Amendment to MSHSL Bylaws

to define eligibility for MSHSL sex-separated sports teams by biological sex at birth

for consideration and voting by all MSHSL Member Schools in 2026 under *MSHSL Constitution §215.00*

1. *Amend Bylaw 101.00 as follows[1]:*

   BYLAW 101.00 AGE <u>AND SEX</u>

   Cross Reference: Bylaw 109 (Seasons of Participation) and Bylaw 110 (Semesters Enrolled)

   A student who turns 20 during the 11th or 12th semester since first entering the 7th grade shall be allowed to participate through the completion of the 12th semester.

   Students who participate in the Adapted Athletics Program shall be under 22 years of age. A student under age 22 who has started a sport season will be permitted to complete that sports season.

   <u>A student who participates in a sex-separated sport shall participate on the team consistent with their biological sex at birth.</u>

   Make conforming changes to the Eligibility Information Brochure for MSHSL Programs which is used as attestation of compliance with MSHSL eligibility criteria and is required to be signed annually by each athlete and a parent/guardian as a condition of MSHSL participation.

2. *Amend Bylaw Series 300, Fair Hearing Procedure, section 3 as follows: Repeal MSHSL's Eligibility Appeal Procedure for a Transgender Student which was imposed in 2014 through the MSHSL Board's adoption of a new policy rather than through a Member School vote under MSHSL Constitution 215.00. Revert to resolution and escalation of eligibility disputes using the established Fair Hearing Procedure (300).*

3. *Amend Bylaw Appendix as follows: Repeal APPENDIX: Board Policy: A Code of Commitment to Diversity, Equity, Inclusivity and Belonging adopted by the MSHSL Board in 2023. Revert to adjudication of good sportsmanship/good standing under existing bylaws including 209.00, 409.00, the Student Code of Responsibilities in 206.2, Fair Hearing Procedure (300) and the Board Policy on Sexual, Racial and Religious Harassment, Violence and/or Hazing (APPENDIX).*

[1] Regular text indicates existing language of MSHSL Bylaw.
<u>Underlined</u> text indicates proposed new language to Bylaw.
~~Stricken~~ text indicates proposed deleted language in Bylaw.
Italicized text gives conforming and drafting instructions.

Text of 2014/16 Board-adopted policy for repeal:

3. ***Eligibility Appeal Procedures for a Transgender Student***

A. ***Introduction:*** *In accordance with applicable state and federal laws, rules and regulations, the Minnesota State High School League allows participation for all students consistent with their gender identity or expression in an environment free from discrimination with an equal opportunity for participation in athletics and fine arts.*

B. ***Transgender Eligibility Appeal Procedures:*** *The application to appeal a transgender eligibility determination is limited to the following circumstances:*

1) *The school must have made a determination of ineligibility based on the student's gender identity after receiving information that the student has a consistent gender identity or that the gender identity is sincerely held as part of the student's core identity and the gender identity is different from the student's sex assigned at birth and that the student wishes to participate in athletics in a manner consistent with the student's gender identity.*

2) *The appeal must be submitted to the MSHSL Executive Director or Executive Director's Designee and may include, but is not limited to, the following:*

a) *The student's current transcript, school registration and any additional relevant information.*

b) *The written statement from the student and the student's parent(s)/legal guardian(s) affirming the consistent gender-related identity and expression to which the student self-relates.*

c) *Statements from individuals such as, but not limited to parents, friends, and/or teachers, which affirm that the actions, attitudes, dress and manner demonstrate the student's consistent or sincerely held gender-related identification and expression.*

d) *A written statement from an appropriate health-care professional, acting within the scope of their licensure that verifies the existence of the student's consistent and uniform gender-related identity or sincerely held gender-related identity.*

e) *Any other evidence that the gender identity is sincerely held as part of the person's core identity as may be required by the school or the MSHSL office relative to the eligibility determination.*

3) *When the MSHSL Executive Director or the Executive Director's Designee has received the appeal from the student, the Executive Director or the Executive Director's Designee shall contact an Independent Hearing Officer who will review the submitted information.*

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4) *In addition to the review of submitted information, the Independent Hearing Officer may:*

a) *communicate with experts, within their scope of licensure, with experience in gender identity health care.*

b) *communicate with the Minnesota Department of Education, Office of Monitoring and Assistance.*

c) *communicate with legislative counsel relative to existing state laws, rules and procedures.*

d) *communicate with representatives of the U.S. Department of Education, Office for Civil Rights regarding Title IX and related laws, rules, guidance and procedures.*

e) *review any other pertinent information as may be necessary in order to render a decision that complies with state and federal laws, rules and regulations.*

5) *Following a complete review of the information, the Independent Hearing Officer's recommendation shall be effective until reviewed by the MSHSL Board of Directors at its next regularly scheduled meeting.*

6) *If the Independent Hearing Officer affirms the eligibility of the student, the student will be eligible to participate in MSHSL activities consistent with the student's gender identification for the balance of the student's MSHSL eligibility.*

7) *Any decision of the Hearing Officer shall take into account the exemptions for religious affiliated non-public schools as set out in Minn. Stat. 363A.24, 363A.26, 20 U.S.C. 1681(a)(3) and 34 C.F.R. 106.12(a).*

Amended on February 4, 2016, as recommended by the MN Department of Education; Division of Compliance and Assistance on December 17, 2015.

Text of 2023 Board-adopted policy for repeal:

POSITION STATEMENT:
A CODE OF COMMITMENT TO DIVERSITY, EQUITY, INCLUSIVITY, AND BELONGING (6/6/23)

The Code of Commitment

The Board of Directors established the following Code of Commitment and will communicate its spirit and intent throughout all League programs.

I will join in the commitment of the Minnesota State High School League and its member schools to champion diversity, equity, inclusivity and belonging in League programs by:

... educating myself and being empathetic to gender fairness, equity, cultural heritage and traditions of others;

...modeling language and behavior that is non-biased and inclusive of individuals regardless of ethnicity, race, religion, ability or gender;

...taking action to prevent prejudice and discrimination against individuals or groups;

...and intervening to let others know I will not tolerate any demeaning actions or words that are ethnic, racial, religious, ability or gender based.

Philosophy

- The Minnesota State High School League believes that preventing prejudice and discrimination begins with each of us.
- The League and its member schools are committed to creating environments and intentional leadership opportunities that promote inclusivity by demonstrating respect and appreciation for all people regardless of ethnicity, race, religion, ability, or gender.
- The League recognizes the impact of prejudice and discrimination on participants in the League programs sponsored by its member schools.
- League programs should be a model for all and demonstrate that individuals with differences can interact with each other in a world free of prejudice and discrimination.

League Representatives and Responsibilities

- The Minnesota State High School League believes that clear expectations of appropriate conduct must be communicated to those individuals responsible for the well-being of students in all League programs.
- Leaders of League programs are role models for students and have a responsibility to model behaviors free of prejudice and discrimination.
- This code applies to all League representatives, including but not limited to the Board of Directors, League Staff, the Representative Assembly, Region Committees, ad hoc and advisory committees, coaches, registered officials, rules clinicians, tournament personnel, and representatives of member schools in League-sponsored activities.

MSHSL Governance

for consideration of the amendment to MSHSL Bylaws
to define eligibility for MSHSL sex-separated sports teams by biological sex at birth

What is an MSHSL Member School? *MSHSL Constitution §204.00*
The MSHSL is a group of 509 Minnesota public and private high schools (Member Schools) that voluntarily associate to form a joint competitive league for boys and girls high school sports and activities. Independent school boards authorize two Designated School Representatives (a staff person and a school board member) for each school district Member Schools who then exercise their delegated authority to vote on MSHSL matters on behalf of their Member School.

What is an MSHSL Local Advisory Committee? *MSHSL Constitution §208.03*
The MSHSL Constitution section on local control urges Member Schools to form an advisory committee.

What is an MSHSL Region Committee? *MSHSL Constitution §209.00*
Each Member School is assigned to one of 16 Regions created by the MSHSL Constitution. The Regions have an elected board and meet monthly, or at their discretion. The Regions each designate and send three people to an annual legislative meeting of the MSHSL Member Schools called the Representative Assembly.

What is the MSHSL Representative Assembly? *MSHSL Constitution §210.00*
Its regular meeting occurs each May, though special meetings can be called at the request of five MSHSL Board members or 15 Representative Assembly delegates. The Representative Assembly may amend the Bylaws of the MSHSL by a 2/3 favorable vote (assuming a quorum).

What is the MSHSL Bylaw Amendment Process? *MSHSL Constitution §215.00*
The MSHSL Constitution establishes a threshold of five Member Schools to propose an MSHSL Bylaw amendment for consideration by all Member Schools. The standard process takes a year and is outlined in MSHSL Constitution 215.00. It requires submission to the MSHSL Executive Director by October 15, distribution of proposals by November 1, collection of Regional votes by February 15 and—if 9 of 16 Regions vote in favor— then consideration and voting at the Representative Assembly annual meeting in May. Alternative expedited processes include special meetings called by the Region Committees or the Representative Assembly and an Emergency Amendment Procedure.

What is the MSHSL Board? *MSHSL Constitution §211.00*
The MSHSL Board consists of 22 people—4 appointed by the Governor, 2 by the trade group for school administrators, 2 by the trade group for school principals, 2 by the school board association and 12 elected by Member Schools. In 2014 and 2016, the MSHSL Board created a controversial policy that forced Member Schools to permit biological boys to compete on girls' sports teams. The Board's policy declares that the League allows sports participation consistent with a student's gender identity, presumes that Member Schools follow this eligibility rule and creates a special procedure to appeal to the League in Bylaws 300 called Transgender Eligibility Appeal Procedure through which an athlete may contest an eligibility determination based on gender or sex at a Member School. In 2023, the Board also adopted a DEI policy premised on "gender fairness". These changes were not proposed through the Member Schools' Bylaw amendment process. Policy that has only been adopted by the Board and not by the Member Schools themselves are published in MSHSL Bylaws in italics rather than in standard font.

MSHSL Governance Links

MSHSL Articles of Incorporation *contains purpose of MSHSL*

MSHSL Constitution *establishes governance processes for Member Schools, Region Committees and the Representative Assembly*

MSHSL Bylaws: 100 Series *establishes initial student eligibility requirements*

MSHSL Bylaws: 200 Series *contains 209.00 Racial and Religious Harassment, Violence and/or Hazing Policy*

MSHSL Bylaws: 300 Series *contains 306.00 Responsibility for Student Eligibility and Board-passed procedures for Eligibility Appeal Procedure for a Transgender Student; Fair Hearing Procedure*

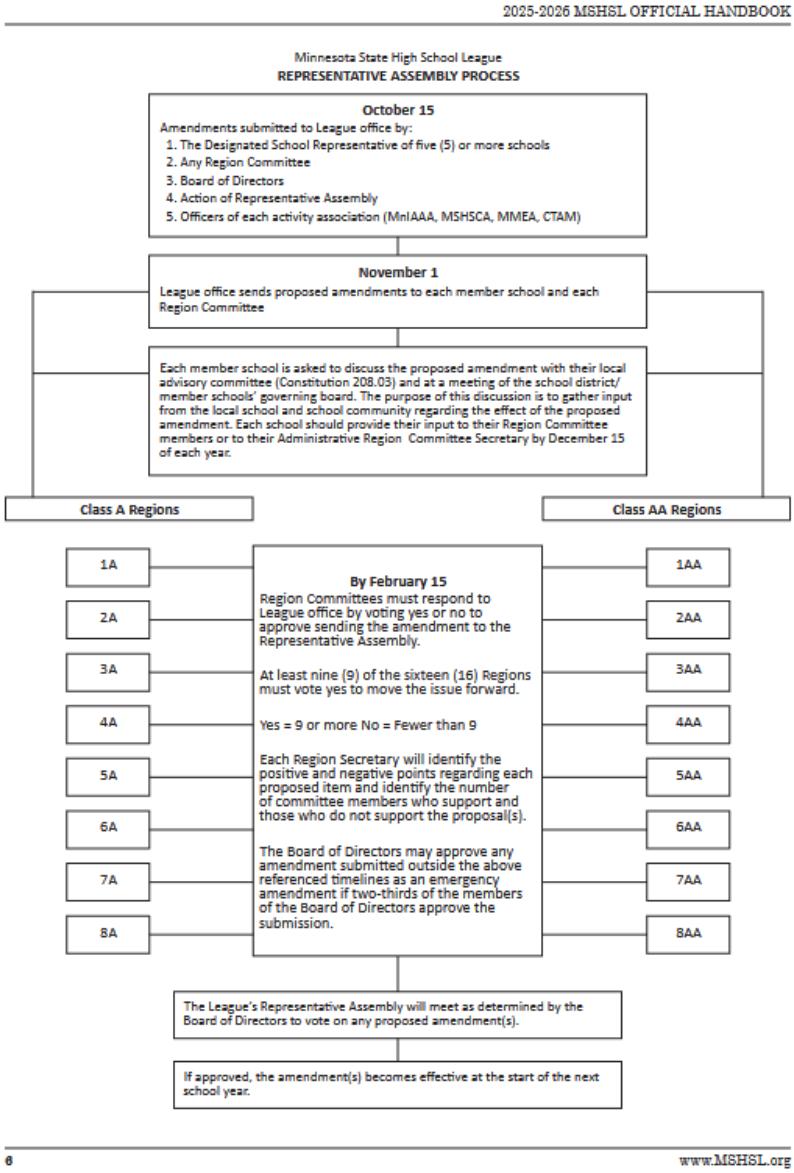
MSHSL Bylaws: 400 Series *contains 408.00 Reporting Violations of League Bylaws*

MSHSL Bylaws: 500 Series

MSHSL Bylaws: Appendix *contains Board-passed policies on Affirmative Action; Sexual, Racial and Religious Harassment, Violence and/or Hazing; Code of Commitment to Diversity, Equity, Inclusivity and Belonging*

MSHSL 2025-26 Handbook *contains board members, region committee leaders, assignment of schools to regions, flowcharts of governance processes*

Eligibility Information Brochure for MSHSL Programs 2026-27 *documents the attestations required of each athlete and athlete's parent/guardian each year*



Reasoning for Amendment to MSHSL Bylaws

to define eligibility for MSHSL sex-separated sports teams by biological sex at birth

for consideration and voting by all MSHSL Member Schools in 2026 under *MSHSL Constitution §215.00*

Why propose this amendment to MSHSL Bylaws?

The MSHSL Board and State leaders newly required Member Schools to sort high school sports teams based on gender identity rather than on biological sex through Board policy passed in 2014 rather than using the Member School voting process. Many of those affected by this decision support decency and concern for athletes struggling to accept their biology while also expecting safety and fair play in girls' sports. Member Schools have opportunity to adopt this popular and lawful biology-based eligibility policy without dependence on activists, legal brinksmanship or legislative action using the Member School voting process laid out in the MSHSL Constitution.

Why propose this amendment now?

Four reasons: 1) Minnesota girls face the compromises of MSHSL's gender affirmation maximalist approach to safety and fair play whenever they compete. 2) Member Schools are in imminent jeopardy of losing federal funding after the MSHSL's year of defiance and legal battle for not adopting a Title IX compliant (biology-based) definition of sports eligibility. 3) The authority of the MSHSL to officiate rules-based events continues to erode by its own flaunting of official oversight and Member School objections. 4) Lastly, while the *West Virginia v BPJ* decision by the Supreme Court released on June 30, 2026, did not automate an eligibility change in Minnesota as it did in many other states, it resolved precedent-setting questions at the federal level that make sex-separated sports team eligibility legally acceptable in Minnesota and determine that biology-based eligibility is not discrimination based on gender identity.

What does the amendment propose to change?

1. It adds a requirement to MSHSL Bylaw 101 that students participating on sex-separated teams compete on the team consistent with their biological sex at birth. It further instructs that the attestation of eligibility document[1] that is signed by students and a parent as a condition of participation be updated to include this new requirement.
2. It repeals the MSHSL Board declaration that Member Schools must allow biological males (described as transgender girls) to compete on girls' teams and the associated appeal procedure that the MSHSL Board adopted in 2014 and 2016. Future disputes regarding eligibility related to sex or gender will be handled through the same processes that the Member School and the MSHSL Board use for other eligibility disputes.
3. It repeals the statement on DEIB that the MSHLS Board adopted in 2023 which is used to advance reinterpretations of common terms like *inclusivity*, *discrimination and belonging* and to require compliance with novel concepts such as *gender fairness*. Related MSHSL trainings and marketing make personal endorsement of the participation of certain males (those claiming a feminine gender identity) on female teams a condition of good sportsmanship/good standing (which is an eligibility requirement for student athletes and coaches). Future disputes regarding conduct and good standing will be evaluated using established MSHSL bylaws and policies.

[1] Eligibility Information Brochure for MSHSL Programs

Does the amendment correct the Title IX violation that jeopardizes Member Schools' funding?

Yes. In February 2025, the Minnesota Attorney General issued a legal opinion[2] to the MSHSL outlining his legal reasoning for why Minnesota schools and MSHSL could not bring themselves into compliance with Title IX by adopting a biology-based definition of eligibility for girls sports, saying that doing so would violate the state law (the Minnesota Human Rights Act) intended to prevent discrimination based on gender identity. Minnesota and its school districts agree to comply with Title IX as a condition of receiving federal funds and, because the state refused to bring itself into compliance under administrative enforcement, the Department of Justice sued Minnesota[3] in 2026. No one knows whether or when that case will be decided, but the financial risks for all Member Schools are substantial. Adopting the proposed amendment would again permit Minnesota school districts to bring themselves into compliance with Title IX, curing the Title IX violation and presumably making the lawsuit and any fiscal disciplinary action unnecessary.

Does the amendment discriminate against athletes that assert novel gender identities?

No. A new Supreme Court decision on June 30, 2026, in *West Virginia v BPJ*[4] established that sport team eligibility determined by biology-based definitions of sex is both compliant with Title IX and permissible under the Equal Protection Clause of the Constitution's Fourteenth Amendment. The decision further determined that defining eligibility for sex-separated teams is not a form of discrimination based on gender identity but, rather, a permissible form of discrimination based on sex because it is necessary to ensure the acceptable competing goods of athlete safety and fair competition. The proposed amendment adopts a federally-permitted definition of eligibility by birth sex which is now protected under federal civil rights law. The Supreme Court decision overrides Minnesota's previous maximalist gender affirmation arguments that were premised on framing biology-based eligibility as discrimination against transgender students under state law and settlements. Future legal activism is to be expected, but legal claims (beyond team eligibility) such as new claims regarding locker room use, bathroom use and overnight lodging accommodations will be more difficult to win under the civil rights logic established in *West Virginia v. BPJ*.

This document should not be construed as legal advice. The amendment language is for consideration by Member Schools and the support documentation is provided as a resource for anyone to review and use.

[2] Minnesota Attorney General letter to MSHSL, February 20, 2025

[3] United States of America v. Minnesota Department of Education; and Minnesota State High School League

[4] *West Virginia v. BPJ*

[DATE]

Erich Martens, Executive Director
Minnesota State High School League
2100 Freeway Boulevard
Brooklyn Center, MN 55430-1735

Dear MSHSL Executive Director Martens,

Please find enclosed a proposed amendment to the MSHSL Bylaws. As an MSHSL Member School Designated Representative, I submit this proposed amendment for consideration and voting by all 509 MSHSL Member Schools in the state's 16 Regions under *MSHSL's Constitution §215.00 Amendments to General Bylaws and All Activity Bylaws*.

MSHSL Constitution §215.00 provides that a proposed bylaw amendment submitted to the MSHSL Executive Director by five Member Schools before October 15 requires that the League provide the proposed amendment to the MSHSL's 16 Region Committees by November 1 for the Region Member Schools' review, input and vote by February 15. If 9 of MSHSL's 16 Regions vote to support the proposed amendment, it is voted on by the 48 Member School designees selected by Region Committees to attend the MSHSL annual Representative Assembly in May. If 2/3 of the representatives present at the Representative Assembly vote in favor of the amendment it is adopted and effective on August 1.

Abbreviated methods for acting on this proposed bylaw amendment are found in *MSHSL Constitution §209.03(3)* which permits MSHSL Region Committees to call special meetings at their discretion and in *MSHSL Constitution §210.03 (2)* which permits 15 members of the Representative Assembly to trigger a special meeting of the body for any purpose at any time.

We believe that the decision by MSHSL Board Members in 2014 to discard the MSHSL biological basis for participation in girls' high school sports in favor of perceived gender identity was in error. It was not presented to Member Schools for action at the time, so is represented as a Board decision (in italicized text) rather than as a MSHSL Bylaw. The Board's decision was also not subject to standard rule-making or public notice, a known short-coming of MSHSL process cited by Minnesota's Legislative Auditor in 2017. Further, we believe that the MSHSL Board's 2025 decision to defy, rather than cure, the US Department of Education's finding of noncompliance with Title IX was in error. In addition to denying fair competition to girls, that decision jeopardizes each Member School's budget, generally 5-8% of their funding. It is not well-supported by Member Schools nor the general public.

We seek to align MSHSL Bylaws with Civil Rights law and Title IX. The previous legal uncertainty of this path was substantially adjudicated by the Supreme Court's decision on June 30, 2026, in *West Virginia v BPJ*, which affirmed the constitutionality of biology-determined sports eligibility. This proposed amendment alleviates the threat of denied federal funds due to noncompliance with Title IX, restores fairness to girls' sports and welcomes gender non-conforming athletes to biology-based competition.

I have sent this letter and proposal by certified mail. I would appreciate email confirmation of receipt and commitment that, assuming timely submission by five Member Schools, the League will distribute the proposed language to all Member Schools before November 1, 2026, and abide by the votes of the MSHSL Regions for possible consideration at a meeting of the MSHSL Representative Assembly in accordance with *MSHSL Constitution §215.02* or *§210.03 2C*.

Sincerely,

[NAME OF DESIGNATED SCHOOL REPRESENTATIVE]
Designated School Representative for [NAME OF MEMBER SCHOOL]
[NAME OF SCHOOL DISTRICT], ISD [NUMBER OF SCHOOL DISTRICT]
MSHSL Region [ASSIGNED MSHSL REGION]
[DESIGNATED SCHOOL REPRESENTATIVE EMAIL ADDRESS]

MSHSL
AMENDMENT
FOR
EQUAL PROTECTION
AND FAIR COMPETITION

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DOES YOUR HIGH SCHOOL SUPPORT THE AMENDMENT?

BACK BYLAWS BASED ON BIOLOGY

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LET'S FIX THIS
MSHSL AMENDMENT FOR EQUAL PROTECTION AND FAIR COMPETITION
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DOES YOUR HIGH SCHOOL SUPPORT THE AMENDMENT?
BACK BYLAWS BASED ON BIOLOGY

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