

*Gender identity, sexual orientation, and religious affiliation in American school sports. About the effects of the new Transgender Participation Policy of the Nationale Association of Intercollegiate Athletics in Catholic educational institutions*

The *Nationale Association of Intercollegiate Athletics* (NAIA), the U.S. governing body of athletic programs at some two hundred and fifty colleges and universities, recently unanimously approved a new *Transgender Participation Policy*. The main change concerns precisely the participation of female student-athletes in sports played within the member schools. It states, in fact, that only «student-athletes whose biological sex is female may participate in NAIA-sponsored women’s sports». Otherwise - at the discretion of the Association’s member educational institutions - female student-athletes who have begun masculinizing hormone therapy may take part only in in-school activities, as well as in outside competitions that are not, however, considered ‘numerable’ within the meaning of Article 12, sec. XXV, of the NAC Policy (i.e., not included in statistics, win-loss records and coaches’ records). It is further stipulated that such student-athletes will be allowed to participate in all men’s sports.

The Association’s new policy is essentially aimed - as asserted in the approved document - to support fair, equitable and safe competitions for all student-athletes. Indeed, from this perspective, the *Nationale Association of Intercollegiate Athletics* (NAIA) organizes separate competition categories for female and male athletes because it believes that «every NAIA sport includes a combination of strength, speed, and endurance, providing competitive advantages to male student-athletes», with the exception of competitive cheer and dance.

However, the *Nationale Association of Intercollegiate Athletics’* innovative *Transgender Participation Policy* appears to assume as a general rule what, in contrast, in the U.S. Department of Education’s proposed sports regulations is an exception. Released in April 2023 as part of a broader regulation being passed on schools’ obligations under Title IX of the Education Amendments of 1972, the proposed regulation, in fact, provides that differential treatment in the selection and training of sports teams based on gender identity is prohibited by Title IX in all educational institutions receiving federal funding. At the same time, however, it is provided that in some specific cases-particularly in highly competitive settings (such as athletics) where considerations of fair competition and sports safety may in fact prevail-schools may introduce certain restrictions.

In such a context, therefore, divergent school sport policies may well emerge, with the possible effect of compressing, rather than strengthening, the guarantee of effective protection of women’s right to sport under conditions of equality and equal opportunities.

Some additional concerns are raised in reference to the various Catholic schools that belong to the *Nationale Association of Intercollegiate Athletics* (NAIA). It is clear that the new guidelines will be able to encourage wider promotion of participation in sports in full compliance with the teachings of the Catholic Church. However, adherence to the new *Transgender Participation Policy* could mean that such schools will be ousted from federal financial assistance. In this regard, in fact, it should be kept in mind that the proposed sports regulations, while not directly applying to governing bodies - such as the *Nationale Association of Intercollegiate Athletics* (NAIA), the *National Collegiate Athletic Association* (NCAA) or state high school athletic associations - continue to regulate educational institutions that are constituent members and receive federal funds. It is

stipulated, in fact, that such schools ‘communicate’ with their respective athletic governing bodies regarding their compliance with their obligations under Title IX, which precisely broadly prohibits discrimination “on the basis of sex” in the programs and activities of state-funded schools, colleges and universities. Educational institutions - as specified in the regulations - are not exempt from Title IX compliance even if they are members of an association that adopts rules to the contrary.

It is to be expected that Catholic schools - like other religious schools - will avail themselves of the exemption from state policies contrary to their beliefs; an exemption that the U.S. Department of Education’s proposed sports regulation appears, in fact, not to exclude. However, even if the religious exemption is granted, one wonders to what extent the rule, if finally passed, will affect these institutions.

Indeed, it is clear that the policy of the *National Association of Intercollegiate Athletics* (NAIA) could have a significant impact in the decisions of Catholic schools to participate in external competitions with other public or private schools that do not categorically follow gender identity-based team participation policies. Nor can it be ruled out that they may be the ones who decide to opt out of competing with religious schools that precisely organize sports on the basis of biological sex.

Therefore, it is desirable that the US Department of Education provide specific guidance on how the proposed rule and any religious exemptions should be implemented in national policies on sports participation by schools with conflicting religious beliefs.

While, therefore, the new *Transgender Participation Policy* is intended to strengthen women’s participation in sports on an equitable basis, in reality its implementation could, instead, significantly undermine those equal sporting opportunities that the Olympic Charter guarantees internationally, without being an impediment on the grounds of gender, sexual orientation and religious identity.

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Fonte: [https://www.naia.org/transgender/files/TG\\_Policy\\_for\\_webpage\\_v2.pdf](https://www.naia.org/transgender/files/TG_Policy_for_webpage_v2.pdf)

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