



**Women's Sports Policy
Working Group**

FREQUENTLY ASKED QUESTIONS – ABOUT CURRENT LAW ON SEX AND SPORT

WomensSportsPolicy.org

Q30: How would the redefinition of "sex" in federal law to include gender identity affect the legal status quo? For example, would it allow schools and sports organizations including the NCAA and USOPC to continue to maintain separate sex sport?

A30: The re-definition of “sex” to include “gender identity” in a law that prohibits discrimination “on the basis of sex” would mean that programs receiving federal funds and operating in interstate commerce could not lawfully distinguish a biological female from a trans-girl or woman. This would make it prima facie unlawful to do what is currently permitted, i.e., to have teams and events that are separated on the basis of biological sex. It would also make it prima facie unlawful to use testosterone as an eligibility criterion for inclusion in girls' and women's elite sport, e.g., as is currently required by the NCAA and the USOPC. Both separate sex sport itself and eligibility criteria based on biological sex and sex-linked traits like testosterone are currently lawful exceptions to general prohibitions on sex discrimination. For this to remain the case, the Equality Act would need to be amended to provide for an express exception for sport.

