

118TH CONGRESS
2D SESSION

S. _____

To prohibit certain discrimination against athletes on the basis of sex by State athletic associations, intercollegiate athletic associations, and covered institutions of higher education, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. MURPHY introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To prohibit certain discrimination against athletes on the basis of sex by State athletic associations, intercollegiate athletic associations, and covered institutions of higher education, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*

2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Play for Women

5 Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 additional 148,000 sports opportunities to match the
2 same ratio of sports opportunities per student as is
3 offered to men.

4 (4) Girls of color are often most impacted by
5 inequitable opportunities. At high schools predomi-
6 nantly attended by white students, girls have 82 per-
7 cent of the opportunities that boys have to play
8 sports, while at high schools predominantly attended
9 by students of color, girls have only 67 percent of
10 the opportunities that boys have to play sports.

11 (5) Transgender, nonbinary, and intersex stu-
12 dents also experience sex-based discrimination in
13 sports, with transgender women and girls being least
14 likely to participate in sports. Transgender, non-
15 binary, and intersex students are consistently denied
16 opportunities to play, often due to policies restricting
17 them from playing sports. The addition of policies
18 that exclude transgender students from athletic op-
19 portunities correlates with an overall decrease in
20 sports participation. According to the Centers for
21 Disease Control and Prevention's Youth Risk Behav-
22 ior Survey, States with policies that exclude
23 transgender students from participation in athletics
24 saw a decrease in overall girls' participation in
25 sports from 2011 to 2019, whereas States with in-

1 clusive policies did not see a decrease in that participation
2 during that same timeframe.

3 (6) The magnitude of current gaps in intercollegiate
4 athletics participation opportunities is likely
5 undercounted, as investigations of intercollegiate
6 athletics data have found that the majority of NCAA
7 member institutions inflate the number of women
8 participating in sports by double- and triple-counting
9 women athletes who participate in more than one
10 sport more often than the institutions double- and
11 triple-count their counterparts who are men, counting
12 men who are practice players on women's teams
13 as women athletes, and packing women's teams with
14 extra players who never end up competing.

15 (7) Women and girls in sports also face unequal
16 treatment. They are frequently provided worse facilities,
17 equipment, and uniforms than men and boys,
18 and they receive less financial support and publicity
19 from their schools, as women receive \$240,000,000
20 less than men in athletic-based scholarships annually.
21 For every dollar colleges spend on recruiting,
22 travel, and equipment for men's sports, they spend
23 58 cents, 62 cents, and 73 cents, respectively, for
24 women's sports.

14 SEC. 3. PURPOSES.

15 The purposes of this Act are to—

16 (1) address inequitable and discriminatory
17 treatment of women and girls in sports in elemen-
18 tary and secondary schools, as well as institutions of
19 higher education;

24 (3) ensure all students participating in ath-
25 letics, as well as those who work in school-sponsored

1 athletics, are aware of and understand the non-
2 discrimination rights of students related to their
3 athletic opportunities; and

4 (4) ensure all students, regardless of gender,
5 have equal access to high-quality and supportive ath-
6 letic opportunities.

7 **SEC. 4. DEFINITIONS.**

8 In this Act:

9 (1) **ESEA TERMS.**—The terms “elementary
10 school” and “secondary school” have the meanings
11 given those terms in section 8101 of the Elementary
12 and Secondary Education Act of 1965 (20 U.S.C.
13 7801).

14 (2) **COLLEGIATE.**—The term “collegiate”, used
15 with respect to athletics, means intramural and club-
16 level athletics or other athletics, in which all partici-
17 pants attend the same covered institution of higher
18 education.

19 (3) **COVERED INSTITUTION OF HIGHER EDU-
20 CATION.**—The term “covered institution of higher
21 education” means an entity that is described in sec-
22 tion 908(2)(A) of the Education Amendments of
23 1972 (20 U.S.C. 1687(2)(A)) and covered by section
24 908 of those Amendments (20 U.S.C. 1687).

1 (4) COVERED LOCAL EDUCATIONAL AGENCY.—

2 The term “covered local educational agency” means
3 such an agency that is described in section
4 908(2)(B) of the Education Amendments of 1972
5 (20 U.S.C. 1687(2)(B)) and covered by section 908
6 of those Amendments.

13 (A) governs competitions among, or other-
14 wise exercises authority over intercollegiate ath-
15 letics at, such institutions of higher education
16 who are members of or under the authority of
17 the intercollegiate athletic association; and

18 (B) is engaged in commerce or an industry
19 or activity affecting commerce.

20 (6) STATE ATHLETIC ASSOCIATION.—The term
21 “State athletic association” means any association,
22 organization, or other group, established by or com-
23 prised of 2 or more elementary schools or secondary
24 schools that receive Federal funding, that governs
25 competition among or otherwise exercises authority

1 over elementary school, secondary school, or inter-
2 scholastic athletics, at such federally funded elemen-
3 tary schools or secondary schools.

11 SEC. 5. DISCRIMINATION BY STATE AND INTERCOLLEGIATE
12 ATHLETIC ASSOCIATIONS, LOCAL EDU-
13 CATIONAL AGENCIES, AND COVERED INSTI-
14 TUITIONS OF HIGHER EDUCATION.

15 (a) ELEMENTARY OR SECONDARY SCHOOL.—No
16 State athletic association or covered local educational
17 agency shall, on the basis of sex, subject any athlete to
18 discrimination with respect to elementary school, sec-
19 ondary school, or interscholastic athletics, including dis-
20 crimination through—

21 (1) the rules it sets for elementary school, sec-
22 ondary school, or interscholastic athletics;

23 (2) the sports—

4 (C) championships sponsored by that asso-
5 ciation or agency; or

6 (3) the location, facilities, or amenities provided
7 for competitions or championships sponsored by that
8 association or agency.

9 (b) HIGHER EDUCATION.—

16 (A) the rules it sets for intercollegiate ath-
17 letics or collegiate athletics;

18 (B) the sports—

19 (i) required for membership in an
20 intercollegiate athletic association, or re-
21 quired for participation in collegiate ath-
22 letics at a covered institution of higher
23 education;

24 (ii) competitions sponsored by the
25 intercollegiate athletic association, or colle-

1 giate athletic competitions sponsored by
2 the covered institution of higher education;
3 or

4 (iii) championships sponsored by the
5 intercollegiate athletic association, or colle-
6 giate athletic championships sponsored by

13 (D) the provision or arrangement for the
14 provision of goods or services (including bene-
15 fits) for competitions or championships spon-
16 sored by the intercollegiate athletic association,
17 or for collegiate athletic competitions or cham-
18 pionships sponsored by such an institution; or

19 (E) the distribution of revenues or other
20 benefits to members of or such institutions
21 under the authority of the intercollegiate ath-
22 letic association, or to teams, clubs, or other en-
23 tities participating in collegiate athletics at the
24 institution.

5 (c) PRIVATE RIGHT OF ACTION.—

23 (d) TRAINING.—

24 (1) ASSOCIATIONS.—Each State athletic asso-
25 ciation or intercollegiate athletic association shall en-

1 sure that each employee of the State athletic asso-
2 ciation or intercollegiate athletic association receives,
3 at least once per year, training on the provisions of
4 this section, including the rights delineated under
5 this section and the procedures for bringing actions
6 under this section.

7 (2) COVERED INSTITUTIONS OF HIGHER EDU-
8 CATION.—Each covered institution of higher edu-
9 cation shall ensure that each employee of the institu-
10 tion with an employment function relating to colle-
11 giate athletics receives, at least once per year, such
12 training.

13 (3) COVERED LOCAL EDUCATIONAL AGENCY.—
14 Each covered local educational agency shall ensure
15 that each employee of the local educational agency
16 with an employment function relating to athletics re-
17 ceives, at least once per year, such training.

18 **SEC. 6. EXPANDING ATHLETICS DISCLOSURE REQUIRE-
19 MENTS.**

20 (a) INSTITUTIONS OF HIGHER EDUCATION.—Section
21 485(g) of the Higher Education Act of 1965 (20 U.S.C.
22 1092(g)) is amended—

23 (1) in paragraph (1)—

24 (A) in the matter preceding subparagraph
25 (A)—

1 (i) by inserting “collegiate (including
2 intramural and club-level) or” before
3 “intercollegiate athletic program”; and

4 (ii) by inserting “collegiate and” be-
5 fore “intercollegiate athletics”;

6 (B) in subparagraph (B), by striking
7 clause (i) and inserting the following:

10 (C) in subparagraph (C)—

11 (i) by striking “The total amount”
12 and inserting the following: “(i) The total
13 amount”; and

14 (ii) by adding at the end the fol-
15 lowing:

1 “(IV) the total number of athletically
2 related scholarships that fund the full cost
3 of attendance for the athlete;

4 “(V) the total number of athletically
5 related scholarships awarded for a period
6 equal to or less than one year; and

7 “(VI) the total number of athletically
8 related scholarships awarded for a period
9 equal to or greater than 4 academic
10 years.”;

11 (D) in subparagraph (E), by inserting
12 “and disaggregated by each men’s sport and
13 each women’s sport” before the period at the
14 end;

15 (E) in subparagraph (G), by inserting
16 “(which, for purposes of this subparagraph, in-
17 cludes compensation, bonuses, benefits, and
18 buyouts paid to coaches and reportable by the
19 institution or related entities, including booster
20 clubs and foundations)” before “of the head
21 coaches of men’s teams”;

22 (F) in subparagraph (H), by inserting
23 “(which, for purposes of this subparagraph, in-
24 cludes compensation, bonuses, benefits, and
25 buyouts paid to coaches and reportable by the

1 institution or related entities, including booster
2 clubs and foundations)" before "of the assistant
3 coaches of men's teams";

4 (G) in subparagraph (I)—

5 (i) by striking clause (i) and inserting
6 the following: "(i) The revenues from the
7 institution's intercollegiate athletics activi-
8 ties, in the aggregate and disaggregated by
9 each men's sport and each women's sport,
10 including—

11 "(I) total revenues; and

12 "(II) each category of revenues de-
13 scribed in clause (ii)."; and

14 (ii) in clause (ii)—

15 (I) by inserting "collegiate and"
16 before "intercollegiate"; and

17 (II) by striking ", and adver-
18 tising, but revenues" and all that fol-
19 lows through the period at the end
20 and inserting ", advertising, and, to
21 the extent practicable, student activi-
22 ties fees and alumni contributions.;"

23 (H) by striking clause (i) of subparagraph

24 (J) and inserting the following: "(i) The ex-
25 penses made by the institution for the institu-

7 (I) by adding at the end the following:

8 “(K) The numbers of participants who
9 participate in 1, 2, or 3 intercollegiate sports at
10 the institution, in the aggregate and
11 disaggregated by each men’s sport and each
12 women’s sport.

13 “(L) The total number of men that prac-
14 tice on women’s intercollegiate teams, in the ag-
15 gregate and disaggregated by each women’s
16 sport.

17 “(M) Information regarding race and eth-
18 nicity for athletes and coaches (including assist-
19 ant coaches), in the aggregate and
20 disaggregated by each men’s sport and each
21 women’s sport.

22 “(N) The number of male students, and
23 the number of female students, participating in
24 collegiate (including intramural and club)
25 sports at the institution.

1 “(O) A certification that the institution
2 has verified the information submitted in the
3 report under this paragraph.

4 “(P) With respect to the sports participa-
5 tion opportunities requirements under title IX
6 of the Education Amendments of 1972—

7 “(i) a certification that the institution
8 complies with such requirements by show-
9 ing—

10 “(I) substantial proportionality;

11 “(II) a history and continuing
12 practice of expanding sports participa-
13 tion opportunities; or

14 “(III) full and effective accommo-
15 dation of athletics interests; and

16 “(ii) an identification of the method of
17 compliance described in subclauses (I)
18 through (III) of clause (i) that the institu-
19 tion uses.”;

20 (2) in paragraph (2), by striking “For the pur-
21 poses of paragraph (1)(G)” and inserting “For the
22 purposes of subparagraphs (G) and (H) of para-
23 graph (1)”;

24 (3) by striking paragraph (4) and inserting the
25 following:

1 “(4) SUBMISSION; REPORT; INFORMATION
2 AVAILABILITY.—

3 “(A) INSTITUTIONAL REQUIREMENTS.—

4 Each institution of higher education described
5 in paragraph (1) shall—

6 “(i) by October 15 of each year, pro-
7 vide the information contained in the re-
8 port required under such paragraph for
9 such year to the Secretary; and

10 “(ii) by not later than February 15 of
11 each year, publish such information on a
12 public Internet website of the institution in
13 a searchable format.

14 “(B) PUBLIC AVAILABILITY.—By not later
15 than February 15 of each year, the Secretary
16 shall make the reports and information de-
17 scribed in subparagraph (A) for the imme-
18 diately preceding academic year available to the
19 public, which shall include posting the reports
20 and information on a public Internet website of
21 the Department in a searchable format.”;

22 (4) by redesignating paragraph (5) as para-
23 graph (6);

24 (5) by inserting after paragraph (4) the fol-
25 lowing:

1 “(5) REPORTS BY THE SECRETARY.—

2 “(A) IN GENERAL.—By not later than 2
3 years after the date of enactment of the Fair
4 Play for Women Act, and every 2 years there-
5 after, the Secretary shall prepare and publish a
6 report on gender equity using the information
7 submitted under this subsection.

8 “(B) CONTENTS.—The report required
9 under subparagraph (A) shall, in the aggregate
10 for all institutions of higher education described
11 in paragraph (1) and disaggregated by each in-
12 dividual institution—

13 “(i) identify participant gaps, if any,
14 by indicating the number of participants
15 that need to be added in order for partici-
16 pants of the underrepresented sex at the
17 institution to match the proportion of en-
18 rolled full-time undergraduate students of
19 the underrepresented sex at the institution;

20 “(ii) identify funding gaps, if any, by
21 showing the percentage differences, com-
22 pared to proportions of enrollment of men
23 and women at the institution, in expendi-
24 tures for athletically related student aid,

1 recruiting, promotion, and publicity in
2 intercollegiate athletics; and

7 (6) in paragraph (6), as redesignated by para-
8 graph (4)—

9 (A) by striking “DEFINITION.—For the
10 purposes of this subsection, the term” and in-
11 serting the following: “DEFINITIONS.—For pur-
12 poses of this subsection:

13 “(A) OPERATING EXPENSES.—The term”;
14 and

15 (B) by adding at the end the following:

18 “(i)(I) is receiving the institutionally
19 sponsored support normally provided to
20 athletes competing at the institution in-
21 volved on a regular basis during the sport’s
22 season;

1 and activities on a regular basis during the
2 sport's season; and

16 (b) ELEMENTARY SCHOOL AND SECONDARY SCHOOL
17 ATHLETIC PROGRAMS.—

18 (1) IN GENERAL.—Subpart 2 of part F of title
19 VIII of the Elementary and Secondary Education
20 Act of 1965 (20 U.S.C. 7901 et seq.) is amended by
21 adding at the end the following:

22 **“SEC. 8549D. DISCLOSURE OF STATISTICS ON EQUALITY IN**
23 **ELEMENTARY AND SECONDARY EDUCATION**
24 **ATHLETIC PROGRAMS.**

25 "(a) DEFINITIONS.—In this section:

1 “(1) PARTICIPANT.—The term ‘participant’
2 means an athlete in a sport who participates in the
3 sport in elementary school, secondary school, or
4 interscholastic competitive events, organized practice
5 sessions, and other team meetings and activities on
6 a regular basis during the sport’s season.

7 “(2) SEASON.—The term ‘season’, when used
8 with respect to a team sport, means the period be-
9 ginning on the date of a team’s first athletic com-
10 petition in an academic year and ending on the date
11 of the team’s final interscholastic athletic competi-
12 tion in such academic year.

13 “(3) STATE ATHLETIC ASSOCIATION.—The
14 term ‘State athletic association’ has the meaning
15 given the term in section 4 of the Fair Play for
16 Women Act.

17 “(b) IN GENERAL.—The Secretary shall collect annu-
18 ally, from each coeducational elementary school and sec-
19 ondary school that receives Federal financial assistance
20 and has an athletic program, a report that includes the
21 following information for the immediately preceding aca-
22 demic year:

23 “(1) The total number of students that at-
24 tended the school, fully disaggregated and cross-tab-
25 ulated by sex and race or ethnicity.

1 “(2) A listing of the school’s teams that com-
2 peted in athletic competition and for each such team
3 the following data:

4 “(A) The season in which the team com-
5 peted.

6 “(B) The total number of participants,
7 fully disaggregated and cross-tabulated by sex
8 and race or ethnicity and level of competition.

9 “(C) The total expenditures for the team
10 from all sources, including school funds and
11 funds provided by any other entities, such as
12 booster organizations, including the following
13 data:

14 “(i) The travel expenditures.

15 “(ii) The equipment expenditures (in-
16 cluding any equipment replacement sched-
17 ule).

18 “(iii) The uniform expenditures (in-
19 cluding any uniform replacement sched-
20 ule).

21 “(iv) The expenditures for facilities,
22 including medical facilities, locker rooms,
23 fields, and gymnasiums.

24 “(v) The total number of trainers and
25 medical personnel, and for each trainer or

1 medical personnel an identification of such
2 individual's—

1 “(D) The total number of competitive
2 events (in regular and nontraditional seasons)
3 scheduled, and for each an indication of what
4 day of the week and time the competitive event
5 was scheduled.

6 “(E) Whether such team participated in
7 postseason competition, and the success of such
8 team in any postseason competition.

9 “(c) DISCLOSURE TO STUDENTS AND PUBLIC.—A
10 school described in subsection (b) shall—

11 “(1) by October 15 of each year, make available
12 to students, potential students, and parents of stu-
13 dents and potential students, upon request, and to
14 the public, the report and information required of
15 the school under such subsection for such year; and

16 “(2) ensure that all students and parents at the
17 school are informed of their right to request such re-
18 port and information.

19 “(d) SUBMISSION; INFORMATION AVAILABILITY.—
20 On an annual basis, each school described in subsection
21 (b) shall provide the report required under such sub-
22 section, and the information contained in such report, to
23 the Secretary not later than 15 days after the date that
24 the school makes such report and information available
25 under subsection (c).

1 “(e) DUTIES OF THE SECRETARY.—The Secretary
2 shall—

3 “(1) ensure that reports and information sub-
4 mitted under subsection (d) are available on the
5 same public website, and searchable in the same
6 manner, as the reports and information made avail-
7 able under section 485(g)(4)(B) of the Higher Edu-
8 cation Act of 1965; and

9 “(2) not later than 180 days after the date of
10 enactment of the Fair Play for Women Act—

11 “(A) notify all elementary schools, sec-
12 ondary schools, and State athletic associations
13 in all States regarding the availability of the re-
14 ports and information under subsection (c); and

15 “(B) issue guidance to all such elementary
16 schools, secondary schools, and State athletic
17 associations on how to collect and report the in-
18 formation required under this section.”.

19 (2) CONFORMING AMENDMENT.—The table of
20 contents in section 2 of the Elementary and Sec-
21 ondary Education Act of 1965 is amended by insert-
22 ing after the item relating to section 8549C the fol-
23 lowing:

“Sec. 8549D. Disclosure of statistics on equality in elementary and secondary
education athletic programs.”.

1 **SEC. 7. TRAINING AND INFORMATION FOR ATHLETES AND**
2 **EMPLOYEES.**

3 (a) TRAINING.—

4 (1) COVERED LOCAL EDUCATIONAL AGENCY.—

5 (A) EMPLOYEES.—Each covered local edu-
6 cational agency shall ensure that each title IX
7 coordinator, and each employee who works with
8 athletics or teaches physical education or
9 health, for the covered local educational agency
10 receives, at least once per year, training on the
11 rights under title IX of the Education Amend-
12 ments of 1972 (20 U.S.C. 1681 et seq.) of stu-
13 dents at elementary schools or secondary
14 schools, and procedures for submitting com-
15 plaints of violations under title IX of the Edu-
16 cation Amendments of 1972 to the Office for
17 Civil Rights of the Department of Education.

18 (B) ELEMENTARY AND SECONDARY
19 SCHOOL ATHLETES.—Each covered local edu-
20 cational agency shall ensure that—

21 (i) a title IX coordinator for the cov-
22 ered local educational agency provides
23 training to athletes at elementary schools
24 or secondary schools served by the covered
25 local educational agency on the rights of
26 the athletes under title IX of the Edu-

1 cation Amendments of 1972, and proce-
2 dures for submitting complaints of viola-
3 tions of that title to the Office for Civil
4 Rights of the Department of Education;
5 and

6 (ii) each such athlete receives that
7 training at least once per year.

8 (2) COVERED INSTITUTIONS OF HIGHER EDU-
9 CATION.—

10 (A) EMPLOYEES.—Each covered institu-
11 tion of higher education shall ensure that each
12 employee of the athletic department of the cov-
13 ered institution of higher education and each
14 employee of the institution with an employment
15 function relating to collegiate athletics receives,
16 at least once per year, training on the rights
17 under title IX of the Education Amendments of
18 1972 (20 U.S.C. 1681 et seq.) of students at
19 covered institutions of higher education, and
20 procedures for submitting complaints of viola-
21 tions of title IX of the Education Amendments
22 of 1972 to the Office for Civil Rights of the De-
23 partment of Education.

1 (B) POSTSECONDARY SCHOOL ATH-
2 LETES.—Each covered institution of higher
3 education shall ensure that—

4 (i) an expert in matters relating to
5 title IX of the Education Amendments of
6 1972, who is not an employee described in
7 subparagraph (A) of the covered institu-
8 tion of higher education, provides training
9 to athletes at the covered institution of
10 higher education on the rights of the ath-
11 letes under title IX of the Education
12 Amendments of 1972 (20 U.S.C. 1681 et
13 seq.), and procedures for submitting com-
14 plaints of violations of that title to the Of-
15 fice for Civil Rights of the Department of
16 Education; and

17 (ii) each such athlete receives that
18 training at least once per year.

19 (b) DATABASE.—The Secretary of Education shall
20 establish and maintain a database of title IX coordinators,
21 which shall be separate from the civil rights coordinators
22 data maintained by the Office for Civil Rights of the De-
23 partment of Education. The database shall include, at a
24 minimum, the name, phone number, and email address for
25 each title IX coordinator. The Secretary shall make the

1 information in the database available to the public with,
2 and by the same means as, reports made available under
3 section 485(g)(4)(B) of the Higher Education Act of 1965
4 (20 U.S.C. 1092(g)(4)(B)).

5 **SEC. 8. ADMINISTRATIVE ENFORCEMENT THROUGH CIVIL
6 PENALTIES.**

7 (a) **NONCOMPLIANCE.**—The Secretary of Education
8 shall determine, at the beginning of each year, each cov-
9 ered institution of higher education, covered local edu-
10 cational agency, elementary school, or secondary school
11 that was found during the prior year to be in noncompli-
12 ance with a requirement of section 7, or of title IX of the
13 Education Amendments of 1972 (20 U.S.C. 1681 et seq.).
14 Such administrative proceeding shall be conducted in the
15 same manner as an administrative proceeding under sec-
16 tion 902 of the Education Amendments of 1972 (20
17 U.S.C. 1682).

18 (b) **CIVIL PENALTY.**—If the Secretary of Education
19 determines under subsection (a) that a covered institution
20 of higher education, covered local educational agency, ele-
21 mentary school, or secondary school was in such non-
22 compliance during the prior year, the Secretary may im-
23 pose a civil penalty on such institution, agency, or school.

24 (c) **FURTHER NONCOMPLIANCE.**—If the Secretary of
25 Education determines under subsection (a) that a covered

1 institution of higher education, covered local educational
2 agency, elementary school, or secondary school was in such
3 noncompliance during 2 or more of the prior 5 years, the
4 Secretary shall—

13 SEC. 9. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to imply that intercollegiate athletic associations, State athletic associations, covered institutions of higher education, or covered local educational agencies—