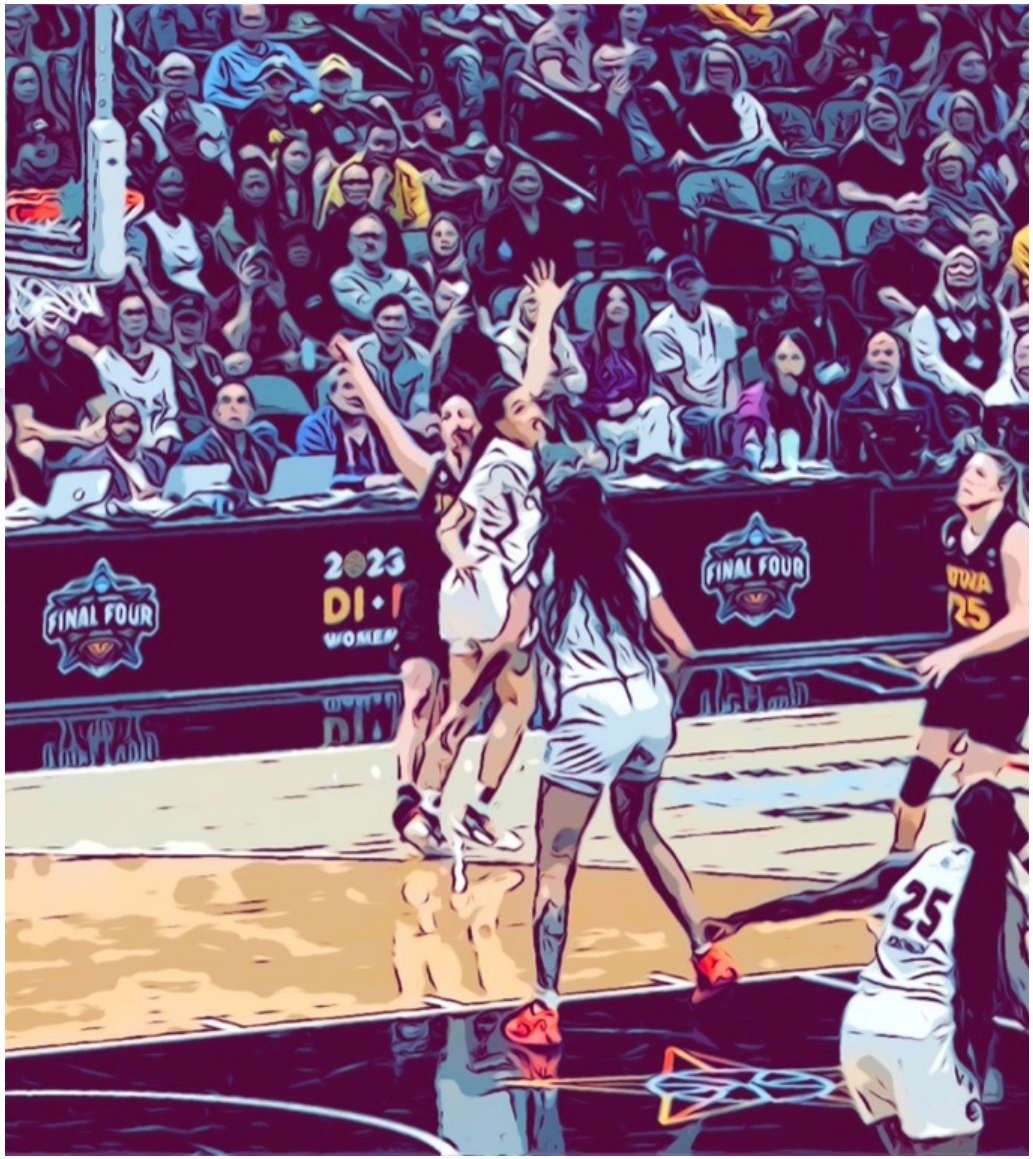
Pragmatic Issues Moving Forward

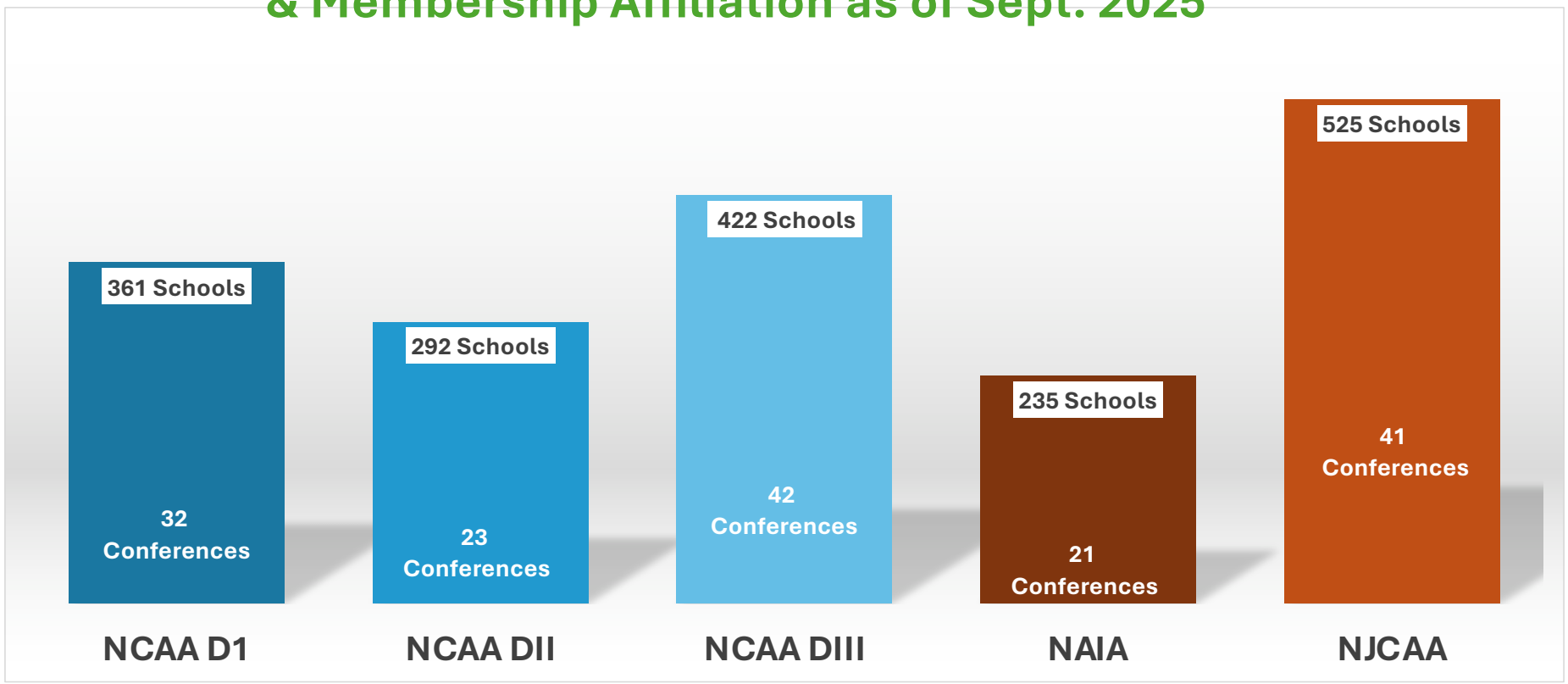
Because the SCT ruling allows but does not require restriction, K-12 school districts and institutions of higher education manage transgender student-athletes participation based on a patchwork of state geography and federal enforcement pressures.

National Collegiate Athletics Organizations and Governing Bodies

- **National Collegiate Athletics Association (NCAA)**
  - 1,100 schools/500,000+ Student-Athletes
  - Three Divisions: D1, D2, and D3 (A4 subset of DI)
  - Hosts 90 NCAA Championships in 24 sports
- **National Association for Intercollegiate Athletics (NAIA)**
  - Focused on providing athletics championship opportunities for small colleges and universities and driving enrollment.
- **National Junior College Athletics Association (NJCAA)**
  - Governing association of community college and junior college athletics.
  - Hosts 24 separate regions across 24 states and is divided into 3 divisions.



The Players: Breakdown by National Conference & Membership Affiliation as of Sept. 2025



Rules, Violations, and Enforcement



- Member schools set rules through their associations and associations enforce those rules, including across state lines (in theory)
  - Courts have shown an increasing willingness to enjoin association rules and enforcement authority.
  - Since June 2026, 181 collegiate participation eligibility cases filed.
- NCAA Does Not Enforce Title IX
  - NCAA requirement that schools conduct Gender Equity/DEI Reviews suspended in wake of Executive Orders.
  - Sexual Violence Policy Training Requirement and Attestation
- In 2025, 26 State Attorney Generals sent a letter to the NCAA demanding that it reverse impact of prior transgender participation policy, including addressing honors and records.
- Schools continue to struggle when state and federal laws may conflict with Association rules



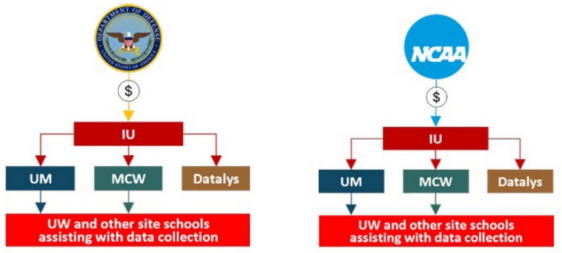
High School & Youth Sports

- The **National Federation of State High School Associations (NFHS)** membership is composed of one association in each state (the largest in states where they may be multiple high school associations) plus the District of Columbia for its 51 members.
  - The NFHS serves as a leadership and service organization to these 51 autonomous organizations.
  - Among the 51 member associations, there are a variety of governance structures.
  - Organization does not have transgender mandate.
- **Varying State Approaches:** State association policies range widely—from fully inclusive guidelines allowing participation aligned with a student's affirmed gender identity, to restrictive mandates requiring alignment with the sex listed on an original or amended birth certificate, medical transitions, or statutory bans.
- Private School Associations, Private Youth Sports Associations, and Clubs Sports Programs

Gaines v. Nat'l Collegiate Athletic Ass'n, No. 1:24-cv-01109-TRJ (N.D.Ga. Sept. 28, 2026)

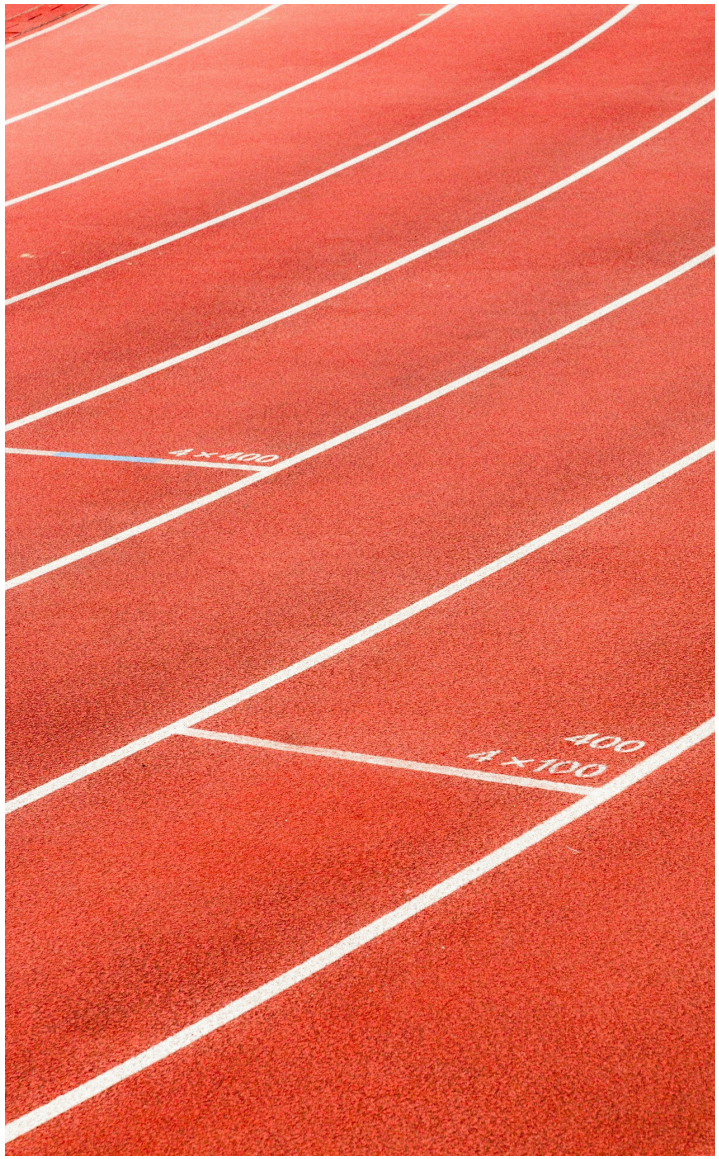
- Complaint alleged that NCAA Transgender Policy in place during the NCAA 2022 Women's Swimming and Diving Championships violated Title IX where it permitted a transgender woman to compete and where she used the locker room that aligned with her gender identity.
- Court found that the NCAA is not covered by Title IX.
  - Agreement between the NCAA and DOD to conduct concussion-related research did not trigger Title IX coverage.
  - No federal assistance ran from the government to the NCAA.
  - NCAA employee travel reimbursements not federal financial assistance.
  - Summary Judgement granted NCAA's Motion for Summary Judgement
- Plaintiffs have indicated an intent to appeal to the 11th Circuit.

Here, there is no evidence that the NCAA received federal financial assistance from the DoD. Instead, the NCAA and the DoD each made separate, independent payments to IU to fund the CARE studies. (Doc. 146-29 at 4; Doc. 157-6). Dr. McAllister testified that "there were two separate funds flow streams, one issuing from the [DoD] and the other issuing from the NCAA." (Doc. 147 at 18). The following chart illustrates the flow of funds from the DoD and the NCAA, respectively, to the CARE studies:



Sample Cases Referencing Prior NCAA Policy:

- **Estabrook v. The Ivy League Council of Presidents et al.**
  - Plaintiffs are Former Penn Swimmers opposed to the participation of a transgender women's participation on the UPENN Team
  - Stayed pending outcome of Gaines v, NCAA litigation
  - OCR Resolution Agreement
- **Slusser v. Mountain West Conference et al.**
  - Filed in 2024, brought by group of volleyball players opposed to the participation of a transgender women's volleyball student-athlete at SJSU
  - Colorado District Judge dismissed plaintiffs' charges against the Mountain West Conference, and stayed charges of Title IX violations against the California State University (CSU) system pending outcome of Supreme Court Litigation.
  - Supplemental briefing completed.
- **The State of Texas v. NCAA**
  - Filed in December 2024, AG Paxton unsuccessfully sought to mandate the NCAA to implement mandatory sex verification screening for all student-athletes.
  - Texas Deceptive Trade Practices Act (DTPA) claims survived – centered around allowing transgender women to participate in events marketed as women's sporting events.
  - NCAA Interlocutory Appeal pending. Question is whether it is an appropriate application of the DTPA.



Sample Cases Challenging Current NCAA Rule:

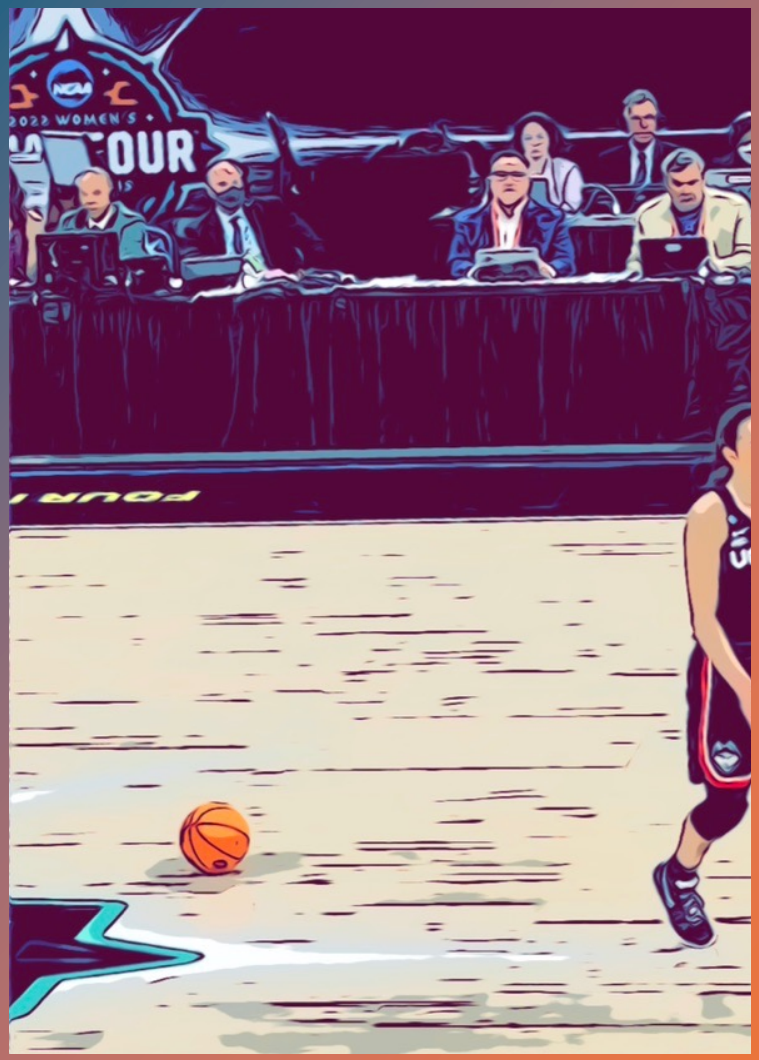
- **Parts v. Swarthmore College et al**, No. 2:25-cv-04702 (E.D. Pa. Filed Aug. 14, 2025).
  - Transgender woman alleged removal from Swarthmore's women's track team on February 6, 2025, following an NCAA policy update restricting transgender athlete participation, violated Title IX and resulted in severe emotional distress.
  - Action stayed on January 21, 2026 pending U.S. Supreme Court
  - Amended Complaint filed on September 4, 2026.
- Additional cases pending in New York and New Jersey filed by the same plaintiff.
  - **Schreiner v. NCAA et al.**,
    - Plaintiff transgender women track athlete alleges NCAA ban violates state anti-discrimination.
    - "To the extent that Schreider was not 'otherwise qualified' to compete in the women's category of the track meet because of the NCAA's written policies, this is not a proper basis for dismissal at this stage of these proceedings."
  - **Schreiner v. Princeton et al.**
    - Plaintiff sued Princeton University and athletics employees after being removed from the women's 200-meter event.
    - Complaint alleges violations of New Jersey Law Against Discrimination.

Recent Title IX Administrative Enforcement

- Focused almost exclusively on transgender participation, support, and access issues.
- EOs state broad support for women's sports, however, the administration enforcement actions related to sport equity and sexual misconduct absent transgender components have dropped dramatically.
- Courts have held to case precedent when deciding sport equity cases, including in cases where schools have argued that the Title IX enforcement framework should be abandoned in light of Loper Bright.
- Courts have not yet addressed the issue of school allocation of direct payments to student-athletes. There is an upcoming argument in December challenging the Settlement Agreement in the House v. NCAA antitrust lawsuit and its disparate allocation of past damages awards to males and females.

Adopted by the NCAA BOG: No Waivers Permitted

- **NCAA Men's Team.** Regardless of sex assigned at birth or gender identity, a student-athlete may participate (practice and compete) with a men's team, assuming they meet all other NCAA eligibility requirements.
  - Medical Exception Process. SA taking a banned substance (e.g., testosterone) must secure a medical exception.
- **NCAA Women's Team.**
  - Student-athlete assigned male at birth.
    - Competition. A student-athlete assigned male at birth may not compete on a women's team.
    - Practice. A student-athlete assigned male at birth may practice on the team consistent with their gender identity and receive all other benefits applicable to student-athletes who are otherwise eligible for practice.
  - Student-athlete assigned female at birth.
    - Competition. A student-athlete assigned female at birth who has begun hormone therapy (e.g., testosterone) may not compete on a women's team. If such competition occurs, the team is subject to NCAA mixed-team legislation, and the team will no longer be eligible for NCAA women's championships.
    - Practice. A student-athlete assigned female at birth who has begun hormone therapy (e.g., testosterone) may continue practicing with a women's team and receive all other benefits applicable to student-athletes who are otherwise eligible for practice.



Use of Male Practice Players on Women's Teams

- EADA Reporting
- Title IX Counting
- NCAA Rules and Certification
- Sports Use