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Transgender guidelines stir controversy

New instructions from Maine Human Rights Commission could affect UM athletics

By Dylan Riley

For The Maine Campus

A draft of guidelines from the Maine Human Rights Commission that would inform schools and colleges of the rights of transgender students in Maine has sparked some debate about possible unintended consequences the guidelines could have on University of Maine athletics.

The guidelines are a clarification of Maine's Human Rights Act. "Sexual Orientation" was added as a protection of the act in 2005, and the guidelines explain in detail how schools and colleges should work with transgender students. The draft states that transgender students must be allowed access to bathrooms that "correspond with their gender identity" and to locker room accommodations that "meet their needs and that take into account the legitimate privacy of all students." The draft of the new guidelines is the product of a Dec. 15 work session hosted by the commission.

According to Patricia E. Ryan, the commission's executive director, "The Commission's guidance will not have the force of law but is entitled to great deference by the courts unless the statute plainly compels a contrary result."

Karen Kemble, director of the Office of Equal Opportunity at UMaine, attended the work session. She said in a Jan. 19 letter to the commission that the university is not taking a stance on the guidelines, but that "there will likely be cases in which allowing a transgender student to participate in gender-segregated sports in accordance with the gender identity or expression will raise legitimate concerns about fairness." The guidelines say a transgender student must be allowed to play on sports teams that matches his or her gender identity.

"It's not something that comes up with great frequency, so I don't see it as requiring us to change how our sports program functions," Kemble said, but the

issue is one she felt the commission should know.

The letter stated a transgender student's participation on a gender-segregated team could result in the National Collegiate Athletic Association classifying it as a mixed team, which could potentially impact an institution's compliance with Title IX. If a team was reclassified as mixed, it might cause an institution to lose its Division 1 status for not having the required number of teams.

Kemble said she did not recall any transgender students requesting to play on certain teams at UMaine, or any time such an issue has arisen in university athletics. The NCAA has its own proposed guidelines for dealing with transgender athletes on gender-segregated teams, but they haven't been formally adopted yet, Kemble said.

Issues of fairness in school athletics — such as whether transgender students on a team give an unfair advantage or reduce athletic opportunities for other students — were also raised at the Dec. 15 work session. In earlier drafts of the guidelines, the commission opted to include exceptions to the rule about sports. The current draft has no such exception, which Ryan and commission counsel John P. Gause explained in a Feb. 8 memo to the commissioners. The memo stated, "It would be impracticable to determine whether a particular individual were better at sports than others because of biological sex than some other factor," and that the fairest ruling opts for "universal inclusion."

Mary Bonauto, civil rights project director for Gay and Lesbian Advocates and Defenders, who was included in the lists of attendees of the Dec. 15 work session, wrote the commission saying, "Experience shows that a student denied the opportunity to play on gender-segregated teams consistent with his or her gender identity results in youth forgoing athletic opportunities." Gause said suggestions and comments from GLAD and

the Maine Principals Association were partly the reason for the commission's decision to include a section on sports.

Danielle M. Steele, of Gay, Lesbian, Bisexual and Transgender Services at UMaine, said, "There's still a lot of ambiguity about what the HRC are trying to do." The guidelines are scheduled for a public hearing March 1, and Steele said UMaine's GLBT community is "eager to see exactly what's going to come of the March hearings."

Despite the potential problems with athletics, Kemble said she doesn't see the potential for issues elsewhere in the university community. Transgender students at UMaine already use bathrooms that correlate with their gender identity, according to Steele, who does not feel the guidelines are redundant.

A separate issue concerning the guidelines involves asking for proof of transgender identity. The current draft states a school that has an "objective basis" to question whether a student's gender identity is genuine may ask for information proving it, but that no particular type of information may be required.

"The initial draft said that they didn't want any students to be asked for proof," Kemble said. She said the draft's current writing would help prevent abuse of the guidelines.

Gause said in most cases transgender students present their gender identity very consistently, and that a sudden switch from their behavior would constitute an "objective basis" for questioning.

"A school in most cases would not have reason to question a bona fide nature of someone's gender identity because they'd be presenting day to day as a boy or a girl, man or woman," Gause said.

There will be a public hearing to discuss the guidelines March 1 at the Senator Conference Center at the Best Western in Augusta.

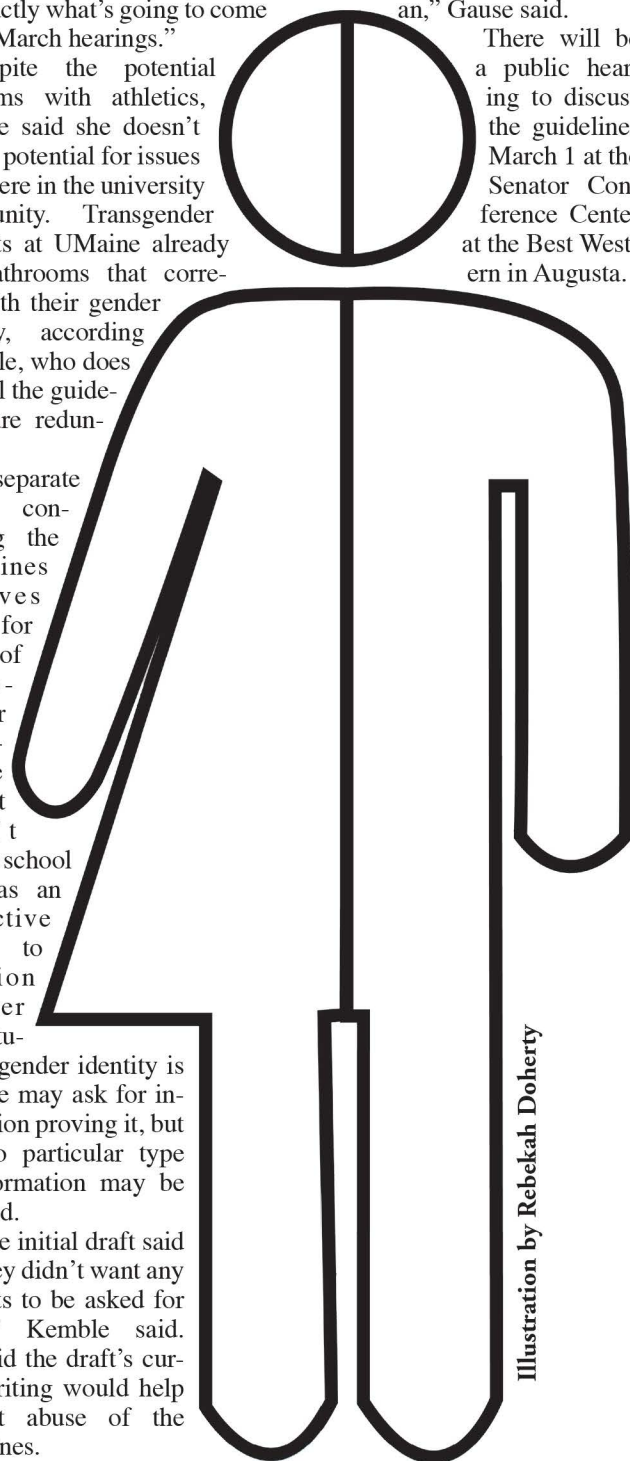


Illustration by Rebekah Doherty