

LFC Requester:	Chilton
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**PUBLIC EDUCATION DEPARTMENT
BILL ANALYSIS
2023 REGULAR SESSION**

SECTION I: GENERAL INFORMATION

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date Prepared: 02/21/23

Bill No: HB492

**Agency Name
and Code**

Number: PED - 924

Sponsor: Montoya

Person Writing Gregory Frostad

Short Title: WOMEN'S SPORTS

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Title: PROTECTION ACT

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
None	None	N/A	NFA

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
None	None	None	N/A	NFA

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	None	None	None	None	N/A	NFA

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 492 (HB492) enacts the Women's Sports Protection Act, requiring interscholastic or intramural athletic teams sponsored by a school and in which a public school

competes to be expressly designated based on biological sex. HB492 also provides protections for schools complying with the provisions of the bill and for students who suffer harm as a result of noncompliance of the provisions of the bill. The bill creates a civil cause of action for:

- Students “deprived of an athletic opportunity or suffers direct harm” as a result of a school violation of the act;
- Students “subjected to retaliation by a school or athletic association” as a result of “reporting to another person a violation of the act”; and
- A school that suffers harm, retaliation, or adverse action as a result of a violation of a state agency or other political subdivision of the state entertaining complaints or opening investigations against a school for compliance with the act.

The bill defines “school” to mean a public or private primary school, a secondary school, an institution of higher education, or a post-secondary educational institution.

The bill does not provide an effective date. Laws go into effect 90 days after the adjournment of the Legislature enacting them, unless a later date is specified. If enacted, this bill would become effective June 16, 2023.

FISCAL IMPLICATIONS

HB492 does not contain an appropriation.

SIGNIFICANT ISSUES

HB492 does not align with the Public Education Department’s goals of supporting student health, safety, and wellbeing.

The [2017 New Mexico Youth Risk & Resiliency Survey](#) (YRRS) found that, when compared with cisgender students, those who identified as transgender, genderqueer, or genderfluid, or who were not sure of their gender identity, were at much higher risk for housing instability, suicidal behaviors, substance use, and being victims of bullying and sexual violence.

According to the [2019 YRRS](#), of youth respondents in 9th through 12th grade, 26.3 percent of cisgender youth participated in daily exercise compared with 13.2 percent of transgender or gender non-conforming youth, and 25.7 percent of cisgender youth participated in daily physical education compared with 16.1 percent of transgender or gender non-conforming youth. SB304, may further widen this disparity by discouraging participation in school sports and physical activity by gender nonconforming or transgender youth and perpetuate gender stereotypes.

School administrators should be aware that the [U.S. Department of Education](#) advises that transgender and gender non-conforming students are covered by Title IX, the federal law that prohibits discrimination based on sex in schools (see, e.g., [Federal Register Notice of Interpretation: Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County](#)).

An estimated 13,137 New Mexico adults or 0.8 percent identify as transgender or gender non-conforming, according to data from the [New Mexico Department of Health’s Behavioral Risk Factor Surveillance System](#). At similar rates there would be 2,480 New Mexico students who identify as transgender or gender non-conforming.

PERFORMANCE IMPLICATIONS

Health and academic outcomes for transgender and gender non-binary students may suffer if HB492 becomes law.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

HB492 provides for male, female and coed sports but does not address on which teams intersex individuals may participate. Estimates of the prevalence of intersex births vary widely from .018 to 1.7 percent (about as prevalent as red hair).

HB492 also does not provide for how biological sex will be determined. Birth certificates in New Mexico can be updated as needed to reflect an individual's gender, including gender non-binary; such updated birth certificates are treated as original, rather than amended certificates.

OTHER SUBSTANTIVE ISSUES

Schools complying with HB492 could face an Office of Civil Rights (OCR) case with the possibility of losing federal funding from the Department of Education due to Title IX sex discrimination. In the OCR Case No. 05-14-1055 from Palatine Illinois, a transgender female student was allowed to use the girls' restroom, was listed as a female student, was addressed with appropriate pronouns, and was allowed to participate in girl sports; however, she was denied unrestricted access to the girls' locker room. The "OCR concluded that the District violated Title IX because, for more than two school years, it has denied the student access to the girl's locker rooms at her high school to change clothes for her athletics activities and for the mandatory physical education (PE) classes needed to satisfy the graduation requirements and receive a high school diploma. Instead, the District has offered the student only separate facilities to change clothes; these facilities are not comparable to those provided other students. As result of the District's denial of access for the student to its girls' locker rooms, the student has not only received an unequal opportunity to benefit from the District's educational program, but has also experienced an ongoing sense of isolation and ostracism throughout her high school enrollment."

According to the [Centers for Disease Control and Prevention \(CDC\)](#), high school sports can help adolescents achieve the recommended amount of daily physical activity and provide knowledge, attitudes and behavioral skills that are needed in order to adopt and maintain a physically active lifestyle. Furthermore, it reaches all children including those that are at risk for engaging in more sedentary types of behavior.

The social implications of school sports are significant for children, primarily due to the sense of belonging it provides. Being a member of a team provides the opportunity to develop leadership and cooperation skills, and shared experiences, including those that encompass feelings of both success and loss, contribute to learning respect and bonding with others. Child Trends, a leading research organization focused on improving the [lives of children and youth report](#), "Youth who say that they "probably will" or "definitely will" graduate from a four-year college are more likely than other youth to participate in school athletics. For example, in 2017, 58% of twelfth

graders who planned to complete four years of college participated in high school athletics, compared with 39% of twelfth-grade students who did not have such plans.”

Participation in school sports can provide a sense of belonging, being part of a team or group, and interaction with your peers in a friendly manner. Students learn to consider the interests of teammates and practice mutual respect and cooperation. They work together, share time and other resources, take turns to play and learn to cope with success and failure as a team. [These interactions](#) facilitate bonding and lasting friendships with schoolmates, which can help make children more sociable and outgoing as they grow.

The American Civil Liberties Union (ACLU) [reports](#) that in 2020 over twenty bills were introduced in states to protect female sport programs, and in January 2023, the [ACLU](#) reported that over 58 bills were introduced across the country that target LGBTQ rights in schools and educational settings. Many of these efforts have been supported through a campaign led by anti-lesbian, gay, bisexual, transgender and queer or questioning (LGBTQ+) groups. Title IX prohibits discrimination based on sex, including athletics. “Every elementary and secondary school system, college and university, vocational school, and proprietary school that receive funds from the [U.S. Department of Education](#) has an obligation to protect all students, including LGBTQ students, from unlawful sex discrimination.”

[The NCAA Transgender Handbook](#) states that “Educators in collegiate athletics programs must develop thoughtful and informed practices that provide opportunities for all students, including transgender students, to participate in sports. These practices must be based on sound medical science, which shows that male-to-female transgender athletes do not have any automatic advantage over other women. These practices must also be based on the educational values of sport and the reasons why sport is included as a vital component of the educational environment: promoting the physical and psychological well-being of all students, and teaching students the values of equal opportunity, participation, inclusion, teamwork, discipline, and respect for diversity.”

Key recommendations from the American Psychological Association focus on creating an inclusive, welcoming school environment for all students. School administrators are responsible for fostering a school climate that supports the learning and healthy development of all students. This is done in part by having strong anti-bullying and anti-discrimination policies and ensuring that these are enforced. It is at least as important to take a more pro-active stance by communicating regularly with all staff and students about how to build a positive school culture and how to create a shared school community where individual differences are accepted and celebrated and where all students feel included and respected, regardless of their gender expression.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

None.

AMENDMENTS

None.