



**KANSAS ASSOCIATION
OF SCHOOL BOARDS**
Serving Educational Leaders, Inspiring Student Success

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Oral Neutral testimony

Before the Senate Committee on Education

on

SB 208 - creating the fairness in women's sports act; restricting participation on women's teams to female students; providing a cause of action for violations.

By Mark Tallman, Associate Executive Director

February 23, 2021

Madam Chair, Members of the Committee:

KASB appears as neutral on this bill because our members have not taken a specific position on the issue of transgender students participating in sports. However, we have a number of concerns we believe the committee should consider regarding this bill.

First, this bill may conflict with federal Title IX requirements that Kansas public schools are expected to follow and face legal action if they do not. We expect this issue to be addressed relatively soon by the U.S. Supreme Court. A recent decision regarding transgender rights in employment cases suggests that the court will hold that transgender students must be allowed to participate in sports based on their gender identity.

This would require districts to make certain decisions, but then leave districts liable for legal challenges even if the district followed this law.

Passage of this bill before the Court has ruled on the application of Title IX invites additional costly and time-consuming litigation involving our members no matter what decisions they make.

Second, current law seems to be working. As indicated, our members have not taken a position, in part because no school board has come forward in our association to ask to us to support a change in law as this bill would provide. We know transgender students are participating in sports. We have not seen outcry over the results. Nor are we aware of any legal challenges over local board action under current law.

The current process, involving local educators addressing these issues under the guidelines of the KSHSAA, is consistent with allowing issues to be handled at the local level as much as possible, which is a goal of KASB.

Third, this issue involves a balancing of rights and interests. We do know that transgender students are far more likely to experience depression and other mental health issues and be vulnerable to suicide

than their peers. The Legislature has expressed deep concerns about these issues for all students and assisted school districts in trying to address these challenges.

Addressing both mental and physical health issues is a priority position of KASB. This bill could remove one option districts have for responding to concerns about this group of students.

Fourth, the bill says that “A dispute regarding a student's sex shall be resolved by the school or postsecondary educational institution where such student attends by requesting that the student provide such student's health examination and consent form, or other statement signed by such student's personal healthcare provider that shall verify the student's biological sex. A student's pre-participation physical evaluation form may be submitted, provided such form verifies the student's biological sex.”

Neither student nor the school will know when a dispute or challenge may arise. Should districts require medical examination of students based on suspicion or appearance? Should they require all students wishing to compete on female teams to receive a more invasive, and potentially, expensive health exam? Since that would single out female, should it be required of all students?

Thank you for your consideration.