



MINNESOTA CATHOLIC CONFERENCE

July 28, 2014

Board of Directors
Minnesota State High School League

Dear Sir or Madam:

Peace be with you; I hope you are well.

I write to express the Catholic Church in Minnesota's opposition to the draft "Policy Regarding Participation of Transgender Students" ("Policy"), which I understand will be considered at your August meeting. We believe that it is not a policy that serves the best interests of students for multiple reasons. The Policy 1) is founded on a controversial and contested understanding of the human person; 2) is not required by state or federal law; 3) has no exemptions or accommodations for schools or students who do not embrace transgenderism; 4) does not specify the sanctions for schools that decline to participate in the policy; and 5) raises public safety and liability concerns. Please reject this Policy.

Underlying concern with the Policy: Policy is based on contested understanding of gender

Gender identity disorder (GID) and gender dysphoria (GD) are controversial topics to be sure. With their origins unknown, debate continues as to whether they should be addressed as psychological or psychiatric disorders or should be accommodated in some way by hormone and other therapies and transgender surgeries. Certainly, for many of those who experience these conditions, they constitute a challenge that should not be dismissed from our concern and care.

The Catholic Church condemns discrimination and supports ways to ensure that all students have access to both educational and extracurricular opportunities. An important aspect of our teaching is that persons who experience gender identity disorder, similar to the challenges of those who experience same-sex attraction, "should be accepted with respect, compassion and sensitivity. Every sign of unjust discrimination in their regard should be avoided." (*Catechism of the Catholic Church* § 2358.)

The Minnesota Catholic Conference submits that, based on policy-related concerns to be discussed, differential treatment that limits eligibility according to one's biological identity as male or female, and not according to one's self-identification, comports with justice and the common good. If enacted, the Policy instead would violate established principles of justice contrary to the common good.

Students may believe that they are “trapped in the bodies of the wrong sex” and desire to be recognized as the opposite gender, but this desire reflects an underlying disordered perception of self.¹ It is as though the person (“me” or “I”) is merely a soul or spirit-consciousness, and the body is just a “shell” and not really part of “me” and can be changed at will—a type of “dualism.” (It seems counter-intuitive that an organization primarily focused on athletics, such as MSHSL, would consider embracing a view that the body is only incidental to personhood.)

Sexual reassignment appears to offer a medical and possibly surgical solution for a psychological problem. But the research of Dr. Paul McHugh of Johns Hopkins University Medical Center—which has stopped doing sex-reassignment surgery at its facilities—underscores the host of psychological problems that embracing such a worldview and performing these treatments and surgeries creates in people’s lives. A recent op-ed by him that appeared in the *Wall Street Journal* is included for your consideration.

Further, a 2011 study at the Karolinska Institute in Sweden followed 324 people who had sex-reassignment surgery (191 male-to-females, 133 female-to-males) from 1973 to 2003. The overall rate of death was higher than expected, with suicide being the leading cause. Those who had the sex-change surgery were almost 20 times more likely to take their own lives than the non-transgender population. They were also more likely to seek in-house treatment for psychiatric conditions.² It does not appear that this Policy follows its own guiding principles of being rooted in “sound medical knowledge and scientific validity.”

Fundamentally speaking, recognizing a student’s “preferred gender” does not really change the child’s gender; the process they undertake does not accomplish what is pursued. Surgery and drugs do not ultimately change who we are as created male or female, and we need to consider the implications and tremendous imprudence of allowing children to choose their gender at a vulnerable age (and seek medical treatment to attempt to do so) when we do not even allow them to buy beer or get a tattoo without their parents’ permission. The Policy ultimately fails to

¹ The Catholic Church agrees with the metaphysical proposition, informed by biblical theology, that the body and soul of the human being are united, such that one’s sexual identity is rooted in one’s biological identity as male or female. See *Catechism of the Catholic Church* §§ 364, 365, 2332, 2333, 2393. Thus in Catholic teaching, sexual difference is considered “a reality deeply inscribed in man and woman.” Congregation for the Doctrine of the Faith, *Letter to the Bishops of the Catholic Church on the Collaboration of Men and Women in the Church and in the World*, no. 8 (2004). The Church regards this view of reality as normative, obliging men and women to accept their biological identity as their sexual identity. See *Catechism* at § 2393 (“By creating the human being man and woman, God gives personal dignity equally to the one and the other. Each of them, man and woman, should acknowledge and accept his [and her] sexual identity.”). “If the Church speaks of the nature of the human being as man and woman, and demands that this order of creation be respected, this is not some antiquated metaphysics. What is involved here is faith in the Creator and a readiness to listen to the ‘language’ of creation. To disregard this would be the self-destruction of man himself, and hence the destruction of God’s own work. What is often expressed and understood by the term ‘gender’ ultimately ends up being man’s attempt at self-emancipation from creation and the Creator.” Pope Benedict XVI, “Address To The Members Of The Roman Curia” (Dec. 22, 2008).
² <http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0016885>

consider the deeper truth that gender cannot be reassigned and embraces a contested and empirically unverified view³ of the human person that, as a practical and pedagogical matter,⁴ is potentially very harmful to students.⁵

The Policy is not required by Minnesota or Federal Law

We do not know where this Policy originated, though it is almost certainly being pursued with the best of intentions and with real concern for students struggling with gender identity. Still, it is important to clarify that this Policy is not required by state or federal law.⁶

Minnesota state law explicitly does not require the Policy. In fact, the Minnesota Human Rights Act specifically exempts “locker rooms and similar places” from its ban on discriminatory practices, and the Human Rights Act’s protections do not apply to youth sports organizations, at least in the organization’s ability to make distinctions based on sexual orientation (which, by statute, includes “gender identity”). Minn. Stat. § 363A.24 states:

Subdivision 1. Restrooms, locker rooms, and similar places. The provisions of section 363A.11 relating to sex, *shall not apply to such facilities as restrooms, locker rooms, and other similar places.* The provisions of section 363A.11 do not apply to employees or volunteers of a nonpublic service organization whose primary function is providing occasional services to minors, *such as youth sports organizations*, scouting organizations, boys’ or girls’ clubs, programs providing friends, counselors, or role models for minors, youth theater, dance, music or artistic organizations, agricultural organizations for minors, and other youth organizations, *with respect to qualifications based on sexual orientation.*

³ This Policy resembles gender identity legislation that in other places is part of a movement to persuade the courts and legislatures to establish what one author refers to as “a right to gender self-determination” that “transcends the binary” and overrides “a legal regime which vigilantly polices the brutal boundaries of male and female,” and thus the legislation raises provocative philosophical questions. See Laura K. Langley, *Self-Determination in a Gender Fundamentalist State: Toward Legal Liberation of Transgender Identities*, 12 Tex. J. on Civil Liberties & Civil Rights 101, 101, 103 (2006-07).

⁴ Approximately 80-85 percent of Catholic children attend public schools. We are concerned about what such a policy communicates to our students, particularly the medical legitimacy and moral soundness of transgenderism and sex re-assignment.

⁵ It must be remembered always that there is a necessary distinction, very often ignored, between unjust discrimination (the arbitrary limitation of freedom) and the necessary limitation placed on human activity whenever such actions would interfere with the just rights of others and harm society. All people of good will must oppose unjust discrimination. However, there are times in our lives when each of us experiences the pain, discomfort, and challenges of necessary limitations on our freedom whenever there is a prudent judgment that the common good is at stake.

⁶ The Obama Administration does argue that Title IX requires schools that receive federal funds to grant transgender student certain rights. But nothing in the plain language of Title IX requires such a policy, and in fact, the Administration’s position amounts to nothing more than cabinet officials attempting to rewrite laws on their own initiative.

Similarly, the Minnesota Supreme Court has held that an employer's designation of an employee restroom based on biological gender is not sexual orientation discrimination against a transgendered former employee. *Goins v. W. Grp.*, 635 N.W.2d 717 (Minn. 2001).

The Policy also raises questions about whether it is consistent with state law that works to ensure athletic opportunities for women. Minn. Stat. §363A.24 states:

Subd. 2. Athletic team, program, or event. The provisions of section 363A.11 relating to sex, do not apply to restricting membership on an athletic team or in a program or event to participants of one sex if the restriction is necessary to preserve the unique character of the team, program, or event and it would not substantially reduce comparable athletic opportunities for the other sex.

Allowing boys to play as girls seems to jeopardize the competitive playing field for women. Again, despite surgery and hormone therapy, what the Policy deems "MTF" persons are still males (as a matter of genetics), and vice versa. This will very likely alter the competitive balance in girls' sports.

Though it has its own corporate status, the Minnesota State High School League is still a form of "state actor." Therefore, it could be subject to litigation were it to enforce this Policy and punish member schools or students in a way that is plainly inconsistent with Minnesota law.

At minimum, exemption from the policy is due religious schools; students' privacy should also be protected

Setting aside the propriety and legality of the Policy, the Policy should be amended and exemptions should be afforded to private religious schools (including our many MSHSL member Catholic schools) that object to accommodating a student's self-selected gender identity.⁷

Minnesota has a strong tradition of exempting nonpublic schools from a wide range of requirements to protect their institutional integrity. And Minnesota law gives wide latitude to religious associations, and accommodates those institutions' beliefs about sexual orientation and gender identity. The Minnesota Human Rights Act explicitly states:

Nothing in this chapter prohibits any religious association, religious corporation, or religious society that is not organized for private profit, or any institution

⁷ Even if the MSHSL were adopting this Policy based on the Obama Administration's understanding of Title IX, religious schools are clearly exempted from Title IX. Specifically, 20 U.S.C. § 1681(a)(3) provides: "this section shall not apply to an education institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization." Thus, Title IX clearly authorizes an exemption for religious schools such as Minnesota's Catholic high schools.

organized for educational purposes that is operated, supervised, or controlled by a religious association, religious corporation, or religious society that is not organized for private profit, from:

...

(2) in matters relating to sexual orientation,⁸ taking any action with respect to education, employment, housing and real property, or use of facilities. This clause shall not apply to secular business activities engaged in by the religious association, religious corporation, or religious society, the conduct of which is unrelated to the religious and educational purposes for which it is organized. . .

Minn. Stat. § 363A.26(2). Minnesota state law requires that the MSHSL provide explicit exemptions to its policy. For example, schools should not be required to accommodate a transgender student's locker room or restroom facilities preferences. Though a school may make separate accommodations for such persons, it need not accede to any student's request to use a particular locker room or restroom facility. It may, but need not, provide separate accommodations for transgender students in a way consistent with the school's beliefs and resources.

We are concerned that without these explicit accommodations, schools that refuse to follow the policy and accommodate the request of each transgender student will be sanctioned by MSHSL or denied membership in its activities. Similarly, what about when schools refuse to place a transgender student on the team of their choice within their own school? Or, what if an all-boys or all-girls Catholic school forbade admission to a transgender student? Will schools face sanctions or penalties? Private, religious schools should be allowed broad latitude about, for example, who gets to play on their teams, yet this is not clear from the Policy.⁹ The MSHSL Board should question the prudence of adopting a policy containing so many unanswered questions and pitfalls.

And what about students who refuse to use facilities because they feel unsafe by the presence of someone of the opposite sex in their locker or restroom facility? All individuals have the constitutionally protected right of privacy in shielding one's body from exposure to persons of

⁸ The definition of sexual orientation includes "gender identity." See Minn. Stat. § 363A.03, subd. 44.

⁹ Some may counter with the argument that we would not accommodate a school's decision to behave with racial animus. But racism, which is an irrational hatred for a person based on an immutable attribute, is fundamentally different than well-reasoned moral and religious opposition to particular *conduct*. Minnesota law makes this very distinction and has much broader accommodations in the Human Rights Act for those who have moral objections to homosexuality and transgenderism.

the opposite biological sex in situations involving partial or full disrobing in close quarters.¹⁰ The MSHSL Policy says MSHSL will make accommodations (and expend its resources) for transgender students who want facilities, but why not also make accommodations for other students who request them? This seems fair to accommodate their legitimate right to privacy.

In no way does accommodating the concerns of religious and other schools and students jeopardize any student's participation in MSHSL activities. Instead, what such accommodations provide, if the MSHSL is intent on adopting the policy, is a genuine pluralism with respect to contested visions of the human person and child well-being (whatever the ground of the objection). Should the Policy be adopted, it should provide a blanket exemption for private schools that object, particularly religious schools.

The Policy creates liability and safety problems for member schools

As already noted, the Policy is unclear about potential sanctions a member school may face from the MSHSL from noncompliance with the Policy. The Policy is also unclear about the process by which complaints made by students against a member school are adjudicated (complaints other than the determination by the school which the child attends that he or she qualifies for MTF or FTM status).

Another issue is that the Policy creates legal liability for schools when accommodating student facility preferences. Certainly, the defense that a school followed MSHSL policy will not likely be adequate when, for example, an MTF transgender student assaults or attacks a female student in a female facility. What if males assault an FTM student in a male facility? What if a transgender athlete injures another athlete of the opposite sex while in play or vice versa? Will the MSHSL indemnify member schools for complying with the Policy?

This issue of liability also highlights the important safety concerns raised with putting students in locker rooms with students of the opposite sex. Beyond the privacy concerns already mentioned, the safety and well-being of children need to be thoroughly considered with this Policy. There may not be many "opportunists" looking to take advantage of the Policy (given the certification

¹⁰ Single-sex services, programs, and facilities take into account the sensitive nature of having to partially or fully disrobe in front of others, an experience of invaded privacy that, when occurring in the presence of members of the opposite biological sex, increases diametrically the sense of one's personal vulnerability. Single-sex policies are designed to shield persons from having to disrobe in the presence of, or from witnessing bodily exposures by, members of the opposite biological sex. The right to privacy applies independently from the issue of security, for even the most secure areas that nonetheless allow access to persons of the opposite sex, thereby increasing the risk of unavoidable opposite-sex bodily exposure, violate the right. In effect, the Policy would require the MSHSL to elevate the interests of those, who, for whatever reason, wish to enter restrooms and like facilities designated for persons of the opposite biological sex and where bodily exposure regularly occurs, over the fundamental, constitutionally protected privacy interests of those who desire to prevent such exposure by avoiding opposite-sex settings. Changing the law in a way that disassociates "gender identity" from biological references cannot change the reality of physiological sexual difference which forms the very basis of the privacy right at issue.

Minnesota State High School League
RE: Transgender Policy
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process), but biological facts and the predatory sexual proclivities of human beings cannot be wished away.

The process by which this Policy has been developed has not been adequate

We learned of this proposed Policy almost by chance. When I inquired about its status on June 2nd, I was told by Mr. Dave Stead only that it would be considered at the August directors meeting and that I may not have a copy as it was in draft form. My further inquiries as to the process by which this Policy was developed and whether there would be an opportunity for stakeholders to offer input went unanswered, even though I expressed that we may have some significant concerns.

I was able to obtain a copy of the Policy by a third party, and the version I have is the one included in this mailing (to ensure you know that our concerns are specific to the draft we have obtained and not necessarily any subsequent draft).

I think you have a duty to inform your member schools about this proposal and seek their input and concerns, as well as encourage them, in turn, to inform students and parents about the proposed Policy.

We stand ready to work with the MSHSL board on this matter, both to share in more detail why we think the Policy is unwise, and also to explore ways of trying to accommodate everyone's legitimate needs and concerns.

Thank you for your consideration.

Respectfully yours,



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Executive Director & General Counsel
jadkins@mnccl.org

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OPINION

Transgender Surgery Isn't the Solution

A drastic physical change doesn't address underlying psycho-social troubles.

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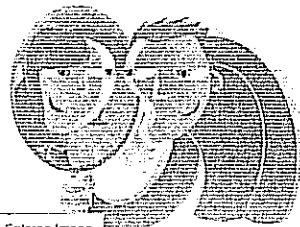
By PAUL MCHUGH

June 12, 2014 7:19 p.m. ET

The government and media alliance advancing the transgender cause has gone into overdrive in recent weeks. On May 30, a U.S. Department of Health and Human Services review board ruled that Medicare can pay for the "reassignment" surgery sought by the transgendered—those who say that they don't identify with their biological sex. Earlier last month Defense Secretary Chuck Hagel said that he was "open" to lifting a ban on transgender individuals serving in the military. Time magazine, seeing the trend, ran a cover story for its June 9 issue called "The Transgender Tipping Point: America's next civil rights frontier."

Yet policy makers and the media are doing no favors either to the public or the transgendered by treating their confusions as a right in need of defending rather than as a mental disorder that deserves understanding, treatment and prevention. This intensely felt sense of being transgendered constitutes a mental disorder in two respects. The first is that the idea of sex misalignment is simply mistaken—it does not correspond with physical reality. The second is that it can lead to grim psychological outcomes.

The transgendered suffer a disorder of "assumption" like those in other disorders familiar to psychiatrists. With the transgendered, the disordered assumption is that the individual differs from what seems given in nature—namely one's maleness or femaleness. Other kinds of disordered assumptions are held by those who suffer from anorexia and bulimia nervosa, where the assumption that departs from physical reality is the belief by the dangerously thin that they are overweight.



Enlarge Image

A man who looks into the mirror and sees himself as a woman Getty Images

With body dysmorphic disorder, an often socially crippling condition, the individual is consumed by the assumption "I'm ugly." These disorders occur in subjects who have come to believe that some of their psycho-social conflicts or problems will be resolved if they can change the way that they appear to others. Such ideas work like ruling passions in their subjects' minds and tend to be accompanied by a solipsistic argument.

For the transgendered, this argument holds that one's feeling of "gender" is a conscious, subjective sense that, being in one's mind, cannot be questioned by others. The individual often seeks not just society's tolerance of this "personal truth" but affirmation of it. Here rests the support for "transgender equality," the demands for government payment for medical and surgical treatments, and for access to all sex-based public roles and privileges.



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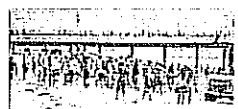


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1



With this argument, advocates for the transgendered have persuaded several states—including California, New Jersey and Massachusetts—to pass laws barring psychiatrists, even with parental permission, from striving to restore natural gender feelings to a transgender minor. That government can intrude into parents' rights to seek help in guiding their children indicates how powerful these advocates have become.

How to respond? Psychiatrists obviously must challenge the solipsistic concept that what is in the mind cannot be questioned. Disorders of consciousness, after all, represent psychiatry's domain; declaring them off-limits would eliminate the field. Many will recall how, in the 1990s, an accusation of parental sex abuse of children was deemed unquestionable by the solipsists of the "recovered memory" craze.

You won't hear it from those championing transgender equality, but controlled and follow-up studies reveal fundamental problems with this movement. When children who reported transgender feelings were tracked without medical or surgical treatment at both Vanderbilt University and London's Portman Clinic, 70%-80% of them spontaneously lost those feelings. Some 25% did have persisting feelings; what differentiates those individuals remains to be discerned.

We at Johns Hopkins University—which in the 1960s was the first American medical center to venture into "sex-reassignment surgery"—launched a study in the 1970s comparing the outcomes of transgendered people who had the surgery with the outcomes of those who did not. Most of the surgically treated patients described themselves as "satisfied" by the results, but their subsequent psycho-social adjustments were no better than those who didn't have the surgery. And so at Hopkins we stopped doing sex-reassignment surgery, since producing a "satisfied" but still troubled patient seemed an inadequate reason for surgically amputating normal organs.

It now appears that our long-ago decision was a wise one. A 2011 study at the Karolinska Institute in Sweden produced the most illuminating results yet regarding the transgendered, evidence that should give advocates pause. The long-term study—up to 30 years—followed 324 people who had sex-reassignment surgery. The study revealed that beginning about 10 years after having the surgery, the transgendered began to experience increasing mental difficulties. Most shockingly, their suicide mortality rose almost 20-fold above the comparable nontransgender population. This disturbing result has as yet no explanation but probably reflects the growing sense of isolation reported by the aging transgendered after surgery. The high suicide rate certainly challenges the surgery prescription.

There are subgroups of the transgendered, and for none does "reassignment" seem apt. One group includes male prisoners like Pvt. [Bradley Manning](#), the convicted national-security leaker who now wishes to be called Chelsea. Facing long sentences and the rigors of a men's prison, they have an obvious motive for wanting to change their sex and hence their prison. Given that they committed their crimes as males, they should be punished as such; after serving their time, they will be free to reconsider their gender.

Another subgroup consists of young men and women susceptible to suggestion from "everything is normal" sex education, amplified by Internet chat groups. These are the transgender subjects most like anorexia nervosa patients: They become persuaded that seeking a drastic physical change will banish their psycho-social problems. "Diversity" counselors in their schools, rather like cult leaders, may encourage these young people to distance themselves from their families and offer advice on rebutting arguments against having transgender surgery. Treatments here must begin with removing the young person from the suggestive environment and offering a counter-message in family therapy.

Then there is the subgroup of very young, often prepubescent children who notice distinct sex roles in the culture and, exploring how they fit in, begin imitating the opposite sex. Misguided doctors at medical centers including Boston's Children's Hospital have begun trying to treat this behavior by administering puberty-delaying hormones to render later sex-change surgeries less onerous—even though the drugs stunt the children's growth and risk causing sterility. Given that close to 80% of such children would abandon their confusion and grow naturally into adult life if untreated,

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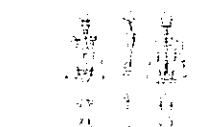
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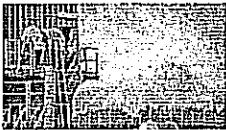
these medical interventions come close to child abuse. A better way to help these children: with devoted parenting.

At the heart of the problem is confusion over the nature of the transgendered. "Sex change" is biologically impossible. People who undergo sex-reassignment surgery do not change from men to women or vice versa. Rather, they become feminized men or masculinized women. Claiming that this is civil-rights matter and encouraging surgical intervention is in reality to collaborate with and promote a mental disorder.

Dr. McHugh, former psychiatrist in chief at Johns Hopkins Hospital, is the author of "Try to Remember: Psychiatry's Clash Over Meaning, Memory, and Mind" (Dana Press, 2008).

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Minnesota State High School League Policy Regarding Participation of Transgender Students

The Minnesota State High School League allows participation for all students regardless of their gender identity or expression. The purpose of this policy is to designate a set of criteria in which student athletes are able to compete on a level playing field in a safe, competitive and friendly environment, free of discrimination. Fundamental fairness, as well as most local, state and federal rules and regulations, requires schools to provide transgender students athletes with equal opportunities to participate in athletics. This policy creates a framework for such participation.

GUIDING PRINCIPLES

- The MSHSL is committed to the providing transgender students with the opportunity to participate in MSHSL-sponsored athletics;
- Members schools shall ensure that all students have access and opportunities to participate in athletics without discrimination based on disability, race, creed, color, gender, sexual orientation, gender identity, gender expression, religion, age, national origin, or ancestry;
- Policies governing athletic participation for transgender students must be formed by sound medical knowledge and scientific validity; and
- Protecting the privacy of transgender student athletes must be a priority for all athletic department and affiliated school personnel. All medical information shall be kept confidential in accordance with applicable local, state, and federal laws. All discussions and documentation at each level of the process shall be kept confidential unless the student and family make a specific request otherwise.

Section 1. DEFINITIONS

1. "Transgender" means having a gender identity or gender expression that differs from societal expectations based on gender assigned at birth.
 - a. Female-to-Male ("FTM") transgender person means one whose gender assigned at birth was female but who identifies as male.
 - b. Male-to-Female ("MTF") transgender person means one whose gender assigned at birth was male but who identifies as female.
2. "Gender identity" means an innate sense of one's gender.
3. "Gender expression" means a persons external characteristics and behavior that are socially defined as either masculine or feminine, such as dress, mannerisms, speech patterns and social interactions..

Section 2. IDENTIFICATION PROCESS

1. The MSHSL Transgender Policy addresses only transgender students and does not alter existing MSHSL rules. Minnesota State law does not prohibit girls from playing on teams traditionally identified as boys' teams. Specifically, Minn. Stat. § 121A.04, subd. 3(d) states the following:

"If two teams are provided in the same sport, one of these teams may be restricted to members of a sex whose overall athletic opportunities have previously been limited, and members of either sex shall be permitted to try out for the other team."

2. The MSHSL member school must determine the student's ability to participate in interscholastic athletics. The following information and criteria should be used by the member school to determine which gender the student will participate on the school's teams:

- A. The student's high school transcript and/or registration information and the student's participation physical examination forms for each year of athletic participation;
- B. A written statement from the student and parent(s)/guardian(s) affirming the consistent gender identity and expression to which the student self-relates;
- C. Affirmation from an appropriate healthcare professional within the scope of practice of the healthcare provider regarding the student's consistent gender identification and expression;
- D. Appropriate medical documentation documenting the student-athlete's intention to transition or the student's transition status if the process has already been initiated, including, but not limited to, hormonal therapy and/or sexual reassignment surgery. This documentation should identify the prescribed hormonal treatment for the student's gender transition and documentation of the student's testosterone levels, if relevant.
 - (i) To ensure safety and competitive equity, a FTM student who has started hormone therapy (i.e. testosterone) is only eligible to participate on male teams. A FTM student who has NOT started hormone therapy may participate on female or male teams if desired.
 - (ii) To ensure safety and competitive equity, a MTF student must have (TBD) of medically documented testosterone suppression therapy in order to be eligible to participate on female teams. To further ensure safety and competitive equity and comply with Minn. Stat. § 121A.04, subd. 3(d), a MTF student who has NOT started testosterone suppression therapy may only participate on male teams.
 - (iii) For purposes of this policy, hormone supplementation/suppression therapy under the supervision of a licensed physician when taken as prescribed does not violate any MSHSL policy regarding performance enhancing supplements.

3. Once a student has been approved to participate as a transgender student athlete in MSHSL sport(s), the student may not return to his/her gender identified at birth for athletic participation purposes unless a subsequent evaluation is undertaken by the member school due to a change in circumstances. If the member school denies a

change for participation as a transgender student athlete, the student's eligibility remains with the school's teams as determined by gender most recently affirmed..

Section 3. APPEAL

If the school does not affirm the transgender student's participation, the student and/or parent(s)/guardian(s) may file an appeal, in writing, to the student's local school board per the local school policy. The school must have a local appeal policy in place whereby the student, in concert with the student's parent(s) or legal guardian(s), are provided an opportunity to address and provide relevant information to the local eligibility committee.

Relevant documentation, including subsequent information submitted by the student and/or parent(s)/guardian(s), must be received as determined by the school. The school must send its appeal decision, in writing, to the student, and the student's parent(s)/guardian(s), and to the Executive Director of the MSHSL within five (5) business days following the hearing at the local school level.

Section 4. LEAGUE-LEVEL HEARING

1. If the local appeal does not affirm the transgender student's participation, the student and/or parent(s)/guardian(s) may file an appeal, in writing, to the MSHSL. Upon receipt of the appeal, the Executive Director of the MSHSL shall review the submitted documents and respond to the member school, in writing, whether the MSHSL agrees or disagrees with the member school's participation determination. The MSHSL may extend the response to the member school in order to confer with a licensed physician experienced with gender identification before making a participation ruling.

2. Unless the Executive Director of the MSHSL extends the response time in order to consult with a licensed physician experienced with gender identification, the final decision of the MSHSL shall be affirmed by the MSHSL Board of Directors and communicated to the member school within ten (10) business days following the initial receipt of the information from the member school.

3. If the MSHSL does not affirm the transgender student's participation, the student or the student's parent(s)/guardian(s) may appeal the decision to an Independent Hearing Officer as identified in the current appeal procedure identified in the most current MSHSL Official Handbook. (See Fair Hearing Procedure).

Section 5. FACILITIES ACCESS FOR MSHSL TOURNAMENTS

1. **Locker Room, Shower, Toilet Facilities:** Transgender student-athletes should be able to use the locker room, shower, and toilet facilities in accordance with the student's gender identity. When possible, every locker room should have some private, enclosed changing areas, showers, and toilets for use by any athlete who desires them. When requested by a transgender student-athlete, the MSHSL will make reasonable efforts to provide private, separate changing, showering, and toilet facilities for the

student's use, but transgender students should not be required to use separate facilities.

If a transgender student-athlete requires a particular accommodation to ensure access to appropriate changing, showering, or bathroom facilities, school administrators, athletic directors, and/or coaches, in consultation with the transgender student-athlete, should notify the MSHSL prior to competition to ensure that the student has access to facilities that are comfortable and safe. This notification should maintain the student's confidentiality. Under no circumstances should a student-athlete's identity as a transgender person be disclosed without the student's express permission.

2. Hotel Rooms – Transgender student-athletes generally should be assigned to share hotel rooms based on their gender identity, with a recognition that any student who needs extra privacy should be accommodated whenever possible.

DRAFT