The NCAA's Transgender Student-Athlete Policy: How Attempting To Be More Inclusive Has Led to Gender and Gender Identity Discrimination

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I. INTRODUCTION

Consider the following hypothetical: Jennifer Dewitt embodied what the University of Tennessee looked for in their applicants. She was the valedictorian of her class, scored in the ninety-fifth percentile on her SAT exam, led her high school to back-to-back California state basketball championships, and even managed to find time to volunteer at her local soup kitchen on the weekends. Her teammates, who affectionately called her Jenny, said she was “a great athlete and friend,” and her teachers raved over her academic success. Jenny’s acceptance to the University of Tennessee was a dream come true, and her parents, Dan and Cindy, could not have been prouder of their little girl.

Jenny was recruited by the University of Tennessee to be the new point guard of the Lady Volunteers, arguably the most legendary women’s team in National Collegiate Athletic Association (NCAA) history. At the same time, she was going to be earning a degree in nuclear engineering at a school whose program ranked in the top ten, nationally. She was just seventeen years old, but Jenny fully understood that the next four years would present her with unbelievable opportunities to succeed both academically and athletically.

Just a month into her freshman year, Jenny was already thriving in her new environment. She had bonded with her roommate, Abigail, and the two had become quick friends. She had also received positive feedback from her professor on her first paper and had garnered the praises of her coaches on the basketball court. And to top it all off, ESPN had come out with their preseason women’s NCAA basketball rankings, which listed the Lady Volunteers as the number one team in the country.

Things were going great until Coach Jane Conrad called Jenny into her office. Along with a senior university administrator, Coach Conrad told Jenny that the university was informed that Jenny had been born Michael James Dewitt. After confirming that statement, Coach Conrad began questioning Jenny about her past and her transition from male to female.

Five minutes later, Coach Conrad explained to Jenny that she would not be able to participate on the women’s basketball team that season. Despite the fact that Jenny identified as female, presented as a woman,
participated in women’s sports in high school, had a driver’s license and a birth certificate with female gender markers, and was admitted to the University of Tennessee as a female, the NCAA rules prevented Jenny from playing on a women’s team without changing the team to a mixed-gender team. Coach Conrad explained to Jenny that she would have to undergo at least a year of documented hormone therapy before she would be eligible to compete on a women’s team. Furthermore, although she felt terrible about it, Coach Conrad informed Jenny that if she did not go through this hormone therapy, she would have no choice but to rescind Jenny’s basketball scholarship.

All at once, this seventeen-year-old girl’s world was turned upside-down. Jenny was told that if she did not start hormone therapy, she would never be able to participate in women’s sports and would have her scholarship rescinded. She knew that although she and her family had made the decision for her not to undergo hormone therapy back when she was thirteen, and then again when she was sixteen, she would once again need to revisit the subject—for if she did not, Jenny knew that her family would not be able to afford out-of-state tuition, and her dreams of playing NCAA women’s basketball and obtaining a nuclear engineering degree from the University of Tennessee would be over.

But who would pay for the hormone treatments? How could anyone guarantee Jenny’s safety or well-being? And did Jenny really want to change her physical appearance or her body’s development? She had decided not to in the past, and at the age of seventeen, Jenny was finally starting to love who she was and embrace her body and her identity. She was finally happy with herself—unfortunately, the NCAA was not.

Although Jenny is a fictional character, her story is a plausible one. In California, people do not have to undergo hormone treatments or sex

1. Since 2000, five different high school women’s basketball teams have won back-to-back state championships, with Long Beach Poly winning the championship four times in a row from 2006-2009. See CIF State Girls Basketball Champions, CAL. INTERSCHOLASTIC FED’N, http://www.cifstate.org/sports/basketball/past_results_records/CIF_State_Basketball_Champions hip_Records_through_2014.pdf (last visited Feb. 22, 2015). Furthermore, former women’s basketball player Rebecca Lobo, who held the Massachusetts state basketball scoring record for almost eighteen years, led her NCAA women’s basketball team to an undefeated season and a national championship, was named an academic All-American, graduated with honors from the University of Connecticut, and was a Rhodes Scholar candidate. See Rebecca Lobo, CANDIDATE F., http://www.ctforum.org/panelist/rebecca-lobo (last visited Oct. 18, 2014); see also Russ Held, Rebecca Lobo Reflects on Her State Scoring Record, Which May Soon Be Broken, MASSLIVE (Jan. 15, 2009), http://www.masslive.com/sports/index.ssf/2009/01/rebecca_lobo_reflects_on_ her_m.html. Although there is no public story of a transgender person accomplishing these feats, that is likely due to the history of society’s misunderstanding of and discrimination against transgender people and the sports world’s lack of access for and openness to transgender people.
reassignment surgery in order to change the gender marker on their birth certificates or driver’s licenses. In addition, a recently passed law in the state allows students to compete on sports teams in schools based on their gender identity, without requiring any legal or medical documentation. On the national level, new policies related to passports allow for the changing of gender markers without hormone treatment or surgery. More and more, state, local, and federal governments, as well as foreign governments, are modernizing their policies related to gender markers and are allowing legal gender changes without requiring medications or surgery.

This Article will examine and expose issues surrounding the current policy governing the participation of transgender student-athletes in the NCAA. After providing relevant background information, Part III will describe the policy and the reasons that it was adopted and, focusing on the requirement of one year of documented hormone treatment for transgender students to compete in their lived gender, will show how transgender men and transgender women are treated differently under the policy. It will further argue that the NCAA is an institution that will not be subjected to the federal antidiscrimination laws, which might otherwise be used to resolve this unequal treatment. Part IV argues that the NCAA should not require any student-athlete to undergo hormone therapy in order to play sports. Part V discusses the benefits of student participation in sports, and Part VI offers recommendations for how the NCAA could avoid sex discrimination, transphobia, and gender-identity discrimination. The Article closes with a brief Conclusion.

II. BACKGROUND

As definitions of terms used to describe gender identity vary and the laws that greatly impact transgender people are continuously changing, this Part provides important background information for this Article. It begins by defining key terminology as used throughout this Article and by exploring some of the different choices that transgender

5. Id. at 402.
people make with respect to the way they live their lives. Following that discussion, this Part will provide information about the problems and recent advances of identity documents for transgender individuals.

A. Transgender Individuals

In this Article, the word “transgender” is used as an umbrella term for people “whose gender identity, expression, or behavior is different from those typically associated with their assigned sex at birth,” including, but not limited to, transsexuals, cross-dressers, genderqueers, and gender non-conforming people. In contrast, “cisgender” refers to people whose gender identity matches the one assigned to them at birth.

The term “transsexual” refers to an individual who desires to live or lives permanently in the role of the gender opposite to the one assigned to them at birth and has undergone or desires to undergo sex reassignment surgery. The term “lived gender” refers to the sex or gender in which a person identifies and lives one’s life, notwithstanding the sex or gender that was assigned to them by others at birth.

It is important to note both that some transgender people prefer to keep their transgender identity private and that in order to feel comfortable with their bodies and their presentation to others, transgender people take different steps and make various changes related to their physical appearance. Some transgender people may not take any steps related to their physical appearance and may continue to present as their natal sex, but still maintain a transgender identity, while others may opt to change their physical appearance and self-referencing pronouns. There are transgender individuals who undergo medical treatments, such as hormone therapy or sex confirmation (or “sex reassignment”) surgery, to alter their bodies to better match their gender

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7. Id.
10. Pat Griffin & Helen J. Carroll, On the Team: Equal Opportunity for Transgender Student Athletes 9 (2010). For example, some transgender individuals elect to take hormones while others elect to undergo cosmetic surgery. Some trans individuals elect to have sex reassignment surgery and others elect to only dress in the accordance with their lived gender and have no surgery at all. Id.
11. Id.
identity. Yet others may not opt for any medical treatment at all and, like Jenny, choose to just wear clothing they find appropriate and live openly in the gender with which they identify; they may also legally change their identification documents to reflect their gender identity. A further discussion of some problems and advancements around identification documents for transgender individuals is discussed in the following Part.

Regardless of the changes that a transgender person decides to make or not to make in order to help them feel comfortable with their gender identity and the expression thereof, “[it] is important [for] other people [to] recognize and respect the transgender person’s identification as a man or woman.”13 Incorrectly classifying a transgender person as the wrong gender can have negative consequences for that individual;14 thus, reasonable efforts should be made to avoid placing a transgender person in uncomfortable and harmful situations.

B. Identification and Legal Gender

Having identity documents—such as driver’s licenses, birth certificates, passports, and social security cards—that do not reflect one’s lived gender, or securing ones that do, can provide problems for transgender individuals.15 In addition to the negative psychological effect of carrying and presenting identification that may not accurately represent a transgender person’s own identity, transgender people have faced employment and housing discrimination because of discrepancies between their lived gender and the gender listed on their identity documents.16 Furthermore, because of how frequently identity

12. Id.
13. Id.
14. It is disrespectful to a transgender person’s human dignity to deliberately use the incorrect pronouns or terminology when referring to that person. Tips and Strategies for Addressing the Challenges That Face Transgender Youth, ADVOCATES FOR YOUTH, http://www.advocatesforyouth.org/publications/497?task=view(last visited Feb. 22, 2015). One report shows that 89.5% of transgender youth feel unsafe in schools. Transgender students have also been expelled from schools “because the school does not know where the person should use the bathrooms.” Transgender and Gender Non-Conforming Youth Recommendations for Schools, TRANSGENDER L. CENTER, http://www.transgenderlaw.org/resources/tlcschools.htm (last visited Feb. 22, 2015). In Arizona, a group of state lawmakers voted to allow businesses to deny a person the right to use a bathroom based on their gender identity, if it does not match their biological sex. This presents harassment and violence risks for transgender people presenting as their lived gender but having to use the bathroom of the opposite gender. Bob Christie, Arizona Transgender Bathroom Bill OK’d by State House Panel, HUFFINGTON POST (Mar. 28, 2013, 2:15 AM), http://www.huffingtonpost.com/2013/03/28/arizona-transgender-bathroom-bill-_n_2968629.html.
16. See id. at 752.
documents are used, transgender people who have identity documents with gender markers that do not accurately correspond to their lived gender are constantly “at risk of discrimination, harassment and violence.”

While virtually every state in the United States allows transgender people to legally change their names and most states allow transgender individuals to change the sex on their birth certificate, requirements and processes for change of name or sex identification on documents such as driver’s licenses and birth certificates vary from state to state. Virtually all requests for name changes are granted, and courts have declared that transgender people should be treated the same as cisgender people when applying for a name change; thus, they should not have to show any medical records in order to obtain one. In addition, twenty-one states allow transgender individuals to change the sex on their birth certificates and driver’s licenses; however, changing the gender marker is usually far more difficult than changing the name on these identity documents.

In many states, a doctor’s note or court order requiring proof of sex reassignment surgery must be obtained and submitted to the Department of Motor Vehicles before the gender marker on driver’s licenses will be changed. However, some states, like California and New York, have policies in which no surgeries or specific medical treatment, other than a

17. Harper Jean Tobin, Fair and Accurate Identification for Transgender People, LGBTQ POL’Y J. (2011), http://isites.harvard.edu/icb/icb.do?keyword=k78405&pageid=icb.page414493 (describing how identification is presented every time a person “begins a new job, applies for housing, credit, or public benefits, goes to a bar or club, is subject to a routine traffic stop, or boards an airplane” and how a transgender person can be “out[ed]” each time identification is shown).


19. Id.

20. The main reason that a request would be denied is if a person was attempting to hide their identity in order to commit fraud. See id.

21. Id (citing In re Winn-Ritzenberg, 26 Misc. 3d 1, 3, 891 N.Y.S.2d 220 (App. Term 2009) (“In the absence of evidence of fraud, misrepresentation, or interference with the rights of others, the name change petition should have been granted. There is no sound basis in law or policy to engraft upon the statutory provisions an additional requirement that a transgendered-petitioner present medical substantiation for the desired name change.” (citations omitted))).


note from a doctor, are required in order to change the gender marker on a driver’s license.\(^\text{24}\) And it looks as if this is the trend among states. In August 2009, Washington eliminated the surgery requirement to change the gender marker on driver’s licenses.\(^\text{25}\) Alaska adopted its new policy that does not require surgery in August 2012,\(^\text{26}\) and in April 2013, Idaho dropped its surgery requirement for gender changes on driver’s licenses.\(^\text{27}\)

Furthermore, in 2011, the United States State Department adopted a policy that allows transgender people to change the gender marker on their passports after providing a letter from a physician stating that they have undergone “appropriate clinical treatment” for gender transition.\(^\text{28}\) The State Department’s *Foreign Affairs Manual* specifically says that sexual reassignment surgery is not a prerequisite for passport issuance, and it does not define “appropriate clinical treatment.”\(^\text{29}\) The *Manual* goes on to prohibit the requesting of a person’s medical records and also specifically allows for the issuance of a passport with a gender marker that conflicts with a state driver’s license or birth certificate in situations in which a state refuses to allow gender changes on such documents.\(^\text{30}\)

The recent changes on both the state and federal level in regards to the requirements and proof necessary to change the gender marker on identity documents will allow more transgender people to obtain identification that corresponds to their lived gender and free them from the risk that is taken when they are “outed” by their own identification. Now, transgender people may obtain passports with the appropriate gender marker without having to undergo any medical treatment, and that person, in an increasing number of states, can also obtain a driver’s license with the same appropriate gender designation.\(^\text{31}\) Thus, any

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\(^{24}\) See Spade, supra note 15, at 737.


\(^{30}\) Id.

\(^{31}\) For the purposes of this Article, I am using the word *appropriate* in the context of a gender binary system. In some cases, transgender people do not wish to be identified as a male or female and do not identify as such. At this time, however, no state allows for the use of a marker other than “M” or “F”
transgender student-athletes who do not consider hormone treatment or surgery as necessary or desirable in their transition process and who are able to obtain a note from a doctor declaring that they are undergoing “appropriate clinical treatment” for gender transition may obtain legal and valid forms of federal identification, and possibly state identification, that reflects their lived gender.

III. THE NCAA TRANSGENDER STUDENT-ATHLETE POLICY

In August 2011, the NCAA’s Executive Committee (Committee) approved a new policy that, it announced, “will clarify opportunities for participation by transgender student-athletes.” The policy allows transgender student-athletes to participate in a sex-segregated sport in their lived gender “so long as the athlete’s use of hormone therapy is consistent with NCAA policies and current medical standards.” These policies state:

- A trans male (female to male) student-athlete, who has received a medical exception for treatment with testosterone for gender transition, may compete on a men’s team, but is no longer eligible to compete on a women’s team without changing the team status to a mixed team. A mixed team is only eligible to compete for men’s sports championships.

- A trans female (male to female) student-athlete being treated with testosterone suppression medication for gender transition may continue to compete on a men’s team, but may not compete on a women’s team without changing it to a mixed team status until completing one calendar year of documented testosterone-suppression treatment.

The policy put forth by the NCAA clearly and expressly provides for different rules for trans male and trans female student-athletes. The decision of whether or not transgender student-athletes may participate on the sports team consistent with their gender identity becomes a question of what hormones that student has or has not taken and, in the case of trans female student-athletes, how long they have been taking those hormones.

33. Id.
34. In order to compete in an NCAA-sanctioned event or game, a transgender student-athlete who is undergoing any hormone therapy must have this treatment approved by the NCAA as these hormones are considered banned substances for NCAA student-athletes. Id.
35. Id.
A. The NCAA’s Reasons for Its Transgender Student-Athlete Policy

The NCAA did not publish any reasons, facts, evidence, or materials to support the new requirements placed on transgender athletes.  

It did not explain why transgender student-athletes need to have different eligibility requirements than cisgender student-athletes, nor did it explain why it prescribed different eligibility requirements for transgender males and females. Furthermore, the NCAA certainly did not give any scientific or medical reasons as to why one year is the appropriate minimum amount of time for a trans female student-athlete to undergo hormone therapy before being able to play on a championship-eligible women’s team.

However, a conversation with NCAA officials revealed a little more insight into what the Committee attempted to accomplish when making its decision. According to Karen Morrison, the Director of the NCAA’s Office of Diversity and Inclusion, the Committee wanted to implement a formal NCAA-wide transinclusive policy so that its different conferences and schools did not have different outcomes pertaining to decisions of eligibility of the same athlete or of similarly situated athletes. In weighing the options for a transinclusive policy, the Committee was concerned with trans female athletes gaining a competitive advantage over cisgender female athletes. Furthermore, it was noted that the NCAA “expects [the policy] to keep evolving.”

B. “Unfair Competitive Advantage” Is Not a Logically Acceptable Reason To Place Special Requirements on Transgender Student-Athletes

Maintaining competitive balance and not giving anyone an unfair competitive advantage is the argument that seems to be most prevalent among the people and organizations that do not wish to allow transgender people, especially transgender women, to play on sex-segregated sports teams that match their gender identity.

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36. See id.
37. See id.
38. See id.
40. Id.
41. Id.
42. See GRIFFIN & CARROLL, supra note 10, at 14; see also Heather Sykes, Transsexual and Transgender Policies in Sport, WOMEN IN SPORT & PHYSICAL ACTIVITY J., Spring 2006, at 1, 8, available at http://www.transgenderlaw.org/resources/sykes.pdf (subscription required)
specifically say that transgender women should not be allowed to play on women’s sports team often cite any or all of these reasons to support their argument: transgender girls and women are not “real” girls or women, and therefore they are not entitled to compete on a women’s team; being born a male gives a transgender girl or woman an unfair advantage when competing with cisgender girls or women; and, intertwined with the unfair advantage argument, boys or men would be able to declare that they are transgender in order to compete on a women’s team.43

1. “Real” Men and Women

“Gender identity is a core aspect of a person’s identity.”44 It is not something that a person can change and is not something that others should try to change. Transgender people who identify as men live their daily lives as men. Transgender women live their lives as women. For many transgender people, not being able to live their lives as a person of the gender with which they identify can lead to harm.45 For these people, their own gender transition is a “psychological and social necessity”46 and should not be discouraged or prevented.

The definition of what a “real” man or woman is varies depending on who you ask. There are those who identify a “real” man or woman based on their genitalia. However, classifying a person based on their genitalia ignores the psychological part of gender and also leaves out intersex people or people who have had genitalia removed or altered for medical reasons.

Thus, while there may not be an appropriate definition of what a “real” man or woman is, the definition should not be defined solely on the basis of a person’s sexual organs. There is much more to gender than that, and it is wrong to classify a person based solely on physical attributes and what one group of people may consider to be a “real” man or woman.

2. Transgender People Do Not Have Advantages That Are Greater Than the Advantages Experienced Within People of the Same Sex

Some people assume that because a transgender woman was declared a man at birth, she will have an unfair competitive advantage

(discussing the argument that male to female athletes have an unfair competitive advantage due to a perceived difference in muscular strength).

43. See GRIFFIN & CARROLL, supra note 10, at 14; see also Sykes, supra note 42, at 8.
44. GRIFFIN & CARROLL, supra note 10, at 15.
45. Id.
46. Id.
over cisgender women. However, while there are some differences in average statistics related to physical ability, it has been noted that “differences within the sexes are considerable and often times larger than differences between the sexes.”

Furthermore, physical attributes such as height and weight, which many people tie to success in sports like basketball and football, are not good indicators of skill or success level. Some of the tallest basketball players in both men’s and women’s NCAA history have neither been the best players of that time, nor considered to be good or productive during their NCAA careers. For example, Paul Sturgess, who is seven feet and eight inches tall, played basketball for Mountain State University, a National Association of Intercollegiate Athletics (NAIA) Division I school. Sturgess, who is the tallest person ever to play college basketball, barely ever got off the bench while most other players, clearly shorter than him, experienced more playing time and success. In contrast, Muggsy Bogues, a former NCAA and professional basketball player, is only five feet and three inches tall, and during his NCAA career, he set a conference record for assists and was then asked to play on the U.S. national team before being drafted in the first round of the NBA draft.

Moreover, if preventing unfair competition is sufficient justification for not allowing transgender athletes to participate on the team that matches their gender identity, then the NCAA should ban all athletes that were born with or have developed skills or physical attributes that enable them to dominate the competition. Brittney Griner, the six-foot, eight-inch tall women’s basketball superstar, won nearly every national women’s basketball award, led her team to victory in the national championship game, and became the first women’s basketball player ever

47. Id. at 14.
49. GRIFFIN & CARROLL, supra note 10, at 15 (quoting Dr. Walter Bockting, Ph.D., President of WPATH, Associate Professor, University of Minnesota Medical School).
51. Id.
to record 2,000 points and 500 assists in a college career. Jim Brown played football and lacrosse for Syracuse University and excelled in both sports; he became one of the best football players in the country and led Syracuse to an undefeated lacrosse season in which he scored the most goals in the nation. Brown went on to become the only NCAA Hall of Famer in both football and lacrosse. However, at no point in their careers did the NCAA step in and ask for Griner or Brown to be taken off of their teams because they were crushing their competition.

As shown above, the difference in physical attributes and skill level between people within the same gender can range significantly, just as it can between people of different genders. The NCAA does not restrict athletes who are over a certain height from competing against those athletes who are shorter, nor do they restrict student-athletes who have abnormally large lung capacity or high bone density levels from competing against those student-athletes who do not. Thus, it seems that the NCAA is only concerned with differences in physical abilities when a transgender person is involved; otherwise, maintaining a competitive advantage over another athlete because of physical abilities is just considered to be part of the game.

3. No Reported Cases of “Gender Fraud” Have Been Committed in Sports in Recent History

Some who believe that transgender athletes should only be allowed to compete in sports with athletes of the same natal sex believe that if transgender athletes are allowed to compete on sports teams that match their gender identity, then other athletes will declare that they are transgender in order to attempt to gain competitive advantages. The NCAA’s policy, which allows for trans men to immediately be eligible for competition on a men’s team without undergoing any medical treatment, does not reflect a concern that cisgender women will begin to pose as men in order to play on an NCAA men’s team. Rather, these people are concerned with the potential “unfair competitive advantage” that would result if a cisgender man falsely claimed to be a transgender woman in order to play on a woman’s sports team.

56. Id.
57. GRIFIN & CARROLL, supra note 10, at 14.
Thus, the desire to stop “gender fraud” has nothing to do with preventing the misrepresentation of a person’s gender in order to play sports; it is essentially a fear of transgender women gaining a competitive advantage over cisgender women. As previously discussed, that fear is not logical. In addition, in the recent history of sports, there have been no documented attempts by a person of any gender, in the NCAA or in any of the professional sports leagues, to misrepresent their gender intentionally in order to play on a specific sports team.

C. Why the Different Treatment of Trans Male and Female Student-Athletes Does Not Present a Constitutional Violation

In 1988, in what has become a highly criticized opinion, the United States Supreme Court issued a split 5-4 decision in NCAA v. Tarkanian, holding that the NCAA was a private association and was not a state actor. This decision has enabled the NCAA to be free from constitutional restraint in most cases, preventing individuals from obtaining remedies for NCAA conduct that abridges their individual rights in ways in which the government would not be allowed.

Courts have consistently upheld and relied upon the decision of the Supreme Court in Tarkanian in cases of racial discrimination, sex discrimination, and other instances in which plaintiffs have accused the NCAA of violating individual rights. Thus, although a trans female student-athlete would likely have a strong gender discrimination case under the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment against a government defendant, she would likely not be able to succeed on a case that is based on constitutional violations.

IV. THE IMPROPRIETY OF THE NCAA’S EVER REQUIRING ANYONE TO UNDERGO HORMONE THERAPY

The NCAA has many eligibility requirements for student-athletes who seek to play sports at an NCAA member institution. There are grade requirements, curriculum requirements, college admissions

60. Sahl, supra note 58, at 622.
61. Id.
However, nowhere in its bylaws did the NCAA require a student-athlete to be medicated in order to maintain eligibility. The transgender student-athlete policy represents the first time that the organization has required that a student-athlete take specific types of medication in order to be able to play a sport at an NCAA member institution.

By creating a policy that requires trans female student-athletes to complete one year of documented hormone therapy before being eligible to play on a women’s team, the NCAA is ignoring or discounting the fact that there are numerous reasons why some transgender people do not undergo hormone treatment. First and foremost, some transgender people do not ever want to take hormones. This group of people does not want to change the body they were born in for a variety of reasons, ranging from the way they choose to identify, to concerns over safety, to the cost of such treatments. In addition, undergoing hormone therapy has many intended and potentially unintended side effects. It is a myth that every trans person wishes to have sex reassignment surgery or to start hormone therapy, the NCAA should not require that all young transgender student-athletes medically alter their bodies in order to participate in college sports.

Furthermore, even those transgender student-athletes who may wish to start hormone therapy can be presented with a large number of problems or situations that can prevent them from being able to transition in this way. For example, the cost of transitioning can be prohibitive in some circumstances.

In order for a trans female student-athlete to be eligible to play on an NCAA member’s team, without changing the team to a mixed-gender team, she must have already completed one year of documented hormone therapy when she enters college. If the average

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63. Lawrence, supra note 32.
65. Spade, supra note 15, at 754.
66. Id. at 754-55.
67. Some hormone therapy medications can cause unwanted side effects such as frequent urination. A Look at Medications, TransGENDER CARE, http://www.transgendercare.com/medical/resources/tmf_program/tmf_program_5.asp (last visited Feb. 22, 2015).
68. See Spade, supra note 64; see also Jonathan L. Koenig, Distributive Consequences of the Medical Model, 46 HARV. C.R.-C.L. L. REV. 619 (2011).
age of an entering college freshman is eighteen,\textsuperscript{70} that student must have been taking hormones since she was seventeen years old. Because the student would have been a minor at that time, parental consent would have been required,\textsuperscript{71} and there is no certainty that the child’s parents would give consent to a hormone therapy regimen. It is not likely that a seventeen-year-old trans female will be able to pay for her own hormone therapy, especially when many insurance companies will not cover the cost of hormone therapy for transgender patients.\textsuperscript{72} Thus, even if parents do approve of the idea of hormone therapy for their children or the minors are emancipated, the parents or minors still must have the resources to pay for such treatment in order for the minors to be able to participate in NCAA sports.

V. THE BENEFITS OF TRANSGENDER STUDENT PARTICIPATION IN SPORTS

The benefits of youth participation in sports are numerous, and athletic programs in schools are “widely accepted as integral parts of the high school and college experience.”\textsuperscript{73} Participation in sports and athletic competition has “many positive effects on physical, social and emotional well-being.”\textsuperscript{74} Cisgender and transgender students alike can receive these benefits and learn lessons such as self-discipline, teamwork, and failure and partake in the “joy and shared excitement” that sports can bring.\textsuperscript{75}

Furthermore, participation in NCAA sports can lead student-athletes to careers as professional athletes, coaches, training staff, and other positions for which their experience as a member of an NCAA team gives them an advantage or is the experience required for position.\textsuperscript{76} NCAA athletes have the opportunity to travel to other schools and places around the country, and sometimes around the world, through their

\textsuperscript{70} The average age of a college freshman is between eighteen and nineteen years old. See John H. Pryor et al., The American Freshman: Forty-Year Trends, HIGHER EDUC. RES. INST. (Apr. 2007), http://www.heri.ucla.edu/PDFs/pubs/TFS/Trends/Monographs/TheAmericanFreshman40YearTrends.pdf.

\textsuperscript{71} Assessing Readiness for Hormones, CENTER EXCELLENCE FOR TRANSGENDER HEALTH, http://transhealth.ucsf.edu/trans/?page=protocol-hormone-ready (last visited Feb. 22, 2015) (“All treatment for minors requires parental/guardian consent, usually from both parents.”).


\textsuperscript{73} Griffin & Carroll, supra note 10, at 6.

\textsuperscript{74} Id.

\textsuperscript{75} Id.

\textsuperscript{76} See id.
They not only learn from being exposed to new cultures, places, and people, but they can use those experiences to their benefit in their personal and professional lives. “All students, including [those] who are transgender, deserve access to those benefits.”

Furthermore, the benefits of participation in sports for transgender youth should not only be looked at through the eyes of the transgender student. Allowing a transgender student-athlete to play on a team with cisgender students, coaches, and staff educates those involved at the team level and the community level.” It gives people the opportunity to learn about gender identities and respectful terminology and enables people to get to know a transgender person on a deeper and more personal level than they otherwise might—providing benefits that can lead to much larger positive change for society and its view of the transgender community.

The very significant benefits of transgender student participation in NCAA sports can be seen on an individual, team, and community level. The denial of these benefits to a transgender female who does not wish to undergo hormone treatment will limit her growth as an athlete and as a human and prevent her team and society from benefitting from her participation.

VI. RECOMMENDATIONS FOR THE NCAA

It is important to note that the NCAA’s inclusion of a transgender student-athlete policy brought the organization one significant step closer to gender identity equality in NCAA sports. However, in order to create

77. NCAA teams normally play one half of their games at their college or university’s facilities and the other half of their games at another NCAA member college or university’s facilities. These 1,076 active members are spread out across the United States. Composition and Sport Sponsorship of the Membership, NAT’L COLL. ATHLETIC ASS’N, http://www.ncaa.org/about/who-we-are/membership/composition-and-sport-sponsorship-membership (last visited Feb. 22, 2015). Furthermore, some teams take trips to either train or play games in foreign countries. For example, there are NCAA games held in Bahamas each year. Iowa To Play in Bahamas Instead of Alaska, CBS SPORTS (May 2, 2013, 5:12 PM), http://www.cbssports.com/college basketball/story/22183750/iowa-to-play-in-bahamas-instead-of-alaska. Additionally, the George Washington University Men’s Basketball Team played five exhibition games and trained in Australia in 2005. Men’s Basketball To Take Summer Tour of Australia, GWSPORTS.COM (July 29, 2005), http://www.gwsports.com/sports/m-baskbl/spec-rel/072905aaa.html.

78. See Griffin & Carroll, supra note 10, at 6.


a policy that truly treats both transgender men and transgender women equally, and one that treats transgender people and cisgender people equally, the NCAA should adopt a policy that does not require any transgender person to undergo any medical treatment, including hormone therapy, to be eligible to play in a sport that matches their gender identity. Furthermore, in order to place all athletes on a level playing field, the NCAA should pay for any additional expenses that transgender student-athletes must incur solely to obtain eligibility to compete in NCAA sports.

A. Remove the Hormone Treatment Requirement

As discussed in the Parts above, there are numerous reasons to remove the one year of hormone therapy required for transgender women to be eligible to play on an NCAA sanctioned women’s sports team. In addition to the unequal treatment of transgender women as compared to transgender men under the policy, transgender women may not wish to undergo therapy and should not be required to do so in order to play sports. Furthermore, transgender women would have to incur the extra financial burden of providing appropriate documentation and undergoing the appropriate hormone therapy before being allowed to play, something that no cisgender or transgender male athlete would have to go through.

In addition, any person who has already taken the steps to change their identity documents to match their gender identity or has been accepted or recognized by an NCAA member college or university as a member of the gender that matches their lived gender should not be denied eligibility to play NCAA sports based on their transgender status. Not only does a denial of eligibility create a situation in which the NCAA is determining a person’s gender, but it also presents situations in which the NCAA’s determination clashes with a person’s passport, driver’s license, or other legal identification documents.

Thus, it is recommended that the NCAA remove the hormone therapy requirement that the current NCAA Transgender Student-Athlete Policy mandates for transgender women and replace it with a policy that allows either:

1. Any person with valid government issued state or federal identification to play on a sports team that matches the gender listed on his or her identity document; or
2. Any person recognized as a male or female by his or her college or university to participate on the sports team that corresponds to that gender.
B. Pay for Expenses Incurred by Transgender Students Attempting To Prove Their Gender Identity

Student-athletes who claim that their gender identity corresponds to their natal sex do not have to provide proof beyond what is required by their university for enrollment at their school. These students do not need to see a psychiatrist or psychologist and have that person write a letter verifying that they are a “man” or “woman” or that they are not a transgender man or transgender woman. Thus, any requirement that the NCAA places upon any transgender student-athlete that requires proof of their (trans)gender identity places an extra financial burden on that student.

In a study conducted by the National Center for Transgender Equality, 90% of transgender people surveyed experienced harassment, mistreatment, or discrimination at work, and 57% of transgender people reported experiences of significant family rejection. Those statistics, when combined, paint a devastating picture for transgender youth. For transgender teenagers who do not have support from their families and cannot maintain a job because of their gender identity, affording the basic necessities is likely difficult. That is probably why 19% of all transgender people have experienced homelessness at some point in their lives. Requiring these youths to obtain special documentation from doctors or mental health professionals, when other cisgender student-athletes do not have to do the same, is treatment that is discriminatory in effect, and should be corrected.

Furthermore, the extra burden of having to pay for exams or documents from physicians or mental health professionals is not only problematic because of the financial and time requirements involved, but it is also problematic because of the message that is being sent to transgender youth. By not requiring cisgender students to present documentation from medical professionals certifying their cisgender identity, transgender students are being treated differently and are being cast as different or unequal and certainly not “normal.” If the purpose of the NCAA’s policy is to be inclusive and welcoming of trans student-athletes, it should not stigmatize and push feelings of abnormality upon these students before they are even eligible to play a sport.

82. Id.
Thus, the cost of any additional documentation or processes not required of cisgender student-athletes should not be forced to come out of the pocket of a seventeen- or eighteen-year-old transgender student but rather should be paid for by the NCAA. This will not only level the playing field related to the costs of eligibility but will also send a message of inclusiveness and acceptance to transgender youth.

VII. CONCLUSION

The NCAA’s transgender student-athlete policy was certainly a step in the right direction for transgender student inclusiveness in college sports. However, the policy still leaves transgender women at a disadvantage because of the additional requirements that these women face before they are able to play sports on a team that corresponds to their gender identity. Depriving some transgender women the benefits of participation because of their own choices about medical treatment or requiring that other transgender women wait a year while undergoing medical treatment that they may not have wanted in the first place is not promoting inclusiveness, but promoting medical treatments for transgender individuals and incorrect assumptions about fair competition and competitive advantages. It is time that the NCAA revisited a policy that it says will “evolve.”