

# Transgender Eligibility Policies in Sport: Science, Ethics, and Evidence<sup>1</sup>

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## Introduction

Many authors have pointed out the innate unfairness in discriminating against transgender and transsexual athletes.<sup>3</sup> Despite advances in gender equity over the past few decades, transgender athletes and coaches still face pervasive prejudice, transphobia, and heterosexism in sport.<sup>4</sup> As is conventional in the gender studies literature, in this paper I use the term ‘trans’ to reflect individuals whose gender identity does not match their sex assigned at birth, regardless of whether or not the individual has undergone genital surgery or consumed hormones. ‘Trans athletes’ thus refer to athletes competing in the sex category matching their gender identity and opposite to that assigned at birth.

Many claims of unfair advantages possessed by trans athletes are predicated upon not only confusion about which category specific athletes should compete in, but also stem from gender normativity biases and a lack of understanding about transitioning.<sup>5</sup> At every level of sport, the only way to avoid defining essential characteristics of women and men is to eradicate sex categories entirely, or to trust participants to self-select the category in which they will compete.<sup>6</sup> As Alice Dreger summarizes,

Intersex and transgender people have historically suffered from opposite problems for the same reason. Whereas intersex people have historically been subjected to sex ‘normalizing’ hormones and surgeries they have *not* wanted, transgender people have had a hard time getting the sex-changing hormones and surgeries that they *have* wanted. Both problems arise from a single cause: a heterosexist medical establishment determined to retain control over who gets to be what sex.<sup>7</sup>

The International Olympic Committee’s 2003 *Stockholm Policy* stipulated the eligibility conditions that trans athletes had to meet to participate at the Olympics.<sup>8</sup> Unique at the time, the IOC was on the forefront of policy development for including (and excluding) trans athletes. Over a decade later, many countries still lack a policy

regarding the inclusion of trans athletes at the high-performance level and apply the IOC's revised (2015) policy by default.

### **Overview of trans policies**

Consider the case of a 15-year-old-student diagnosed with what the medical field now refers to as “gender dysphoria” whose was assigned to the category male at birth, but whose gender identity is firmly female. If this student competes in Manitoba, Canada, where I live, according to the Manitoba High School Athletics Association's trans athlete policy enacted in 2015, she can compete on the girls' teams, no questions asked. The MHSAA's policy is blunt, consisting of a preamble outlining the Association's guiding principle that “all students, regardless of gender identity, should have the opportunity to participate in interscholastic athletic activities in a safe, respectful, inclusive and non-judgmental environment,” followed by a one-sentence policy: “Any transgender student athlete may participate fully and safely in sex-separated sports activities in accordance with his or her gender identity.”<sup>9</sup>

A similar policy is in effect south of the Canada-US border in the state of Minnesota, but has resulted in over 10,000 complaints.<sup>10</sup> Let's imagine the athlete attracts the attention of American scouts, and is convinced to pursue a university degree while competing in the National Collegiate Athletics Association. In this case, another set of eligibility requirements apply. As the NCAA decided in 2011 that trans female athletes can play on men's teams *or* compete on a women's team after consuming testosterone blocking drugs for at least one year, the athlete will need to sit out of competition for a year as she consumes testosterone-blocking drugs before continuing her career as a member of a NCAA team.<sup>11</sup>

Let's now assume that after that year ends she returns to sport and has a stellar year leading her NCAA team, but is homesick and wants to return to Canada. If the athlete wants to compete for a Canadian university, she will find herself in a position where a policy does not exist. If she opts to enroll in a Canadian college, yet another policy will apply, which enables her to participate on the women's team because she has already taken hormones for a year to fulfil the NCAA's policy, but she must also now have a medical diagnosis of gender dysphoria.<sup>12</sup>

If her skills develop to the point where she earns a place on Canada's national team, the eligibility requirements change again. A comprehensive discussion paper released in 2012 by the Canadian Centre for Ethics in Sport, entitled *Sport in Transition: Making Sport in Canada More Responsible for Gender Inclusivity*, calls for gender self-declaration as the sole criterion for sports organizations across Canada to adopt. While lacking in specifics on how a policy of gender self-declaration as the sole criterion for adjudicating which sex category an athlete competes would be managed, logistics aside, the principles behind the recommendations mean that the athlete in the example above is eligible to be selected to represent Canada at the international level. In fact, the athlete would have been eligible even if she had not opted to take a year's dose of testosterone-blocking drugs in order to compete in the NCAA.

Despite now being a member of the Canadian national team, the athlete runs into a problem when her team participates in an Olympic qualification tournament. In order to participate in an Olympic qualifying event, she must meet the criteria set out by the IOC Medical Commission in the 2015 update to the *Stockholm Consensus*. For trans women, the conditions include: 1) a declared gender identify of female for at least four years; 2) a serum testosterone level of less than 10 nmol/L for a minimum of 1 year prior to competing, 3) the agreement of the IOC Medical Commission that condition 2 has been met, and 4) agreement to participate in the monitoring of the above conditions.<sup>13</sup> As a result, she must disclose her transition history to the IOC Medical Commission and request an evaluation to determine if she has fulfilled the policy's requirement. These requirements, however, are a considerable improvement from the 2003 inaugural requirements, which made compulsory surgical intervention, two years of hormone therapy, and having identity document changed to reflect the opposite gender. For a 12-year period, the IOC's surgical intervention component required all trans women seeking to compete to undergo gonadectomy to remove the testicles, despite the research literature not supporting this intervention as necessary to ensure competitors did not compete at an unfair advantage.

### **Assessing the evidence**

A recent study published in the *Journal of Sex Research* investigating trans men and women's decisions to undergo gonadectomies, breast

augmentation, or chest reconstruction surgeries, reports that in Canada only 20 to 25% of trans women elect to get any surgery as part of their transition, and only 21% of trans men choose to get a hysterectomy.<sup>14</sup> These numbers demonstrate a strong majority of trans people do not opt for surgery, and a policy requiring surgery raises many issues. Prominent among the concerns these statistics raise is the observation that three out of four trans individuals do not choose to have surgical interventions, for a variety of reasons, including the availability of knowledgeable surgeons capable of performing the procedures, the costs associated with procedures, particularly in areas where one's health insurance does not cover the expenses, and the pain and risks associated with any invasive surgery requiring general anesthetic. In recognition of the problems related to accessibility, expenses, and the risks surgery poses, many international human rights standards have begun classifying mandatory sex reassignment surgery as a necessary condition of changing one's gender and identity documents to be a human rights violation.<sup>15</sup> The same rationale raises questions about requiring trans people to consume hormones in order to have their self-identified gender identity recognized. Scheim and Bauer's study reports that 90% of trans women and 65% of trans men used hormones as part of their transition, but between 10 and 35% of trans people elected not to consume hormones.<sup>16</sup>

The idea that trans athletes gain unfair performance advantages is always the elephant in the room in discussions of trans athletes' eligibility. In requiring at least one year of hormone therapy for trans women to compete in the NCAA and the IOC, these organizations have decided that hormones play a significant enough role in athletic performance that, without manipulation, athletes who have transitioned are competing with unfair advantages because of their hormone levels. Researchers in the area have been noting for more than a decade that there is not enough scientific evidence to either confirm or refute that hypothesis. For example, a 2008 systematic literature review on potential advantages and disadvantages was inconclusive, and few studies have emerged in the research literature that includes trans athletes as subjects.<sup>17</sup> Methodologically, this is not surprising as the challenges inherent in developing the sort of studies sports officials and administrators want are notoriously difficult given

the small potential sample sizes and the impact of participants' status as trained or untrained both before and after transitioning.

In an opinions piece published in the *Washington Post* entitled, "Do transgender athletes have an edge? I sure don't," Joanne Harper provides a narrative of her experiences running in the national Masters Championships in the United States, more than a decade after transitioning from male to female. Her piece poignantly demonstrates the transphobia, stigma, and suspicion that openly trans athletes face when she questions exactly how slow she would need to run in order for her competitors to be assured she was not receiving an advantage that they were not. She reflects, "for some people, no variable matters as much as gender assigned at birth. They can't get past the idea that I'm a man trying to profit in a woman's sport."<sup>18</sup> MMA fighter Fallon Fox has acknowledged similar struggles since confirming in 2013 that she is a trans woman. Among the discriminatory and hateful sentiments directed at her, a statement from fellow fighter Ashlee Evans-Smith highlights the suspicion trans athletes receive. Evans-Smith stated publicly that she refused to fight Fox due to what she perceived to be Fox's "unfair advantage." These claims were made to the media only months before Evans-Smith was suspended for committing an anti-doping violation for using banned diuretics to cut weight – in an attempt to gain an unfair advantage for herself. Evans-Smith was clearly trying to cheat, while Fox is trying to compete. Assessing which advantages are to be celebrated and which are to be rejected as unfair is far from easy.

It does not help that the only study measuring running performance changes in trans female athletes before and after transitioning is published in *Journal of Sporting Cultures and Identities* – which appears to be a predatory journal that offers publication if one pays the registration fee for the publisher's annual conference (though actually attending and presenting the paper at the conference is not a requirement). The article, "Race times for transgender athletes," is written by the same runner whose *Washington Post* editorial raised the question of how we assess what counts as an advantage in sport. Harper, however, is one of the eight athletes included in the study, a fact that is glossed over in the article.

While it is promising to finally see a study of this nature, which tracks the performance changes in a sample of eight trans athletes pre- and post-transitioning, much more evidence in scholarly peer-

reviewed journals is needed. Designing a study to measure performance before and after testosterone suppression drugs are consumed is not easy. Harper notes, “Until now, there has not been any published data, based on performances of transgender athletes, to either support or refute ... There are two main stumbling blocks to creating such a study: the first is to determine an appropriate metric to examine and the second is to find participants for the study.”<sup>19</sup> Her study tracked 8 trans women runners competing in 5k, 10k, half marathon and marathon races, previously in the men’s category and now in the women’s category, and concluded that when applying age grading techniques, the runners performed the same in the women’s category post-transition as they did in the men’s category before. Seven of the eight participants in the study ran significantly slower than they ran when they identified as men, but when accounting for age-related decline in speed, their relative performances compared to other competitors remained consistent. The author also reports that among the eight participants, the average hemoglobin level dropped from 9.3 mmol/L to 8.0 mmol/L after one year of taking testosterone suppressing drugs, which met the criteria established by IOC Medical Commission members in 2004 in establishing an acceptable range for women.<sup>20</sup> Based on these numbers, the author concludes that trans women do not experience unfair performance advantages based on oxygen carrying capability, and are not at an advantage in endurance-based sports, calling into question many of the stigmas trans athletes face. However, Harper acknowledges that her assessment is based on self-reported data from the participants, and none of them could be considered elite runners.

It is necessary for physiologists to weigh in and confirm that the author’s analysis is sound, and to conduct additional research. However, it is an unfair burden to ask the very small number of trans athletes who have achieved success in high-performance sport after transitioning to participate in each research group’s study, particularly if baseline levels were not established prior to their transition. Of particular note is Harper’s admission that it took seven years to recruit eight participants into her study. Harper’s research clearly has a purpose. As she states in her *Washington Post* editorial, her research findings published in the *Journal of Sporting Cultures and Identities* directly challenge policies requiring trans women to undergo surgery and at least two years of hormones prior to being cleared to compete.

While the science is slowly coming closer to answering questions regarding the impact of hormones on athletic performance, sports organizations are moving forward with crafting policies based on their own assessments of the evidence available. The Canadian Center for Ethics in Sport's expert working group has been advocating since 2011 for gender self-declaration to be the sole criterion for all athletes in determining which sex category an athlete will compete, but acknowledges that gender self-declaration leaves sport open to the possibility that any woman competing in sport – whether she was declared female at birth, has a hyperandrogenism condition that results in her possessing a higher than average testosterone level, or is a trans woman – *might* compete with an advantage over women with lower testosterone levels.<sup>21</sup> However, the key word is *might*. The scientific evidence neither confirms nor denies the possibility – an idea that is integral in the Court of Arbitration for Sport's two-year embargo on applying the IAAF's hyperandrogenism policy, which up until July 2015 prevented women with testosterone levels surpassing its established limit to compete at the elite level.<sup>22</sup> There are countless ways in which competitors gain performance advantages over each other, from over 100 genes that impact performance to access to the best coaches and high tech training environments, so singling out testosterone as the sole exclusionary criterion for women remains unjustifiable discriminatory.

Following this line of reasoning, if there is no compelling evidence that requires trans athletes to consume hormones, then it follows that requiring updated identity documents that list the athlete's sex as the category in which he or she seeks to compete, and disclosure for evaluation by the IOC Medical Commission, would become redundant because these two steps only serve to "prove" that the trans athlete has undergone surgery and completed the mandated hormone regime. Two objections can be raised concerning athletes who are 1) engaging in medically-supervised consumption of hormones that would trigger a violation of the WADA Code and 2) in the process of transitioning while an active athlete. Based on the evidence we have available today, neither case requires extensive monitoring to ensure the playing field is fair. The former could be dealt with through the established Therapeutic Use Exemption protocol, and the latter would simply require respect and sensitivity.

## Conclusion

In a recent special edition of the *Journal of Intercollegiate Sport* dedicated to creating social change through sport, guest editor Jon Welty Peachey quotes Kwame Anthony Appiah's influential work on inequities, arguing "people will find themselves thinking not just that an old practice was wrong and a new one was right but that there was something shameful in the old ways."<sup>23</sup> Drawing on Appiah's work, Peachey challenges readers to grapple with the question of "why coaches, athletes and fans are so ingrained in the 'old way' of doing things in sport" and why resistance to different ways of organizing sport is so strong.<sup>24</sup> Sociologists of sport have been attempting to answer that question, from both quantitative and qualitative perspectives, for decades. However, easy solutions have not been found. The Canadian Center for Ethics in Sport's guidelines for sports organizations in Canada astutely note: "As we continue to better understand the extent of our human diversity, there is a need to continue to adapt our policies to reflect our reality."<sup>25</sup> In the meantime, having multiple, overlapping but inconsistent policies create less harm than applying the IOC's policy across all levels of sport in all countries. The difficulties that stem from having incongruent policies are outweighed by the benefits that result from embracing policies that move us toward more inclusive sport and are based on rigorous scientific studies. Finding a balance between the principles of including everyone and ensuring fair opportunities and fair play is never simple, and we should not expect it to be in this case.<sup>26</sup> The IOC, as a global sports organization, sets rules that apply to all 206 participating nations. Not all 206 nations are ready to accept gender self-declaration as a legitimate option, but that does not mean this will always be the case, depending on the evidence gathered in response to calls for further studies on the impact of hormones, particularly testosterone-blocking drugs, on athletic performance. As Dreger argues, "Evidence really is an ethical issue, the most important ethical issue in a modern democracy. If you want justice, you must work for truth. And if you want to work for truth, you must do a little more than wish for justice."<sup>27</sup>



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- <sup>4</sup> Erin E. Buzuvis, "Including Transgender Athletes in Sex-Segregated Sport," in *Sexual Orientation and Gender Identity in Sport: Essays from Activists, Coaches, and Scholars*, ed. George B. Cunningham (College Station, TX: Center for Sport Management Research, 2012), 23-34.
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- <sup>6</sup> Bruce Kidd, "For Gender Self-Declaration," Paper presented at *Play the Game*, October 5, 2011 in Cologne, Germany. <http://www.playthegame.org/conferences/play-the-game-2011/presentations.html>
- <sup>7</sup> Alice Dreger, *Galileo's Middle Finger: Heretics, Activists, and the Search for Justice in Science* (New York, NY: Penguin Press, 2015), 53.
- <sup>8</sup> IOC, *Statement of the Stockholm Consensus on Sex Reassignment in Sport* (Lausanne: IOC, 2003). [http://www.olympic.org/Documents/Reports/EN/en\\_report\\_905.pdf](http://www.olympic.org/Documents/Reports/EN/en_report_905.pdf)
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- <sup>17</sup> Michaela C. Devries, *Do Transitioned Athletes Compete at an Advantage or Disadvantage as Compared with Physically Born Men and Women: A Review of the Scientific Literature* (Ottawa, Canada: Promising Practices, 2008).
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- <sup>19</sup> Joanna Harper, "Race Times for Transgender Athletes," *Journal of Sporting Cultures and Identities* 6, no. 1 (2015), 1-9.
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- <sup>24</sup> Peachey, "Creating Social Change," 96.
- <sup>25</sup> CCES, *Creating Inclusive Environments*, 1.
- <sup>26</sup> Joy T. DeSensi, "Sport: An Ethos Based on Values and Servant Leadership," *Journal of Intercollegiate Sport* 7 (2014), 58-63. See also Peter Paul Roby, "Ethical Leadership in College Athletics," *Journal of Intercollegiate Sport* 7 (2014), 35-39.
- <sup>27</sup> Dreger, *Galileo's Middle Finger*, 262.