



Municipality of Anchorage

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Anchorage Assembly Chair Constant and Assembly Member Rivera

May 1, 2023

Alaska School Activities Association Board of Directors
4048 Laurel St. #203
Anchorage, AK 99508

Via email to contactus@asaa.org

Dear Alaska School Activities Association Board of Directors,

It has come to our attention that the Alaska School Activities Association (ASAA) is considering proposed bylaw changes which would, in effect, allow for discrimination against transgender athletes within the Anchorage School District (ASD). **If the proposed changes were to go into effect, ASD would be forced to withdraw from all ASAA sanctioned sport activities in order to maintain compliance with the Municipality of Anchorage's (MOA) non-discrimination laws. This would be a great loss for ASAA, ASD, and most importantly, for all of the student athletes in the Anchorage School District.**

ASAA bylaws and policies require that "[a]ll school sponsored interscholastic sports, events and activities of member schools must be conducted in accordance with the Association's Constitution and Bylaws,"¹ ASD schools would be bound by these rules as long as it maintains membership in ASAA.

Simultaneously, Anchorage Municipal Code (AMC) Title 5, establishes that within the municipality equal opportunity for all persons is provided. Invidious discrimination in public based on sex, sexual orientation, gender identity, among other characteristics adversely affects the welfare of the community. Accordingly, AMC 5.20 establishes that such discrimination is prohibited in public accommodations and educational institutions.

As the authors of the most recent amendment to Title 5, we want to be clear. We assert that ASD is construed as an educational institution, an agency of the Municipality and a public accommodation.² Regardless of its classification, ASD is clearly forbidden from discriminating based on sex and gender identity.³ The proposed bylaw changes would appear to violate AMC 5.20, based on its treatment of trans female students.

¹ Bylaws, Article 3, Section 1A

² AMC 5.20.010

³ AMC 5.20.050-070

By refusing to allow trans female students to compete on a team consistent with their gender identity, while making such an allowance for trans male students, ASAA's proposed bylaw changes effectively deny them a benefit the bylaw changes confer on another group.

In addition, there is a strong argument that the mere classification based upon gender at birth, in and of itself, will exacerbate already existing stigma associated with trans youth. In *Brown v. Board of Education*, the Supreme Court premised its decision striking down racially segregated education largely upon compelling evidence that, even if the services provided to every student are truly equal by every objective measure, "[t]o separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."⁴ One can argue, quite persuasively, that the proposed classification scheme would create the same stamp of inferiority on trans youth that the Supreme Court sought to end in *Brown*.

By forcing ASD to choose between violating Title 5, Equal Rights, and denying trans female students access to an ASAA sanctioned event or allowing their participation and being penalized by ASAA, these proposed bylaw changes put ASD in a legally precarious situation and **open both ASD and ASAA up to serious litigation risk.**

On top of violations of Title 5, the ASAA proposed bylaw changes may also conflict with federal Title IX rules proposed by the Biden Administration. The proposed change to Title IX reads as follows:

If a recipient adopts or applies sex-related criteria that would limit or deny a student's eligibility to participate on a male or female team consistent with their gender identity, such criteria must, for each sport, level of competition, and grade or education level: (i) be substantially related to the achievement of an important educational objective, and (ii) minimize harms to students whose opportunity to participate on a male or female team consistent with their gender identity would be limited or denied.⁵

In order to remain compliant with Title IX then, ASAA would be forced to express what substantial government interest is being advanced by these rule changes. Given that these rules are being proposed in an absence of an identified problem with the current language, ASAA would have a difficult argument to make. **This is yet another example of the proposed bylaw changes putting ASAA in needless litigation risk, forcing ASD to consider leaving ASAA, and worst of all, increasing the harm to vulnerable youth who are simply attempting to participate in team sports in high school.**

⁴ *Brown v. Board of Education*, 347 U.S. 483, 494 (1954).

⁵ Notice of Proposed Rulemaking Title IX of the Education Amendments of 1972, at 115 (April 6, 2023). ([Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams \(PDF\)](#)).

To close, we urge the ASAA Board of Directors to vote against adoption of the proposed bylaw changes you will be considering during your board meeting this week.

If the ASAA Board of Directors chooses to move forward with the discriminatory proposed bylaw changes, it not only adds needless legal liability but could force the largest school district within the state with some of the most competitive teams across multiple sports to drop out of all ASAA sanctioned activities, impacting all other teams around the state.

As an aside, we respectfully encourage ASAA to work towards a diversification of its board and staff in order to ensure adequate gender and viewpoint representation, which would assist you in making decisions that work for the entire community.

Respectfully,



Assembly Chair Christopher Constant



Assembly Member Felix Rivera

Cc: Heidi Teshner, Commissioner, Alaska Dept. of Education & Early Development
Billy Strickland, Executive Director, ASAA
Anchorage School Board
Dr. Jharrett Bryantt, Superintendent, Anchorage School District