

LEGAL MAILBAG – JANUARY 23, 2025



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The “Legal Mailbag Question of the Week” is a regular feature of the CAS Weekly NewsBlast. We invite readers to submit short, law-related questions of practical concern to school administrators. Each week, we will select a question and publish an answer. While these answers cannot be considered formal legal advice, they may be of help to you and your colleagues. We may edit your questions, and we will not identify the authors. Please submit your questions to: legalmailbag@casciac.org.

Dear Legal Mailbag,

My head is spinning, given the numerous Executive Orders issued following the Inauguration of President Trump earlier this week. As a coach of various sports at my high school, I am particularly curious about the following executive order, which President Trump issued on January 20, 2025: “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.” In that Executive Order, I read

- It is the policy of the United States to recognize two sexes, male and female. These sexes are not changeable and are grounded in fundamental and incontrovertible reality.
- (a) “Sex” shall refer to an individual’s immutable biological classification as either male or female. “Sex” is not a synonym for and does not include the concept of “gender identity.”
- (g) “Gender identity” reflects a fully internal and subjective sense of self, disconnected from biological reality and sex and existing on an infinite continuum, that does not provide a meaningful basis for identification and cannot be recognized as a replacement for sex.
- (b) Each agency and all Federal employees shall enforce laws governing sex-based rights, protections, opportunities, and accommodations to protect men and women as biologically distinct sexes. Each agency should therefore give the terms “sex”, “male”, “female”, “men”, “women”, “boys” and “girls” the meanings set forth in section 2 of this order when interpreting or applying statutes, regulations, or guidance and in all other official agency business, documents, and communications.

These are harsh words, and they conflict with the rules that have applied to our sports teams. While we have had only a few such situations, we have understood that we must respect the right of students to participate on the sports teams that conform to their gender identity and expression.

Does this Executive Order mean that I may no longer permit a student to participate on the sports team of the gender with which that student identifies? I want to be respectful of all students, and I want to follow legal requirements. What is the story now?

Signed,
Confused Coach

Dear Confused:

You live in Connecticut, and the law here is still the law. You should continue with business as usual. But stay tuned.

As you probably know, Title IX states in relevant part: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Interestingly, Title VII also prohibits discrimination on the basis of “sex,” but in the context of employment. That statute provides that it is “unlawful . . . for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual . . . **because of such individual’s** race, color, religion, **sex**, or national origin.” 42 U. S. C. §2000e–2(a)(1). (Emphasis added).

Legal Mailbag notes that the United States Supreme Court ruled in 2020 that the Title VII prohibition against discrimination on the basis of “sex” in employment decisions extends to decisions based on sexual orientation or transgender status:

When an employer fires an employee because she is homosexual or transgender, two causal factors may be in play— both the individual’s sex and something else (the sex to which the individual is attracted or with which the individual identifies). But Title VII doesn’t care. If an employer would not have discharged an employee but for that individual’s sex, the statute’s causation standard is met, and liability may attach.

Bostock v. Clayton County, Georgia, 590 U.S. 644, 140 S. Ct 1731 (U.S. 2020). That said, Title IX and Title VII address different issues, and the composition of the Court has changed since 2020. In short, Legal Mailbag cannot predict how this issue will be resolved, but Legal Mailbag believes that a decision of the United States Supreme Court will be necessary to know with certainty what the rights of transgender students are under Title IX.

In the meantime, Connecticut law prevails to protect the rights of transgender students. Conn. Gen. Stat. § 10-15c has long prohibited discrimination on the basis of sexual orientation, and gender identity or expression has been protected in Connecticut since 2011. See Conn. Gen. Stat. § 10-15c; Conn. Gen. Stat. §§ 46a-58, 46a-60. After the law was passed, there was some confusion over school district obligations. However, in 2012 the Connecticut Coalition issued [“Guidelines for Connecticut Schools to Comply with Gender Identity and Expression Non-Discrimination Laws,”](#) which clarified that school officials should treat students in a manner consistent with their gender identity. While Connecticut has

no decided court cases on the subject, interpreting a similar law the Maine Supreme Court ruled that a biologically-male student who has identified as female since a young age may use the girls' bathroom. [*Doe v. Regional School Unit 26*](#), 86 A.3d 600 (2014).

Given the controversies in other states over this issue, in 2017 Governor Malloy directed the State Department of Education, in consultation with the Commission on Human Rights and Opportunities, to develop guidance for school districts to provide students access to school facilities consistent with their gender identity and expression. The State Department of Education then issued Guidance on Civil Rights Protections and Supports for Transgender Students dated June 2017. At the same time, the Department issued a helpful resource, Civil Rights Protections and Supports for Transgender Students: Frequently Asked Questions (June 2017), which was updated in 2024.

That protection applies in all areas of school life, including sports. Since 2013, the Connecticut Interscholastic Athletic Conference (CIAC) has had a Transgender Participation Policy, which permits students to participate in interscholastic athletics on the team that conforms to their gender identity. This policy is consistent with school district obligations under state law, and the policy is still in force.

To be sure, this policy was challenged in federal court by some female students who claim that the CIAC policy violates their rights under Title IX. After a complicated history that has included two decisions by the Second Circuit Court of Appeals, in November of last year, the Connecticut federal district court denied CIAC's motion to dismiss, which will permit these students to proceed with their claims under Title IX. That said, we do not expect a final decision on the merits for years, given that this lawsuit was filed in 2020, and the courts have just ruled that the case can proceed on the merits. Under Connecticut law and the related CIAC policy, therefore, you must continue to respect the rights of transgender students unless and until at some point in the future, perhaps the distant future, the courts rule otherwise.