



[HF 2416](#) – Girls' Athletics, Eligibility (LSB5990HV.1)

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Fiscal Note Version – As amended and passed by the House

Description

[House File 2416](#) requires an interscholastic athletic team, sport, or athletic event that is sponsored or sanctioned by an educational institution or organization as defined in Iowa Code section [280.13](#) to designate that team, sport, or event as females, women, or girls; males, men, or boys; or coeducational or mixed. An educational institution is defined as an accredited nonpublic school; school district; Board of Regents institution; community college; or any institution of higher education located in the State that is a member of the National Collegiate Athletic Association (NCAA), National Association of Intercollegiate Athletics (NAIA), or National Junior College Athletic Association (NJCAA). Only female students, based on their sex as defined in the Bill, may participate in any team, sport, or athletic event designated as being for females, women, or girls.

A student who suffers direct or indirect harm as a result of violation of this Bill's requirements, or is subjected to retaliation or other adverse action by an educational institution or organization as a result of reporting a violation of this Bill's requirements, has a private right of action against the educational institution or organization. Tort liability protection of governmental subdivisions or the State, as defined in Iowa Code chapter [670](#) or Iowa Code chapter [669](#), will not apply to an educational institution employee or educational institution that does not comply with the requirements of this Bill. A governmental entity will not investigate a complaint or take any adverse action against an educational institution or organization for compliance with the requirements of this Bill.

If an educational institution or organization suffers direct or indirect harm as a result of violation of this Bill's requirements, it has a private right of action against the violating entity. A governmental entity, educational institution, or organization will not be liable to any student for compliance with requirements of this Bill.

Any civil action related to this Bill must be initiated within two years from the date the alleged harm occurred. The Attorney General is required to provide legal representation at no cost for an accredited nonpublic school, school district, school employee, school board member, or authority of a nonpublic school for any lawsuit initiated or any complaint filed against such entity for compliance with this Bill. The State is required to assume financial responsibility for any expenses related to the lawsuit or complaint as incurred by the accredited nonpublic school, school district, school employee, school board member, or authority of a nonpublic school.

The Bill is effective upon enactment.

Background

[Title IX](#) of the Education Amendments Act of 1972 protects persons from discrimination based on sex in education programs or activities that receive federal financial assistance. Title IX applies to schools, local and state educational agencies, and other institutions that receive federal financial assistance from the United States Department of Education.

The United States Department of Education's Office for Civil Rights (OCR) issued a [notice of interpretation](#) on June 16, 2021, requiring that a recipient institution that received United States Department of Education funds must operate its education program or activity in a manner free of discrimination based on sex, which is to encompass sexual orientation and gender identity. If a Title IX complaint meets applicable requirements and standards, the OCR will open an investigation allowing for due process, including the reasoning by a state as to why it should not lose federal funds. Opportunities for resolution agreement and an appeals process provide additional pathways for the state to settle the matter with the OCR without the loss of federal funds.

At the collegiate level, the NCAA is a nonprofit organization that regulates student athletes from 1,268 institutions across the United States and Canada. The NCAA's January 19, 2022, press release on updated participation rules [states](#) that effective starting with the 2022 winter championships, "Transgender student-athletes will need to document sport-specific testosterone levels beginning four weeks before their sport's championship selections. Starting with the 2022-23 academic year, transgender student-athletes will need documented levels at the beginning of their season and a second documentation six months after the first. They will also need documented testosterone levels four weeks before championship selections. Full implementation would begin with the 2023-24 academic year."

At the junior college level, the NJCAA is the governing association of community college, state college, and junior college athletics across the United States. The organization is divided into 24 regions, with region 11 representing institutions in Iowa.

Current [rules](#) of participation for the NJCAA state the following in Article VI, Section 6:

- A transgender 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.
- A transgender 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 until completing one calendar year of documented testosterone-suppression treatment.

The NAIA policy for transgender student-athlete participation at national championships can be found [here](#).

Fiscal Impact

House File 2416 may have a fiscal impact related to noncompliance with Title IX. The loss of federal funds is unlikely due to precedent, but the outcome of future enforcement by the OCR cannot be predicted.

At the collegiate level, House File 2416 may conflict with participation rules of the NCAA and may risk eligibility and media rights or competition hosting revenues. At the junior college level, House File 2416 also may conflict with current NJCAA participation rules and thereby risk eligibility and athletic competition hosting revenues.

In addition, House File 2416 may have a fiscal impact related to increased future exposure to litigation to the State of Iowa; however, the number of claims is unknown. Fiscal impacts may include financial responsibility, as described in the Bill, and the potential for additional costs related to required legal representation that is to be provided by the Attorney General. Attorney General costs would be dependent on the number of lawsuits filed.

Sources

United States Department of Education
United States Department of Justice
National Collegiate Athletic Association
National Junior College Athletic Association
National Association of Intercollegiate Athletics

/s/ Holly M. Lyons

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The fiscal note for this Bill was prepared pursuant to [Joint Rule 17](#) and the Iowa Code. Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.

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