardless of performance-mitigating drugs or surgically altering any body part.²⁴

9. Science Supports the *Women's Sports Policy Working Group* and *Champion Women's Policy Recommendations*

A. Pre-Puberty, Male and Female Children Show Marked Differences in Sport Performance.

Scientific evidence supports our central idea: competitive sports should remain sex segregated. Even pre-puberty, males have substantial testosterone-based advantages, which begin before birth. In utero, male fetuses receive an infusion of testosterone that is later associated with young boys' somewhat greater strength²⁵

²³ See WSPWG and Champion Women Policy Statement, "[Access to Female Athletes' Locker Rooms Should Be Restricted to Female Athletes](https://championwomen.dm.networkforgood.com/emails/our-position-female-athletes-locker-rooms-should-be-restricted-to-female-athletes)" January 2023, available at: <https://championwomen.dm.networkforgood.com/emails/our-position-female-athletes-locker-rooms-should-be-restricted-to-female-athletes>

²⁴ Supra, Hilton and Lundberg

²⁵ "[Boys demonstrate, on the average, greater strength than girls at all ages. Sex differences throughout childhood are consistent, although small.](#)" – Human Growth, Frank Falkner et al., 1978, Page 286.

and somewhat greater propensity for aggression – the androgenic effects of testosterone.²⁶ For example, fitness data from over 85,000 children in Australia showed that, compared to nine-year-old females, nine-year-old males were 9.8 percent faster in sprints (running) and 16.6 percent faster in the mile run. They could jump 9.5 percent farther, could complete 33.3 percent more pushups in 30 seconds, and had a 13.8 percent stronger grip.²⁷

Significant male advantage was also found in a study of Greek children pre-puberty. Compared with six-year-old females, six-year-old males completed 16.6 percent more shuttle runs in a given time and could jump almost ten percent farther from a standing position.²⁸ Another Danish study showed six- and seven-year-old males had a higher aerobic capacity (VO₂max) than girls in the same age group.²⁹

A 2022 [analysis of American swimming records](#) showed that boys' records in the ten-and-unders (nine and ten-year-olds) average 0.57 seconds faster per 100 yards than girls' records. Boys' records jump to an average of 3.01 seconds faster per 100 yards for the 12-and-under group and more than 4.5 seconds faster per 100 yards between the ages of 13 and 18. Jerry Giordano, an attorney who conducted the analysis, concluded that "about two-thirds of the eventual male-female differential in the performance of top swimmers emerges by the age of 12."³⁰

The pattern is even more dramatic in children competing in track. Every USA Track & Field age-group national championship record is better than the girls' record. This is true beginning with the youngest competitive age group (eight-and-under), with the gap growing dramatically during and after puberty.

B. Post-Puberty, The Gap Between Male and Female Sport Performance Explodes. Medication and Surgery Do Not Remove the Male Sport Advantages, Even After Many Years.

²⁶ Hooven, Carole, *T: The Story of Testosterone, the Hormone That Dominates and Divides Us*. New York: Henry Holt, 2021.

²⁷ Mark J Catley and Grant R Tomkinson, "Normative health-related fitness values for children: analysis of 85,347 test results on 9–17-year-old Australians since 1985," *British Journal of Sports Medicine*, Vol. 47, Issue 2 (January 2013)

²⁸ Tambalis KD, Panagiotakos DB, Psarra G, et al. Physical fitness normative values for 6–18-year-old Greek boys and girls, using the empirical distribution and the lambda, mu, and sigma statistical method. *Eur J Sport Sci*. 2016;16(6):736–46, cited in Hilton EN, Lundberg TR. Transgender Women in The Female Category of Sport: Perspectives on testosterone suppression and performance advantage. *Sports Medicine*. 2021;51: (PMID 33289906 and doi: 10.1007/s40279-020-01389-3).

²⁹ Eiberg S, Hasselstrom H, Grønfelt V, et al. Maximum oxygen uptake and objectively measured physical activity in Danish children 6–7 years of age: the Copenhagen school child intervention study. *Br J Sports Med*. 2005;39(10):725–30, cited in Hilton EN, Lundberg TR. Transgender Women in The Female Category of Sport: Perspectives on testosterone suppression and performance advantage. *Sports Medicine*. 2021;51: (PMID 33289906 and doi: 10.1007/s40279-020-01389-3).

³⁰ Jerry Giordano, "The Boy-Girl Difference in Swimming Records," *Ricochet*, June 25, 2022.

Male performance advantages are dramatically accentuated beginning with the onset of male puberty.³¹ As a group, male bodies become faster, stronger, and more powerful than female bodies. The performance gap between male and female athletes that accelerates at puberty ranges from 8-20 percent, but up to 50 percent depending on the sport and event.³² The performance advantages cannot be erased via testosterone suppression.^{33 34}

This chart shows the gap is between the two sexes, and how precarious the situation is for women if trans-identified males are allowed to compete against them.³⁵

- The far-left column shows the track events.
- On the far-right column are women's world records.
- The middle column shows the age of high school boys when they beat the women's world records.
- Note that for the discus, shot put, and javelin, women throw objects that are significantly lighter; teenage boys, throwing heavier objects, still "win."

³¹ Handelsman DJ, Hirschberg AL, Bermon S. Circulating Testosterone as the Hormonal Basis of Sex Differences in Athletic Performance. *Endocr Rev.* 2018;39(5):803-29. Epub 2018/07/17.

³² Clark RV, Wald JA, Swerdloff RS, Wang C, Wu FCW, Bowers LD, Matsumoto AM 2019 Large divergence in testosterone concentrations between men and women: Frame of reference for elite athletes in sex-specific competition in sports, a narrative review. *Clin Endocrinol (Oxf)* 90:15-22.

³³ Transwomen maintain physiological, sex-linked (legacy) advantages even after multiple years on gender-affirming hormone treatment such as testosterone-suppression drugs. For example, hormone treatments do not affect height.

³⁴ Hilton EN, Lundberg TR. Transgender Women in The Female Category of Sport: Perspectives on testosterone suppression and performance advantage. *Sports Medicine.* 2021;51: (PMID 33289906 and doi: 10.1007/s40279-020-01389-3).

³⁵ See BoysvWomen at <https://boysvswomen.com/#/> for similar comparisons throughout sport.

Event	Boys (Age)	Women
100m	 10.20 (15)	10.49
200m	 20.89 (14)	21.34
400m	 46.96 (14)	47.60
800m	 1:51.23 (14)	1:53.28
1000m	 2:26.30 (15)	2:28.98
1500m	 3:48.37 (14)	3:50.07
Mile	 4:08.80 (15)	4:12.33
2000m	 5:19.33 (16)	5:23.75
3000m	 7:56.40 (17)	8:06.11
5000m	 14:10.92 (15)	14:11.15
10,000m	 28:39.04 (16)	29:17.45
Marathon	2:17:21.00 (18)	 2:14:04.00
3000m Steeplechase	 8:26.81 (18)	8:44.32
400m Hurdles	 51.14 (15)	52.16
High Jump	 2.17m (14)	2.09m
Pole Vault	 5.33m (15)	5.06m
Long Jump	 7.85m (15)	7.52m
Triple Jump	 16.63m (15)	15.50m
Shot Put	 23.86m (15)	22.63m
Discus	 77.68m (15)	76.80m
Hammer Throw	 85.17m (14)	82.98m
Javelin	 74.24m (14)	72.28m

boysvswomen.com

To ensure that female athletes have access to fair and safe competition, trans-identified males at any age must not be eligible to compete against females.

10. Sport Achieves Diversity, Equity and Inclusion by Creating Categories Based on Objective Measurements and Standards. As such, the Biden Administration's Proposed Rules Are Anti-Inclusion.

Sport categories facilitate inclusion of different types of bodies; it is how sport creates diversity, equity, and inclusion. Sport categories include weight classes in boxing, wrestling, rowing, and judo; age categories for children and older athletes; and Paralympic categories for people with disabilities. All categories allow more athletes to compete, and allow different athletes to experience the benefits of sport. For example, weight categories allow smaller athletes to shine, age categories allow younger or older athletes to reap the benefits of sport. Without sport categories, young men would win all competitions.

To illustrate the importance of sport categories, consider the Paralympic Games. Each paralympic athlete is evaluated to determine the extent of their disability, which will then determine which category the athlete will compete in. Those evaluations determine who the winners and losers will be. As such, category manipulation is common, as some Paralympic athletes try to get an edge by becoming eligible into a more disabled category.³⁶ These Paralympic athletes can win with a category that is meant for more disabled athletes, similar to trans-identified males winning in a category meant for females.

As such, sports participants do not get to choose their sport category. Athletes are eligible for the sport category or they are not. Because of the enormous male performance advantage, males, however they identify, are ineligible to compete in the females sport categories.

Separate, sex-segregated sport categories provide more people with a chance to enjoy competitive victories. Without the two sex categories, female and male, we would never have known about or celebrated the greatest female athletes of all time, including but by no means limited to these household names: Martina Navratilova, Mia Hamm, Jackie Joyner-Kersey, Lindsey Vonn, Serena Williams, Simone Biles, Allyson Felix, Wilma Rudolph, Mary Lou Retton, Nancy Lopez, Joan Benoit, Peggy Fleming, Lisa Leslie, Ann Meyers, Donna de Varona, Nancy Hogshead, and Billie Jean King. All would have been defeated by and overshadowed by countless male competitors and lost to history

³⁶ See numerous examples, "Paralympics in Crisis As International and Australian Athletes Game the System", ABC, April 2023, available at: <https://www.abc.net.au/news/2023-04-03/paralympic-games-classification-system-exploited-australian/102165924> "Wheelchair Basketball at Risk of Paralympics Exclusion Over Classification Dispute," The Telegraph, January 2020, available at <https://www.telegraph.co.uk/paralympic-sport/2020/01/30/exclusive-wheelchair-basketball-risk-paralympics-exclusion-classification/> "Classification System for Paralympic Track and Field "Open for Abuse," The Guardian, March, 2017, available at: <https://www.theguardian.com/sport/2017/mar/20/classification-system-for-paralympic-track-and-field-open-to-abuse>

11. Sport Governing Bodies, Nationally and Internationally, Are Quickly Affirming Sex Segregation in Sport

In 2022, World Aquatics, the international governing body for swimming, diving, and other water sports, formerly known as FINA, undertook an enormous review of the research and concluded by acknowledging the immutable physical differences between women and men. This conclusion led to a rules change that excludes people who have experienced male puberty from women's events.³⁷ In 2023, World Athletics, the international governing body for track and field and all running events, followed suit and came up with similar rules that designate the "female" categories as just for women. The International Rugby League, the World Boxing Council, USA Powerlifting, USA Swimming, and Volleyball England provide examples of other national and international organizations that have recently issued similar rules for women. The International Body for Cycling, UCI, is undertaking a review after a trans-identified male won an elite race created specifically to give women more opportunities in cycling – a win that gave the winner's share of a \$35,000 prize to a male.³⁸

12. Policies That Affirm a Female Sport Division Are Often Mis-Framed As "Anti-Transgender" or as "Exclusionary." They Are Not. Transgender Athletes Must Be Accommodated in Their Proper Sport Category, Based on Biology, Like Every Other Athlete.

Trans-identified males should be accommodated so that they, too, can comfortably participate in sports. For trans-identified males who are uncomfortable playing with and against boys or men, such accommodations could take the form of separate scoring for individual sports, separate leagues for team sports, new transgender categories, or other solutions – *so long as there is no direct competition with females and no overall reduction of female athletes' right to their rightful percentage of all participation, scholarship, and prize-money opportunities.*

13. Trans-Identifying Females Must Also Be Accommodated in Sport, Especially After Starting Performance-Enhancing Drugs Like Testosterone.

Trans-identified females often play on women's teams, until they start taking testosterone or other prohibited drugs. At this point, these females could play on men's teams, but females on testosterone or other performance-enhancing drugs will rarely -

³⁷ World Aquatics' (formerly FINA) policy on transgender athletes:

<https://resources.fina.org/fina/document/2022/06/19/525de003-51f4-47d3-8d5a-716dac5f77c7/FINA-INCLUSION-POLICY-AND-APPENDICES-FINAL-.pdf>

³⁸ UCI to review its policies after a trans-identified male wins a prestigious women's cycling race, see e.g., <https://nypost.com/2023/05/04/uci-reviewing-rules-after-transgender-cyclist-austin-killips-win/>

if ever - be competitive in the men's sport category.³⁹ Schools and sport leaders should consider providing these trans-identified females with accommodations similar to those discussed for trans-identified males.

Note that male athletes do not face no parallel crisis due to an influx of trans-identified females into the ranks of men's sports. The fact is another reminder that biology matters.

It is worth repeating: females taking testosterone must not be permitted to play against women.⁴⁰ In addition, responsible measures should be undertaken to ensure the safety of these females on men's teams.

14. Girls and Women Are Entitled to Privacy and Dignity in Changing, Toileting, and Sleeping Spaces.

In all cases, female and male athletes have a right to privacy and must be provided with safe, private places to change clothes and shower. Neither male nor female athletes should be asked or required to share hotel rooms or other overnight accommodations (such as bedrooms in private homes) with members of the other sex, regardless of how those people identify.

15. Girls and Women Are Entitled to Be Safe in Changing, Toileting and Sleeping Spaces, Away from Males.

Females have not abandoned their legal right to privacy from males. Separating women and men in locker rooms is a nearly universal phenomenon, a custom that female athletes have come to expect and rely upon. Women are vulnerable when undressing. Criminal laws have protected women from male voyeurism for hundreds of years. Because women know that men are far more likely than women to commit sexual assault, the presence of males can be inherently threatening, even traumatic, to women as they are undressing or showering.⁴¹ Naked men also make women vulnerable; exposing male genitalia is typically a criminal act of indecent exposure or flashing.⁴²

³⁹ East German women were given large amounts of performance enhancing drugs like testosterone; enough so that they developed male secondary sex characteristics. Many suffered through lifelong medical problems, including infertility and birth defects. East German women swam slightly faster than their female peers, but they were never competitive against the male athletes of their time.

⁴⁰ Taking steroids and other performance enhancing drugs are effective, meaning they do indeed give athletes taking those drugs unfair competitive advantages. Gender identity should not be a permissible reason to compete against women while under the influence of these drugs.

⁴¹ Statistics on male violence against women remain stubbornly high. According to the FBI, Males are responsible for 97% of murder and non-negligent manslaughter, 96.8% of rapes, 96% of pedophilia cases. See "FBI Crime in the United States 2018." According to RAINN, 9 out of every 10 victims of rape are female.

⁴² Most trans-identified males do not undergo surgery to remove their penis and testicles. According to three recent studies, only between four and sixteen percent of transgender people undergo genital surgery. Annys Sinn, 6 key takeaways from the Post-KFF survey of transgender Americans, Washington

In particular, the presence of naked or near-naked men can feel threatening and traumatic to women who have already been harassed or sexually assaulted. [Twenty-six percent](#) of college-age women report having been sexually assaulted while attending college.⁴³

Fears of locker-room assaults are not unfounded. According to [one recent investigation](#) of complaints of sexual assaults, voyeurism, and harassment at public fitness centers and swimming pools in London, almost 90 percent of sexual offenses against females took place in unisex changing rooms.⁴⁴

Several world religions prohibit women from being in the same room with males. Enabling trans-identified males into these spaces puts an enormous burden on these women.

Excluding trans-identified males from women's locker rooms does not imply that these transgender athletes are inherently violent. But in fact, a [longitudinal, quantitative study](#) by Swedish researchers found that post-operative trans-identified males⁴⁵ had criminal-conviction rates that were comparable to male controls. In other words, sex reassignment did not decrease men's risk for criminal convictions.⁴⁶ Trans-identified males are not dangerous to females because of their gender identity; they are dangerous because they are male.

Sex-segregated changing spaces provide girls and women with protection from:

- undressing and showering in front of males;
- revealing such intimate details as when they are menstruating;
- displaying vulnerable rituals such as when swimmers help each other squeeze into tight, competitive swimsuits;
- seeing naked male bodies; and
- hearing male commentary about their naked bodies.

Post, March 23, 2023; Ian T. Nolan, Christopher J. Kuhner and Geolani W. Dy, "[Demographic and Temporal Trends in Transgender Identities and Gender Affirming Surgery](#)," *Translational Andrology and Urology*, June 2019, pp. 184-190.

⁴³ David Cantor et. al., Association of American Universities, "Report on the AAU Campus Climate Survey on Sexual Assault and Misconduct," 2019. "According to a recent survey of nearly 182,000 students, 26% of female college and graduate students report nonconsensual sexual contact by physical force or an inability to consent since enrolling in the school."

⁴⁴ Andrew Gilligan, *The Sunday Times*, "Unisex Changing Rooms Put Women in Danger," September 2, 2018, available at: <https://www.thetimes.co.uk/article/unisex-changing-rooms-put-women-in-danger-8lwbp8kgk>

⁴⁵ The study used the term male-to-female transsexuals rather than more modern terms: transwomen or trans-identified males.

⁴⁶ The study also compared conviction rates of post-op trans-identified males to those of women to test whether trans-identified males successfully became similar to women in that way. They did not. Their rates of conviction, like men's overall rates of conviction, remained significantly higher than women's.

16. Girls’ and Women’s Rights Should Be Respected By Adults, Not Just In School Competitive Sport, and Not Just By Their Peers.

These conditions and accommodations should apply to age-group club competitions; competitive interscholastic, intercollegiate, and developmental elite athletic programs; and the U.S. Olympic and Paralympic movement. They should be used as guidelines for any competitive youth and age-group and AAU sports, such as swimming and track, that involve rules; scorekeeping; adult organizers, referees, or umpires; and, ultimately, one or more winners.

When sports involve adults such as coaches, organizers, referees, or umpires, those adults should follow the same privacy and safety single-sex rules.

Formal sex-segregation is unnecessary in physical education, intramurals, or recreational sports sponsored by municipalities, schools, and colleges. Sex-segregation rules should not interfere with children’s or adults’ decisions to organize non-competitive, coed sports with any number of female and male participants when the only goal is to have fun.⁴⁷

17. Performance-Enhancing or Performance-Mitigating Drugs Should Be Impermissible For Sport Eligibility. Ingesting Drugs is Contrary to The World Anti-Doping Agency (WADA) and the United States Anti-Doping Agency (USADA) Policy and to Accepted Principles of Fair Competition.

No eligibility rules should force an athlete to take drugs to meet a standard consistent with their gender identity. However, some trans-identified people take drugs such as testosterone, estrogen, and testosterone-suppressing medications, in order to address their gender dysphoria. Doping governing bodies will need to determine when transgender athletes could qualify for therapeutic-use exemptions (TUEs). New transgender athlete categories could choose to allow TUE exemptions.

Women’s Sports Policy Working Group and Champion Women

The *Women’s Sports Policy Working Group* is a bipartisan think tank comprised of champion athletes, coaches, and sports administrators dedicated to affirming and strengthening girls' and women's legal right to separate, single-sex sports competitions. We encourage any equitable and inclusive accommodations for males who identify as women; gender-fluid athletes; and nonbinary athletes so long as

⁴⁷ As described above, coed competitions are permissible with a balanced number of females and males on each team, such as mixed doubles in tennis or mixed running or racing relays, so long as all participants compete based on their birth sex.

those accommodations do not diminish females' opportunities, financial rewards, nor females' right to fair, safe, separate sports experiences.

Members, Women's Sports Policy Working Group

- Donna de Varona, OLY: Two-time Olympic gold medal swimmer; Title IX leader; Hall of Fame broadcaster; first president, Women's Sports Foundation
- Martina Navratilova, OLY: Winner, 59 Grand Slam singles, doubles, and mixed doubles tennis titles, the most ever; first openly gay professional athlete; longtime LGBTQ rights advocate
- Nancy Hogshead, JD, OLY: Three-time Olympic gold medal swimmer; athletes' rights activist; CEO, Champion Women; Past-President, Women's Sports Foundation; Author, *Equal Play; Title IX and Social Change*, Member, Federal Commission on the State of the U.S. Olympic and Paralympic Committee
- Donna Lopiano, PhD: Hall of Fame softball player; Title IX expert; women's sports leader; former women's athletics director, University of Texas; first CEO, Women's Sports Foundation; Past President, the Drake Group
- Tracy Sundlun: Six-time Olympic track coach and manager; Founding Board member, National Scholastic Athletics Foundation; co-founder, Rock 'n' Roll Marathon Series; CEO, Everything Running
- Mariah Burton Nelson, MPH: former Stanford University and professional basketball player; pioneering author: *The Stronger Women Get, The More Men Love Football* and other books

Champion Women: *Champion Women* is a non-profit organization that provides legal advocacy for girls and women in sports. Founder and CEO: Nancy Hogshead, JD, OLY (see brief bio above).