Including Transgender Athletes in Sex-Segregated Sport

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Jaime’s Story

Jaime is a rising tenth grader at a large public high school in the northeast United States. Though born and raised as male and named James by her parents, Jaime has identified internally as female from an early age. When she started high school, she began to express her female identity to others as well. With her parents’ support, she grew her hair out and started wearing girls’ clothes to school. Though her birth certificate and school records all identify Jaime as male, she asked her teachers and classmates and teachers to use female pronouns and to call her Jaime instead of James, which they usually remembered to do.

This social transition has been largely good for Jaime. Integrating her appearance and her identity has improved her self-image and eliminated the anxiety she used to experience when people regarded her as the boy she did not feel she was. But her transition has produced some challenges as well. Despite her female hair and clothing, Jaime’s male body makes her different-looking from other students. She is a little taller than most girls, has a deeper voice, and her rail-thin body lacks the curves emerging on the bodies of her female classmates. Because of these differences, Jaime is sometimes teased by other students. She worries that she might encounter a hostile presence in the girls’ bathroom, so she chooses to use the neutral single-stall in the nurse’s office. She would like to begin taking hormones to feminize her body and fit in better, but her parents are nervous about the potential health risks of this, not to mention the expense. As a family, they have decided to forego a hormonal transition for now.

Jaime has several female friends who plan to try out for the high school girls’ soccer team this fall. They have encouraged her to try out too, but Jaime is not so sure. She loves sports, and would love to play with her friends. But she is worried that trying out for a girls’ team would “push her luck” too far, and jeopardize the fragile-seeming acceptance that she’s experienced so far in high school. Would the other players on the team accept her as one of them? Would she face hostility from other teams? Would she be strong enough to endure a challenge or controversy? Or, she might be rejected at the outset. Given her male physiology and the word “male” on her birth certificate and school records, the coaches might insist that Jaime belongs on the boys’ team if she wants to play soccer. But that is not an option for Jaime. As worried as she is about acceptance by the girls, she is certain that she would never be accepted by the boys, given her female expression. Moreover, it just feels wrong to Jaime to consider joining the boys’ team, when in her heart she does not feel like a boy. In the end, Jaime decides to not to pursue soccer. She attends the junior varsity games to watch her friends play, but on the sidelines, she feels like an outsider. She wishes she could be a member of the team.

Jaime’s story is fiction, but it is rooted in the reality of transgender students’
More and more, young people are coming out as transgender, that is, having an internal sense of self that does not match their sex assigned at birth. Many of them may wish to pursue athletic opportunities for the same reasons other students do. It is fun to be a part of a team, to have the connection to teammates that comes from working together to pursue a common goal. Sports participation promotes physical and mental health, and builds confidence, cultivates leadership, and correlates to success in the classroom as well (Bailey, 2006; Ewing, Gano-Overway, Branta, & Seefeldt, 2002; Rosewater, 2009). The fact that schools across America include sports as part of their (extra)curricula demonstrates that educators regard the potential for sport to enrich the educational experience in valuable ways.

Moreover, participation in sports may be particularly beneficial to transgender youth. Like Jaime, many transgender youth are at risk for teasing, bullying, and harassment at school that can negatively affect a student’s attendance, grades, well-being, and mental health (Greytak, Kosciw, and Diaz, 2009). They may also experience shame and isolation (Grossman & D’Augelli, 2006). Researchers examining other populations where these risks are present have shown that participation in sports provides a protective factor for these challenges (Bailey, 2005; Taliaferro, Rienzo, Miller, Pigg & Dodd, 2008), thereby suggesting that it would likely benefit transgender youth as well. In particular for Jamie, affiliation with girls’ soccer would also validate Jamie’s gender identity and demonstrate to her peers and to the community that she deserves treatment similar to any other girl. But even without considering the potential for sport to help mitigate some of the serious risks particular to transgender individuals, athletic opportunities should be equally available to them for one simple reason: they are no less deserving of the opportunity to play, simply because they are transgender.

Presently, private and public policy addressing participation by transgender athletes can be described on a spectrum of least to most inclusive. This chapter will describe and evaluate different ways in which athletic associations and sport organizers are trying to accommodate transgender athletes into single-sex athletic teams. It will end with recommendations for advocacy to promote the inclusion of transgender athletes across all sports.

**Least-Inclusive Policies**

The sport organizations with the least inclusive policies are likely those without any policy addressing inclusion of transgender athletes. In the absence of express words to the contrary, gatekeepers, such as coaches and administrators, may choose to narrowly interpret “sex” in the context of a sex-specific team to only include those who were assigned that sex at birth, without regard for the fact that such an interpretation would preclude some transgender individuals, such as Jaime, from participating in the category most meaningful to them. As further
illustrated by Jaime’s story, when sport organizations do not expressly convey the message of inclusion through their policies, they put the burden on the athletes to risk rejection, criticism, publicity, and controversy. Seeking to participate under these circumstances would require transgender athletes to sacrifice privacy and to actively self-advocate for the right to play with their identified gender, a right which is automatically extended to non-transgender athletes. It is easy to see how these risks can operate as a deterrent to participation, and as a result, exclusion.

In 2003, the International Olympic Committee (IOC), the governing body charged with overseeing Olympic competition and those events leading up to the Games, became the first athletic body to adopt a policy of inclusion regarding transgender athletes. At the time, many saw this as a progressive step because it broadened the prevailing birth-sex paradigm and allowed for some transgender athletes to compete with their transitioned gender. The IOC’s policy, however, is one of conditional inclusion. Only those who have (a) undergone sex reassignment surgery, (b) had hormone treatments for at least two years, and (c) received legal recognition of their transitioned sex can participate consistent with their gender identities (IOC, 2003). Many have critiqued these restrictions for excluding more athletes than necessary to achieve the IOC’s stated objective of preserving a supposedly level playing field – in particular, a level playing field within women’s sport (Griffin & Carroll, 2010; Dreger, 2010). For example, there is no medical basis to require an athlete transitioning from male to female to surgically remove her testes, the body’s source of testosterone, in addition to undergoing hormone treatment that includes anti-androgens to neutralize the effect of testosterone in the body (Griffin & Carroll, 2010). Along with the requirement of a legally recognized sex change, the requirement for surgery seems only to underscore the permanence and irrevocability of the athlete’s transition in order to ensure that the athlete is really transgender, and not temporarily transitioning for the purpose of a competitive advantage. Yet this concern is hardly supported by history, as evidence by the fact that IOC’s decades-long history with gender verification testing has never revealed a case of fraud (Ritchie, Reynard, & Lewis, 2008). Moreover, it is a concern that could be addressed through other less restrictive requirements, such as testimony of a health care provider.

Unfortunately, the combination of the IOC’s stature, coupled with it having been at the forefront of the issue of transgender inclusion, has influenced several sport organizations to adopt the IOC’s policy as their own. Many of these organizations govern professional and other elite sports, which exist for capitalist and nationalist purposes rather than the promotion of health, recreation, community, and other objectives that value inclusion. More concerning, however, is the fact that the IOC’s policy has been adopted by two state high school athletic associations, and is currently still the policy of one. The Connecticut Interscholastic Ath-
The Connecticut Interscholastic Athletic Conference (CIAC), which governs interscholastic athletics for 184 high schools and 148 middle schools (public and private) in the state of Connecticut, requires students to participate in their “birth sex” unless they have undergone “sex reassignment,” which it defines in similar fashion as the IOC (CIAC, 2011). That is, transgender students in Connecticut must undergo sex reassignment surgery, hormone treatment, a two-year waiting period after surgery, and legal recognition of new sex. Similarly, the Colorado High School Activities Association (CHSAA) adopted a policy that allows transgender students to participate in sports consistent with their transitioned sex only if they have undergone surgical and hormonal transition. However, a more recently-adopted policy appears to give member schools the discretion to relax these requirements when determining an athlete’s eligibility.

Unfortunately, the application of the IOC’s policy to high school athletics can hardly be considered an inclusive policy. Jaime, the student described in the introduction to this chapter, does not satisfy the surgical, hormonal, or the legal sex change components of the policy. And even if she had made a different decision to start a hormone treatment, it is highly unlikely that she’d be a candidate for sex reassignment surgery at such a young age, since surgical intervention is not recommended as part of the standard of care for transgender individuals under 18 years of age, except in rare cases (W-PATH, 2001). Furthermore, considering the additional two-year waiting period imposed in Connecticut makes clear that adopting the IOC’s policy for high schools is an effective ban on transgender participation, given that one’s eligibility for high school athletics is typically only four years. If Jaime lived in Connecticut, she would have had to undergone sex reassignment surgery sometime before seventh grade (probably age twelve) in order to play girls’ sports for four years in high school.

More-Inclusive Policies

Compared to the IOC’s policy, the National Collegiate Athletic Association’s transgender participation policy, adopted in 2011, is far more inclusive. The NCAA allows transgender athletes who identify as female to participate on teams competing for a women’s championship if they are undergoing cross-sex hormone treatments designed to neutralize the effect of testosterone on the body. Unlike the IOC, the NCAA does not require sex reassignment surgery or legal recognition of one’s transitioned sex (which in some states is conditioned on surgery) because the NCAA regards hormone treatment as sufficient to neutralize any source of gender-related physical advantage that may be relevant to sport. Moreover, the NCAA requires only one year of hormone treatment as a condition for being eligible for women’s sport in contrast to the IOC’s two-year minimum. It bases this departure on medical evidence suggesting that one year of testosterone suppression decreases an individual’s muscle mass and puts that individual in the “spectrum of physical traits of their transitioned gender.”
(NCAA, 2011, p.7; Goorin & Bunck, 2004). The one-year waiting period is also a better fit for collegiate sport than the IOC’s two-year requirement, given that an athlete’s eligibility is limited to the time period she or he is enrolled in school, which is typically four years. A one-year waiting period squares with the NCAA’s “medical redshirt” practice of allowing an athlete to extend eligibility for one year due to time taken off for medical reasons.

The NCAA’s policy also expressly acknowledges participation by athletes who may identify as male notwithstanding a female sex assigned at birth, a category of athletes that the IOC’s policy overlooks. The NCAA’s policy clarifies that such an athlete remains eligible to compete in women’s sports unless or until that athlete begins a physical transition using hormones. This aspect of the policy provides important protection for those athletes who may have devoted a lifetime to women’s sports based on having been assigned a female sex at birth. It ensures that these athletes will not be excluded from their sport “of origin” just because they transition socially by expressing a male gender identity. At the same time, the NCAA’s policy ensures that those athletes transitioning from female to male who are undergoing cross-sex hormone treatment will not be excluded from men’s sports for testing positive for exogenous testosterone, an otherwise banned substance (NCAA, 2011).

While the NCAA’s policy is more inclusive than the IOC’s policy, some transgender athletes are still excluded—namely, athletes who identify as female despite having been assigned a male sex at birth who have not transitioned with hormones for more than one year. If Jaime, the student from the introduction to this chapter, grew older and enrolled in college, she would not be eligible for women’s sports despite perhaps having played on a women’s team in high school (under one of the “most inclusive” policies described in the following section). Unlike non-transgender women, Jaime would have to undergo an expensive medical treatment that could compromise her fertility and expose her to other health risks (Becerra & de Luiz, 1999) as a condition to compete with her identified gender. Nor is it necessary to assume that competitive equity hinges on excluding transgender women like Jaime, who are not on hormones. As the NCAA itself acknowledges in its explanation of the policy, “A male-to-female transgender woman may be small and slight, even if she is not on hormone blockers or taking estrogen. ... The assumption that all male-bodied people are taller, stronger, and more highly skilled in a sport than all female-bodied people is not accurate.” (NCAA, 2011, p. 7). Moreover, other forms of “natural” potential competitive advantage—such as height, weight, musculature, or training environment—are rarely questioned or proffered as the basis for exclusion from women’s sports. Women come in many shapes and sizes. If we wouldn’t exclude a woman from sport because she was born with a tall body, or a strong body, or other attributes that might provide an asset on the field, then it is not necessary
either to exclude a woman because she was born with a male body.

Most-Inclusive Policies
The most inclusive policies governing participation by transgender athletes are those that turn not on whether the athletes has transitioned to some degree, but on what gender category that athlete declares as most appropriate for her- or himself. In 2007, the Washington Interscholastic Athletic Association, which governs high school sports in the state of Washington, enacted a policy allowing students to participate in sports “in a manner that is consistent with their gender identity, irrespective of the gender listed on a student’s records.” (WIAA, 2007). Should any questions arise about the appropriateness of a student’s asserted gender, an eligibility committee can determine whether the athlete’s gender identity is “bona fide” (i.e., that the athlete is really transgender and not pretending to be the other sex for an improper purpose). Importantly, no medical evidence is required to confirm that a student’s asserted gender identity is bona fide. The WIAA’s policy instructs the eligibility committee to accept confirmation of the student’s “consistent gender identification” in the form of affirmed written statements from the student, the student’s parent or guardian, or her or his health care provider (WIAA, 2007).

The most recent example of a most-inclusive policy comes not from athletic association bylaws, but through an application of state law. On July 1, 2012, a statute went into effect in the state of Massachusetts that protects individuals from discrimination on the basis of gender identity in the context of employment, housing, and education (An Act Relative to Gender Identity, 2011). The Department of Elementary and Secondary Education has promulgated regulations to specify the law’s application to public and charter schools within the state. Specifically, to the regulatory provision allowing schools to sponsor separate teams for female and male students, the Department added the following sentence: “A student shall have the opportunity to participate on the team that is consistent with the student’s gender identity” (DESE, 2012). This simple regulatory provision is augmented by the statutory definition of gender identity, which includes a mechanism for ensuring that an individual’s asserted gender identity is legitimate and sincerely held: “[g]ender-related identity may be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, as part of a person’s core identity; provided however, gender-related identity shall not be asserted for any improper purpose” (An Act Relative to Gender Identity, 2011).

This broad language of both WIAA’s and Massachusetts’s verification provision ensures that no particular form of medical treatment—such as surgical or hor-
monal transition—or legal documentation is required to verify one’s gender
identity for the purpose of athletic participation or any other context of the law.
In Washington and Massachusetts, a student like Jaime can assert the right to
play on the girls’ soccer team even though she has not taken hormones or legally
changed her sex, simply by asserting that her gender identity is genuine. Since
gender identity is the internal sense of being male, female, or something else, it
makes sense to recognize that the best evidence of Jaime’s gender identity is
what she says it is.

WIAA and Massachusetts’s policies are also considered “most” inclusive because
they would not exclude transgender athletes from participating according to
their sex assigned at birth if that was the more appropriate category for them.4
For some transgender individuals assigned a female sex at birth, but who identi-
fy as male, being restricted from women’s sports could be exclusive and isolat-
ing, especially if they have grown up playing women’s sports and have cultivat-
ed a community in that context. Many who come to identify as transgender men
in adulthood have identified as female in the past, and some, in particular, as
lesbians. Given that women’s sports leagues often foster community not only
among women, but among lesbians in particular, a requirement that “you must
identify as female to play” has the possibility to exclude someone who has been
playing with women all along, but who eventually comes out as transgender.
Especially in leagues that value community, it is not necessary to exclude some-
one who is assigned a female sex at birth whose gender identity happens to be
male. In my own women’s softball league, I have advocated for a definition of
women that includes anyone who now or has ever identified as woman, leaving
it up to the individual to determine when and whether the community of wom-
en’s sports is no longer salient to them.

Creating Change: Advocating for More- and Most-Inclusive Policies
There are a number of components to a strategy for advocating that sport organi-
izations adopt “more” and “most” inclusive policies for transgender athletes as
described in this chapter.

First, it’s important to meet organizations “where they are.” Self-declaration pol-
icies, like Massachusetts’s and WIAA’s, are a good fit for high schools and other
scholastic contexts, given the value that schools place on high rates of partici-
patation in athletics and the recognized importance of sport to students’ well-being.
Insisting that the NCAA or the IOC adopt a similar policy, however, may not be
a fruitful approach given those organizations’ strong, persistent beliefs about
gender-related athletic advantages and the desire to protect “competitive equi-
ity.” While it is important to speak honestly about the limitations of the “more
inclusive” policies described herein, it is also important to recognize the value of
such incremental steps of inclusion.
Another prong of an overall strategy of inclusion is to leverage state law and other nondiscrimination policies wherever possible. Two state agencies, the Massachusetts Department of Elementary and Secondary Education and the Connecticut Commission on Human Rights and Opportunities, have interpreted laws prohibiting discrimination on the basis of gender identity to require permitting athletes to participate in a manner consistent with their gender identity, without any requirements for legal or medical transition. In addition to Massachusetts and Connecticut, eleven more states—Colorado, Oregon, Iowa, Vermont, Washington, New Jersey, Illinois, Maine, California, Rhode Island, Minnesota—plus the District of Columbia have discrimination laws that prohibit educational institutions from discriminating on the basis of gender identity and expression (NCLR, 2010). Advocates should therefore not only challenge the Connecticut Interscholastic Athletic Commission’s policy for its inconsistency with state law, but also challenge the absence of inclusive policies in other states with similar laws. Relatedly, fifteen states (Connecticut, Nevada, Colorado, Oregon, Iowa, Vermont, Washington, New Jersey, Hawaii, Illinois, Maine, California, New Mexico, Rhode Island, and Minnesota), the District of Columbia, and over a hundred cities and towns across the country ban discrimination on the basis of gender identity in places that are open to the public (NCLR, 2010). Many local sports leagues are covered by such laws, and therefore represent more opportunities to leverage existing nondiscrimination laws to promote gender-identity-based participation outside the context of schools.

Third, directing advocacy efforts at the level of a sport’s national governing body (NGB) can, if successful, promote widespread change, since NGBs have jurisdiction over many affiliated organizations and leagues within that sport. At the same time, it is important not to forget adult recreational athletes, whose opportunities are not governed by any of the Olympic, collegiate, or high school policies discussed in this chapter. Moreover, adult leagues independent of any NGB will not be affected by policy change at that level, so it is may be necessary to address them individually.

Fourth, it is useful to remember that even policies on the same end of the spectrum of inclusion are not necessarily one-size-fits all. The needs of the organization should dictate the terms and language of the policy. For example, it may not make sense to recommend the language of WIAA’s or Massachusetts inclusion policy in the context of youth sports context where everyone is required to show proof of sex (and in many cases, age) in order to register for the appropriate division. An inclusion policy tailored to those kinds of organizations might be written in a way to make clear that birth certificates, while dispositive of age, may not be dispositive of sex, and should yield to other verifications of the participant’s gender identity that may be submitted at registration.

Finally, we must ensure that sex-specific sports are not the only opportunities
youth and adults have to participate in athletics. Having some sports that are open to anyone regardless of sex augments opportunities for transgender individuals who may be excluded even by the “more” and “most” inclusive policies described above. Some individuals identify their genders as something other than male or female, and therefore might be excluded or deterred from participation not because of the absence of a transgender inclusion policy, but by the more basic fact of having only two sex categories from which to pick. Co-ed sports are a good start, but they lose appeal to athletes seeking a gender-free alternative if they highly regulate participation by sex, such as by requiring a set number of participants of each sex to be on the field, or in a particular set of positions, at any given time. Where possible, sport organizers should provide truly gender free sports, or at least more flexible requirements for sex of coed participants.

Conclusion
This chapter started with the story of Jaime, a fictional transgender student deterred from trying out for the high school girls’ soccer team due to the absence of an applicable policy of inclusion. In another version of this story, Jaime could have gone out for the team and enjoyed the physical, educational, and socio-emotional benefits that sports participation has to offer, not to mention the opportunity to assert and be validated in the expression of her gender identity. By advocating for “more” and “most” inclusive policies throughout the sporting work, we can change the ending of Jaime’s story and make a difference for other athletes like her.

References


**Notes**

1. These organizations include USA Track and Field, USA Rugby, USA Hockey, the United States Golf Association, Ladies Professional Golf Association, Ladies Golf Union (Great Britain), the Ladies European Golf Tour, Women’s Golf Australia, and USA Track and Field (Buzuvis, 2011).

2. The new policy states, “The school may use the following criteria to determine participation: Gender identity use [sic] for school registration records; Medical documentation (hormonal therapy, sexual reassignment surgery, counseling, medical personnel, etc.; Gender Identity related advantages for approved participation” (CHSAA 2011-12). The word “may” suggests that school officials are permitted to require medical documentation, including that of sex reassignment surgery, if they so choose. Or they may choose to consider other evidence instead. Note that the listed alternatives are rather vague and subjective, particularly “gender identity related advantages for approved participation.”

3. The CIAC’s policy is, however, likely unlawful. In 2011, Connecticut amended its antidiscrimination law to prohibit discrimination on the basis of gender identity. The state agency that enforces that law, the Commission on Human Rights and Opportunities, interprets that new law to require schools to allow athletic participation in a manner consistent with the student’s gender identity (CHRO, 2012). However, until the CIAC’s policy is challenged by the CHRO or someone seeking to assert their participation rights under Connecticut law, the CIAC’s IOC-like policy remains in its Handbook where it operates as a likely deterrent to transgender athletes’ participation.

4. For an example of a policy to the contrary, consider the Women’s Flat Track Derby Association (roller derby), which limits participation to anyone “Living as a woman and having sex hormones that are within the medically acceptable range for a female.” The policy further clarifies that “Male athletes may not participate, nor can those born female or Intersex who identify as male” (WFTDA, 2011).