

# HIGHER EDUCATION

## INFORMATION MEMO

MARCH 29, 2024

### **Past and Present College Athletes Sue NCAA Over Transgender Participation Rules**

Only about .007% of athletes who compete in NCAA sports are transgender. However, this group has attracted an outsized amount of social, media, regulatory and now litigant, attention. Under National Collegiate Athletic Association (NCAA) rules dating to January 2022, transgender female athletes may compete in women's events if the national governing body for the specific sport allows transgender athletes to compete. This means that different college sports may have different rules about transgender athlete participation. In addition, the NCAA requires that transgender female athletes must have undergone one year of testosterone suppression treatment. (Starting in August 2024, these athletes will also be required to submit semi-annual documentation that their testosterone levels fall under sport specific maximums.)

On March 14, 2024, a group of current and former college athletes—including swimmers, soccer, volleyball and tennis players, along with track and field competitors—filed a lawsuit in a Georgia federal court against the NCAA, the University of Georgia System and several administrators from the University System of Georgia. The plaintiffs allege that permitting transgender females (referred to as “males” in the lawsuit) to compete in women's sports infringes upon their equal protection and “bodily privacy” rights under the 14th Amendment and Title IX.

The behemoth complaint, consisting of 637 paragraphs across 153 pages, recounts how some plaintiffs competed against and shared a locker room with transgender swimmer Lia Thomas at the 2022 NCAA swimming championships held at Georgia Tech University. Additionally, the lawsuit details the emotional reaction that one plaintiff and her Roanoke College teammates experienced due to the presence of a transgender female on their swimming team, even after the athlete left the team. It mentions another plaintiff who lost placements and points in track competitions to a transgender female, as well as concerns from other plaintiffs about potentially competing against transgender athletes under current NCAA policies.

The plaintiffs further assert they have been deprived of equal opportunities and resources, which have been redirected to transgender females on women's teams, claiming this has compromised their ability to prepare and compete fairly in college sports and increased their risk of concussions. They accuse the NCAA of aligning with what they call the “most radical elements” of diversity, equity and inclusion agendas to distract from the financial exploitation of college athletes and allege that the NCAA enforces a “code of silence” that suppresses the speech of female athletes and unfairly penalizes those who display homophobic or transphobic behaviors.

The lawsuit also criticizes the NCAA's testosterone suppression policy as insufficient for ensuring competitive fairness and not aligned with Olympic or USA Swimming standards. It contends that the maximum acceptable testosterone levels set by various sports' governing bodies are excessively high.

The plaintiffs demand that the NCAA prohibit transgender females from participating in women's events or using women's locker facilities, and to reassign awards previously given to transgender athletes or their teams to cisgender female competitors. They seek monetary damages for emotional distress, punitive damages and attorney's fees, aiming to expand this lawsuit into a class action that would include all female competitors at the 2022 NCAA Swimming and Diving Championship and all past, current or future female NCAA athletes.

In response, the defendants are expected to assert their compliance with the law and question the lawsuit's validity. Potential defenses include the NCAA's historical exemption from Title IX, based on Supreme Court precedent, and arguments regarding the NCAA's jurisdiction over college athletics. Additionally, the NCAA might claim it does not act "under color of law" for 14th Amendment purposes, while the University of Georgia system could assert its limited role in hosting events. Questions of legal standing for some plaintiffs and statutory limitations for others are also anticipated.

If you have questions about the information provided here, please contact [Kristen J. Thorsness](#), [Seth F. Gilbertson](#), any attorney in Bond's [higher education](#) or [collegiate sports](#) practice or the Bond attorney with whom you are regularly in contact.

