

## EQUITY &amp; DIVERSITY

# Federal Rule on Trans Athletes Is Delayed. Here's What That Means for Schools



By [Libby Stanford](#) — June 02, 2023 ⌚ 5 min read



Protesters fill the Ohio Statehouse corridor on April 19, 2023, in Columbus, Ohio in opposition to a bill that would ban transgender girls from playing in girls sports at K-12 and collegiate levels. The U.S. Department of Education's proposed Title IX rule change would challenge state-level bans on transgender athletes playing sports that align with their gender identity.

— Samantha Hendrickson/AP

The U.S. Department of Education will not finalize long-awaited changes to Title IX until October, leaving the rights of transgender athletes in limbo and potentially forcing school administrators to change athletic policies in the middle of next school year.

In a [blog post published May 26](#), the Education Department announced it will not release the final version of two major changes to Title IX, the federal law that protects against sex discrimination at schools and colleges that receive federal funding, until October.

The proposed changes, which the department released in two separate rulemakings, have been the subject of public scrutiny for the last year. The changes aim to enshrine in federal regulations that Title IX protections against sex discrimination apply to discrimination based on gender identity and sexual orientation and prohibit across-the-board bans on transgender athletes from joining teams that align with their gender identity.

The Education Department originally said it would release the finalized rules in May, but after receiving a record number of public comments, the agency has decided to extend that date by five months to October.

“Carefully considering and reviewing these comments takes time and is essential to ensuring the final rule is enduring,” the department wrote in the blog post.

The first proposal, released in July of 2022, [would change Title IX’s definition of sex-based discrimination and harassment to cover discrimination based on gender identity and sexuality](#). It garnered [around 240,000 public comments](#), nearly twice as many comments as the Education Department received in its previous rulemaking on Title IX in 2018 during former President Donald Trump’s administration, according to the blog post.

The second rule, [released in April](#), would prohibit categorical bans on transgender athletes’ membership on athletic teams that align with their gender identity. As proposed, the rule would still allow schools to prevent some athletes from playing if their participation interferes with the objectives of the sport, such as competitive fairness or safety. That proposal, which was controversial for people on all sides of the debate, generated 150,000 comments.

The proposed changes come at a time when LGBTQ+ people, especially youth, are the subject of an onslaught of state laws that ban gender-affirming care for minors, [require teachers to inform parents about changes to a students’ pronouns or names](#), and prohibit transgender people from using bathrooms that align with their gender identity.

Since 2020, 21 states have passed laws that bar transgender athletes from playing sports on teams that align with their gender identity, with many of those states specifically prohibiting transgender girls from joining female school teams, according to the Movement Advancement

Project, an organization that tracks changes to LGBTQ+ policy. The Title IX regulation on transgender athletes from the Biden administration directly challenges those state laws.

“What we’re seeing right now is an attempt by a violent, loud, angry minority to hold the rest of us hostage,” said Melanie Willingham-Jaggers, executive director of GLSEN, an advocacy organization for LGBTQ+ youth. “That’s what all of this is intending to do.”

## A sticky situation for school administrators

The proposed Title IX changes are likely going to require a lot of administrative work for school leaders, as they establish new regulations for how schools determine sports eligibility.

Before the Education Department’s announcement last week, administrators were prepared to have the summer to navigate the policy changes, but now they’ll have to adjust in the middle of the school year, which is a difficult ask, said Sasha Pudelski, director of advocacy for AASA, The School Superintendents Association.

“Mid-year implementation is challenging generally,” Pudelski said. “It means you start the school year with policies and procedures that are going to have to shift.”

The proposed changes would likely require additional staff training, communication with parents and community members, and, in some cases, school board meetings to update school policies and handbooks. AASA recommends that administrators start preparing now by adding time to the school schedule for professional development for staff members who work with Title IX.

The situation may be especially tricky for school districts in states that ban transgender athletes from playing on teams that align with their gender identity. There will likely be lawsuits to challenge those state laws when the rules are finalized, as well as lawsuits from officials in those states challenging the new federal regulation. Conservative lawmakers and state leaders have already threatened to sue the Biden administration if the new rule is finalized as is.

Pudelski would like to see the Education Department allow schools ample time to adjust to the change when it releases the finalized rules in the fall. She’d like to see the new policy take effect in the 2024-25 school year.

“The longer the runway, the easier it is to transition,” Pudelski said. “Even 90 days is preferable to 60 days, but certainly district administrators would appreciate being able to start fresh and ensure that they have the time that they need before the next school year to prepare to fully implement these regulations.”

## **Finalized rules could be momentous for LGBTQ+ students**

Willingham-Jaggers is hopeful that the extra time will allow the Education Department to ensure the proposed rule changes are as strong as possible.

“If in fact this delay is related to making sure the rule is as strong and as inclusive and as robust as possible, [that’s] wonderful,” Willingham-Jaggers said. “Take the time you need to get us the right rule and get us the right guidance.”

In a comment posted in response to the proposed rule, GLSEN urged the department to ensure that “no transgender, nonbinary, or intersex student is denied the opportunity to play school sports.”

While the rule would prevent outright bans on transgender youth participating in sports, it allows some room for schools to still limit student participation, especially in highly competitive sports. As a result, Willingham-Jaggers worries that the rule will still allow some students to be excluded.

## **Comments reflect intense opinions about transgender athletes in sports**

GLSEN’s comment was just one among 150,000 on the Education Department’s rule regarding transgender youth participation in athletics. The comments reflected a range of views, and intense feelings.

Many comments were identical to each other, generated by campaigns to oppose the rule, and argued the rule would be unfair to cisgender women. For example, around 32,000 comments resembled this one:

“ I strongly oppose the Department of Education’s proposed rule that threatens to withhold funding for children’s education in exchange for accepting someone else’s “adopted” sexual identity ... The department’s proposal creates an unfair advantage to males and undermines girls’ and women’s sports. I urge the Department of Education to recognize the differences and stop placating the movement to destroy the true equality that women have worked so hard to achieve.

“ This will reverse decades of fairness and scholarships for female athletes. It is scientifically sound that the influence of testosterone on the development of muscles, joints and bones causes male dominance of all athletic endeavors. If you allow boys and men to change their identity and then compete against females in ANY sport, then you will effectively eliminate the value of girls and women competing against girls and women. ... There are many other choices to allow transgender people to compete against other transgender people that keep the playing field level. There is no NEED to create many new problems when there has been insufficient need for biological men to compete against women.

Others urged the Biden administration to ensure students can’t be prohibited from playing sports, regardless of circumstance:

“ As a retired educator I urge you to ensure robust protections allowing all children and youth in K-12 grades to play in school sports. Let's allow children to be children. Allow them to participate, play, and enjoy school sports. School sports are an integral part of school for all students and foster a sense of well-being, confidence, and belonging as well as encouraging physical fitness. Additionally, school sports motivate all children to stay in school and continue their education. Do not deny transgender children and youth entry and participation in these important school programs. Sports should be fun and foster

inclusion and belonging for all children and teenagers whether straight or LGBTQ+.

Many comments voiced their support for transgender athletes:

“ As a psychologist, I have worked with the LGBT community for many years. This is a highly vulnerable population at that age which needs to be protected and not victimized. Their successful development at this period is critical. The failure of our system to support them can lead to increased isolation, rejection leading to homelessness, lower graduation rates, greater economic vulnerability, sexual exploitation and prison. It is a vicious cycle we must break and this regulation is a step in the right direction.

“ As a former competitive athlete and a law student, I am writing to express my support for the balanced and practical approach the new proposed rule takes. The controversy regarding transgender athlete's participation in sports is complicated with stakeholders on both sides presenting valid and legitimate concerns about the significance of athletics in education. As a Youth National Gold and Silver Medalist in Judo, I identify with many of the concerns regarding fairness in competition and safe participation in sport; however, I am also sympathetic towards the desire for inclusivity and validation through athletics. Aware of these tensions, the proposed rule fairly takes into consideration issues of law and community input to uphold the fundamental purpose of athletics in education: to provide students a space in which they can mentally, emotionally, and physically be their best.





## Libby Stanford

Reporter, Education Week

Libby Stanford is a reporter for Education Week.

### Reprints, Photocopies and Licensing of Content

All content on Education Week's websites is protected by copyright. No part of this publication shall be reproduced, stored in a retrieval system, or transmitted by any means, electronic or otherwise, without the written permission of the copyright holder. Readers may make up to 5 print copies of this publication at no cost for personal, non-commercial use, provided that each includes a full citation of the source. For additional print copies, or for permission for other uses of the content, visit [www.edweek.org/help/reprints-photocopies-and-licensing-of-content](http://www.edweek.org/help/reprints-photocopies-and-licensing-of-content) or email [reprints@educationweek.org](mailto:reprints@educationweek.org) and include information on how you would like to use the content. Want to seamlessly share more EdWeek content with your colleagues? Contact us today at [pages.edweek.org/ew-for-districts-learn-more.html](http://pages.edweek.org/ew-for-districts-learn-more.html) to learn about how group online subscriptions can complement professional learning in your district or organization.



Copyright © 2023 by Editorial Projects in Education, Inc. All rights reserved.