Draft Nebraska Athletic Association Policy Requires Transgender Female Athletes Undergo Hormonal Therapy Or Sexual Reassignment Surgery Before Playing Girls Sports

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Publications

Earlier this month, the Nebraska State Activities Association (NSAA) issued a draft policy regarding transgender student participation in sports. The draft policy would require transgender students and/or their parents to submit a request to the local school district for consideration. If the district determines the student meets the state's requirements, it submits an application to the state's Gender Identity Eligibility Committee. To be approved, evidence must be presented proving the student exhibits the gender identity they identify with, including evidence from an appropriate health care professional. Also, transgender females (male-to-female) must submit evidence of either sexual reassignment surgery or one year of hormonal therapy, in addition to physiological testing.

The requirement of proving either sexual reassignment surgery or one year of hormonal therapy is a more substantial burden than in some other states, which only require that parents or a physician attest to the child's gender identity. Jim Tenopir, the executive director of the NSAA, explained that the draft policy was crafted in accord with Nebraska's "Midwestern values." Bob Reznicek, a NSAA board member and local superintendent, stated that it would require a "major commitment" for a transgender student to qualify under the proposed policy.

Advocacy groups on both sides voiced concern with the policy. The ACLU of Nebraska recommended a policy allowing local administrators to determine if a transgender student had changed their gender identity, based on statements made by the student and their parents. Amy Miller, legal director of the ACLU of Nebraska, stated that if the policy was adopted, "the NSAA and individual school districts could face costly, lengthy civil rights litigation or

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other repercussions like the loss of federal funds for treating transgender students in a discriminatory manner." On the other hand, the Nebraska Catholic Conference proposed a policy that would require transgender students to participate in sports based on the birth gender.

The Ohio High School Athletic Association adopted a transgender policy in November, 2014. Ohio's policy focuses on physical and physiological advantages and the comparative physiques of the athletes. Ohio allows a transgender female to either (1) prove they have completed 1 year of hormonal treatment; or (2) prove by way of sound medical evidence, that they do not have physical (bone structure, muscle mass, testosterone, hormonal) or physiological advantages over genetic females. This is less stringent than Nebraska's draft policy.

What You Need To Know

Transgender students and student privacy are hot-button issues this year and schools need to stay informed on advances in these areas. Ohio schools should follow Ohio's transgender athlete policy as drafted, and should keep a pulse on how other states are handling transgender issues. Feel free to contact the attorneys at Frost Brown Todd to help resolve issues related to transgender students and student privacy.

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