

The Honorable David G. Estudillo

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

K.M.K., by and through her mother and
legal guardian, STEPHANIE LYNNE
BROWN; STEPHANIE LYNNE
BROWN,

Plaintiffs,

v.

WASHINGTON INTERSCHOLASTIC
ACTIVITIES ASSOCIATION, et al.,

Defendants.

CASE NO. 3:26-cv-05616-DGE

REPLY IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION

NOTE ON MOTION CALENDAR:
August 7, 2026

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INTRODUCTION

No one denies that a biological male digitally penetrated fifteen-year-old K.M.K. during a girls' wrestling match. Nor that District officials hid from K.M.K. and her mom that the opponent was male. Nor that, when K.M.K. reported the sexual assault, officials minimized it and did little.

None of that's legal. Prosecutors have criminally charged the principal and athletic coordinator with failing to mandatory report. The Constitution protects a mother's right to direct the care and upbringing of her child. Title IX exists to give girls fair and safe athletic opportunities, not to force them to compete against males. And no girl should have to be sexually assaulted, or have her report ignored, as the price of playing sports.

BACKGROUND

A. No one denies the sexual assault.

No one denies that the physical contact between K.M.K. and her opponent was consistent with digital vaginal penetration. Ex1.18. Per the District's investigator:

The videos of the match show, by both the angle and observed force applied, that [the opponent] likely touched [K.M.K.'s] vagina with force in the first instance, such that it caused her discomfort.

Id. No one offers contrary evidence.

B. No one denies failing to report.

No one claims reporting to law enforcement within 48 hours as required. RCW 26.44.030. Thus, the criminal charges. Ex.2.

The District and WIAA whistle past these charges, saying instead that K.M.K. didn't claim digital penetration until January 29, 2026. Brobbey.Decl. ¶¶ 2, 4. District.Resp.3, 17-21; WIAA.Resp.6.

Wrong. On December 8, 2025, Ms. Brown emailed the coaches, sent a video, and texted that K.M.K. said the opponent's "fingers [are] in her c**chie." Compl. ¶¶ 92–96, Compl.Ex.2. The same day, Coach Scott sent Ms. Brown's email to Principal Smith and Athletic Coordinator Collins, and the three met, then moved it to Athletic Coordinator Kase at Emerald Ridge High School, as well as unnamed others on the "admin team." Ex.3.7. Under school policies, they had to then inform Title IX Coordinator Dr. Gordon Brobbey, Compl. ¶¶ 93, 105, 114, and the District says that it "has followed its Title IX policies." District.Resp.21.

Smith also admits knowing on December 8, 2025 that K.M.K. and Ms. Brown said that "the other wrestler placed fingers in daughter's private parts." Ex.3.7. When asked if he understood "that to mean penetration," he answered, "I did." *Id.*

Under Title IX, that's actual knowledge: "notice of sexual harassment ... to any employee of a[] ... secondary school." 34 C.F.R. § 106.30 (2020).

C. The District and WIAA minimize the sexual assault.

Worse still, officials minimize the sexual assault. Ex.3.7 ("That's wrestling"). They call what K.M.K. experienced "commonplace" (Morrison Decl. ¶3), and accuse her of "hyperbole" and being "melodramatic." (WIAA.Resp.5, 22).

But sexual assault is not wrestling. No fifteen-year-old girl consents to digital vaginal penetration by signing up for high-school sports. Pursel Expert Decl. Ex.11 ¶11. Contra Defendants, it's illegitimate, prohibited, and incredibly uncommon. *Id.* ¶¶10-12.

Officials should have reported the sexual assault. *Id.* ¶12. As OSPI says, K.M.K.'s factual allegations "are extremely troubling." OSPI.Resp.1.

D. The District insists that K.M.K. learn and compete under the very officials who failed to protect her.

Now the District says K.M.K. must stay in school with the very officials criminally charged with failing her.¹ Even though OSPI and WIAA support K.M.K. transferring to another school, the District refuses. OSPI.Resp.1, 24–25; WIAA.Resp.8; District.Resp.2,6–7.

First, they say that K.M.K. didn’t fill out the right form. Ex.4.5. But Ms. Brown twice asked the District through counsel for transfer. Ex.4.6–9,10–11. And the form makes Ms. Brown responsible for transportation, which conflicts with her own job at the District. Ex.4.3,4,6,10–11; Ex.6. And the District forbids transfers over the summer anyway. Ex.6.3,6. So the form is a no-win.

Next, the District says that transfer is costly and against policy. Brobbey.Decl. ¶¶35,46–47, 50; District.Resp.4-5. But that doesn’t trump its duty to provide a safe learning environment. Supportive measures include “chang[ing] academic or extracurricular activities ... to avoid contact with the alleged harasser,” “[m]odifications of work or class schedules,” “[s]eparating students and/or staff,” and “[m]utual restrictions on contact between the parties.” Brobbey.Decl. ¶¶30–31. That’s what K.M.K. seeks: separation from those who ignored her sexual-assault complaint. Ex.4. She shouldn’t have to trust that they’ll get it right next time.

ARGUMENT

I. Title IX allows K.M.K. to escape a hostile environment.

The Court should order the District to separate K.M.K. from the officials who failed to protect her.

¹ Smith filed no response, as is his right. U.S. Const. amend v.

A. The District created a hostile environment by not responding to and not reporting the sexual assault.

By not adequately reporting and responding to K.M.K.'s sexual assault, District officials created a hostile environment that endures to this day. Ignoring a teenage girl's assault report for months is severe, objectively offensive, and pervasive. MPI.23–27. Plus, no one denies that 13 girls from her opponent's school separately complained about discomfort sharing a locker room with two male teammates, only to likewise be dismissed. Compl. ¶¶109, 113; MPI.8,16.

Nine months later, the District's inadequate investigation drags on, officials still minimize the sexual assault, there's no protection for K.M.K. in wrestling, and the District pretends its employees have known nothing the whole time. Ex.4.5. Then there's ongoing hostility and harassment from officials and peers. Ex.4.6–9. And K.M.K. is stuck in the same school. Ex.4.1–5.

WIAA says that the District acted fine because one coach received her complaint, and nearly two months later, one principal belatedly reported it to law enforcement. WIAA.Resp.27-22. That's not a defense; it's a Title IX violation.

B. The District received—but ignored—K.M.K.'s complaints that school officials failed to report and respond to sexual assault.

The District says that K.M.K. never complained of—let alone experienced—any hostility at her own school. District.Resp.2,4,6,20–21,23–25; Brobbey.Decl. ¶¶43–44, 46. Again, they say she didn't use the right form. Brobbey.Decl. ¶¶ 36–44; District.Resp.21,23; Ex.4.5. And they say they can't give her "special treatment" by switching schools. Brobbey.Decl. ¶46; District.Resp.2,6–7,13, 20.

But for more than eight months, K.M.K. has raised complaint after complaint about school officials failing to respond adequately to her sexual-assault report. Ex.4.1–5. The District's own policies don't make her use a particular form, Ex.4.3–4;

Ex.7.4–7, but still, she has used that form, too. Ex.4.3–4, Ex.5.²

And the District knew she was claiming a hostile environment. That’s why in February 2026, Dr. Brobbey announced “a prompt, thorough, and equitable investigation” under its sexual harassment policy into (1) complaints about the match and (2) complaints that its officials “failed to promptly respond to and report” the sexual assault. Ex.8.2. He even cited policies making staff “responsible for reporting all suspected cases.” *Id.*

But contrary to Brobbey’s announcement, the District didn’t investigate the reporting failure. Their investigator’s own report says he only investigated the assault itself. Ex.1.3,16–18. This despite K.M.K. submitting a legion of evidence of the reporting failure. Ex.4; Ex.5; MPI.Ex.14.4–5; Compl. ¶¶92–141,149–52,175–84. That’s deliberate indifference.

II. Plaintiffs have standing.

Despite the lack of notice and sexual assault, Defendants argue that any future injury is speculative. OSPI.Resp.7–8; District.Resp.22; WIAA.Resp.24.

But injury is automatic when “the process departs from the law.” *Bost v. Illinois State Bd. of Elections*, 607 U.S. 71, 77–79 (2026). “Each runner in a 100-meter dash, for example, would suffer if the race were unexpectedly extended to 105 meters,” as “all would be deprived of the chance to compete for the prize that the rules define.” *Id.* at 79. Likewise, Defendants’ policies deprive K.M.K. of equal athletic opportunity under Title IX, and courts must accept that legal claim when assessing standing. *FEC v. Cruz*, 596 U.S. 289, 298 (2022).

And Defendants’ arguments blink reality. They already assigned K.M.K. to unknowingly wrestle a male once, and another male is in an adjacent class. Schedules going back to 2023 show the District’s teams facing each other multiple

² K.M.K. even asked if her mom should report the sexual assault, though she was not required to, *State v. James-Buhl*, 415 P.3d 234, 238 (Wash. 2018). Compl.Ex.3.

times every season, Ex.9.1–3, and the past has significant “predictive value.” *Murthy v. Missouri*, 603 U.S. 43, 59 (2024). Officials matched K.M.K. against a male in the very first tournament of the year. Neither male on Emerald Ridge’s team has graduated or quit, nor does anything prevent an unknown male from competing. Without notice, K.M.K. risks a male opponent every time she wrestles. That is injury-in-fact. *Cf. Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956, 969–70 (9th Cir. 2018) (inability to rely on defendant’s future statements).

Nor is the risk of harm unclear. *Contra* OSPI.Resp.6–7. Washington doesn’t require the hormone interventions OSPI’s expert relies on, and there’s no serious dispute that “allowing biological males to play on women’s sports teams puts women and girls at significant risk of sometimes severe injuries.”³ *W. Virginia v. B.P.J. by Jackson*, 146 S. Ct. 2356, 2375 (2026). And sports are “zero sum”; “[a]llowing a biological male athlete to compete on a girls’ team *necessarily* displaces or disadvantages a female athlete.” *Id.* at 2372–73.

Nor is K.M.K.’s exclusion “self-imposed.” OSPI.Resp.8. Reasonably refraining from desired activity because of a defendant’s actions is an injury-in-fact. *Friends of the Earth, Inc. v. Laidlaw Envtl. Services (TOC), Inc.*, 528 U.S. 167, 182–83 (2000). K.M.K. has standing just like a plaintiff who refrains from fishing, canoeing, or swimming because of river pollution. *Id.* And the caselaw amply supports standing when a student reasonably withdraws from school because of a Title IX violation. *Doe 1 v. Baylor Univ.*, No. 6:16-CV-173-RP, 2020 WL 1557742, at *4 (W.D. Tex. Apr. 1, 2020); *see, e.g., Doe v. Univ. of Tennessee*, 186 F. Supp. 3d 788, 813 (M.D. Tenn. 2016); *Frechel-Rodriguez v. Puerto Rico Dep’t of Educ.*, 478 F. Supp. 2d 191,

³ Plaintiffs’ experts comprehensively rebutted declarations submitted by Dr. Millington here, as well as by Drs. Goepferd and McQuillan elsewhere. Exs.13,14,15,16. Plaintiffs’ new rebuttal expert addresses Defendants’ experts’ claims about “gender affirming care,” including social transition and opposite-sex sports participation. Ex.16.

1 198 (D.P.R. 2007). K.M.K. would return to girls' sports if the Title IX violations
2 were remedied. Compl. ¶ 104.

3 Certainty isn't required for parental rights either. *Mirabelli* didn't require
4 showing that the parents' "particular child" would be transitioned without notice.
5 *City of Huntington Beach v. Newsom*, No. 25-3826, 2026 WL 1785110, at *3 (9th
6 Cir. June 18, 2026). Ms. Brown is the "object" of Defendants' policies forbidding her
7 notice and opt-out rights. *See id.* (quoting *Diamond Alternative Energy, LLC v.*
8 *EPA*, 606 U.S. 100, 114 (2025)). Defendants' policies force Ms. Brown to sideline her
9 daughter or cede her parental decision-making authority. That's the injury.

10 **III. Ms. Brown's parental-rights claim is likely to succeed.**

11 Defendants' policies mean parents *must* let Defendants pit their daughters
12 against males—or avoid sports. That forces Ms. Brown to condition her daughter's
13 access to public-education benefits on forfeiting her right to direct her daughter's
14 care and upbringing. Defendants should be enjoined from matching K.M.K. against
15 males without the notice and opt-out opportunity that *Mahmoud v. Taylor*, 606 U.S.
16 522 (2025), and *Mirabelli v. Bonta*, 607 U.S. 492 (2026) demand.

17 **A. Matching K.M.K. against males without notice infringes Ms.** 18 **Brown's parental rights.**

19 Parents' fundamental interest in directing their children's care, upbringing,
20 and education is not an "open issue," District.Resp.7. The right applies "at school"
21 and "during school hours." *Mirabelli*, 607 U.S. at 497. Schools can "usurp" parental
22 authority just as easily on the wrestling mat as in the classroom. *Gruenke v. Seip*,
23 225 F.3d 290, 306–07 (3d Cir. 2000) (coach violated parental rights).

24 Nor do parental rights evaporate during competition. Parents hold a "vitally
25 important interest[]" in their children's safety in contact sports, where "safety risks
26 are at their apex." *B.P.J.*, 146 S. Ct. at 2371, 2375, 2380. So when "biological males"
27
28

1 play on “women’s sports teams,” that puts girls “at significant risk of sometimes
2 severe injuries.” *Id.* at 2375.

3 But “withhold[ing] notice to” Ms. Brown and “forbid[ding] opt outs” violates
4 her fundamental rights. *Mahmoud*, 606 U.S. at 2353. Deciding if K.M.K. will
5 compete with a male rests with Ms. Brown alone. She “can and must make those
6 judgments” about the “physical ... health” of her daughter. *Parham v. J.R.*, 442 U.S.
7 584, 603 (1979). Defendants’ arguments to the contrary fail.

8 Start with Defendants’ contention that this claim is novel. OSPI.Resp.8;
9 WIAA.Resp.12; District.Resp.7–8. It’s not. What’s new is the violation: only in
10 “recent years” have “some biological males who identify as female ... sought to play
11 on women’s or girls’ sports teams.” *B.P.J.*, 146 S. Ct. at 2367. But a “modern
12 development” doesn’t strip parents of their rights. *Id.* *Mirabelli* applied the right to
13 another new situation: children “gender-transitioning at school.” *Henry v. Sheriff of*
14 *Tuscaloosa Cnty.*, 180 F.4th 1294, 1320 (11th Cir. 2026) (en banc) (Rosenbaum, J.,
15 concurring). And it “described the asserted right broadly.” *Id.* Given the physical
16 safety risks that *B.P.J.* recognized, the same right applies here.

17 Defendants mischaracterize the claimed right as a right to determine “with
18 whom” K.M.K. “will interact at school.” District.Resp.8; *accord* OSPI.Resp.9.
19 Incorrect. Ms. Brown asserts a right to direct the “*conditions* under which her child
20 interacts with others” when “*physical safety* and bodily privacy are at issue.”
21 MPI.12 (emphasis added), such as wrestling against a male. *See B.P.J.*, 146 S. Ct.
22 at 2375. That implicates K.M.K.’s “physical ... health.” *Parham*, 442 U.S. at 602–03.
23 Whether to put K.M.K. at “significant risk of sometimes severe injuries” is Ms.
24 Brown’s decision alone. *B.P.J.*, 146 S. Ct. at 2375.

25 Second, Defendants say Ms. Brown claims a right to other students’ private
26 information. District.Resp.9; OSPI.Resp.22; WIAA.Resp.12. Wrong again. Ms.
27 Brown seeks an opt-out from competition with males. Stephanie Brown Decl. ¶ 38.
28

Defendants do not have to disclose any private health information or violate FERPA. They need only abstain from pitting her daughter against males or allow her an opt-out from such matches by providing notice.

Third, the District claims Ms. Brown seeks to “direct school administration,” relying on *Parents for Privacy v. Barr*, 949 F.3d 1210, 1230–31 (9th Cir. 2020). But that case concerned school bathrooms, not contact sports. It lacked the “significant risk of sometimes severe injuries” from wrestling males. *B.P.J.*, 146 S. Ct. at 2375. And the policy in *Barr* did not even require interaction between opposite-sex students because it made single-user bathrooms available. *Barr*, 949 F.3d at 1219. No comparable accommodation exists here. So an opt-out here is no more a claim for “administrative control” than the opt-outs *Mahmoud* and *Mirabelli* required.

The District and OSPI puzzlingly argue that parental rights don’t extend to the classroom. District.Resp.9–10; OSPI.Resp.10. But *Mahmoud* required an opt-out for “the public school classroom.” *Mahmoud*, 606 U.S. at 547. And if *Fields v. Palmdale School District*, 427 F.3d 1197 (9th Cir. 2005), is still good law after *Mirabelli*, it did not feature the health and safety risks present here. *Id.* at 1200.

Finally, the District suggests that only religious parents possess these rights—ignoring *Meyer* and the rights of secular families. *See* District.Resp.9–10. But *Mirabelli* rejects that claim. 607 U.S. at 497.

Cornered by *Mirabelli* and *Mahmoud*, the District and OSPI say those cases were “preliminary,” not “decision[s] on the merits.” District.Resp.8–10; OSPI.Resp.9. But “regardless of a decision’s procedural posture, its reasoning—its *ratio decidendi*—carries precedential weight in future cases.” *Nat’l Institutes of Health v. Am. Pub. Health Ass’n*, 145 S. Ct. 2658, 2663 (2025) (per curiam) (Gorsuch, J., concurring in part); *see also Trump v. Boyle*, 145 S. Ct. 2653, 2654

(2025). The Supreme Court and the Ninth Circuit have already treated them as binding. *Mirabelli*. 607 U.S. at 496; *City of Huntington Beach*, 2026 WL 1785110, at *2.

OSPI next gives a parade of horrors, like parents demanding sex-segregated lunchrooms because boys “misbehave,” or knowing a student’s immigration status because “undocumented immigrants are dangerous.”

OSPI.Resp.11. These aren’t serious concerns. Equating K.M.K.’s sexual assault to sharing a lunchroom with “misbehaving” boys is insulting. And there’s no danger from sharing a classroom with undocumented children.

Mirabelli and *Mahmoud* are binding. And *B.P.J.* confirms the safety risks that make notice critical. So withholding notice and opt-out rights from Ms. Brown triggers strict scrutiny.

B. Defendants’ policies fail strict scrutiny.

Strict scrutiny demands that Defendants’ policies be “narrowly tailored to serve a compelling state interest.” *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997). Defendants don’t even try to satisfy this.

Defendants seem to suggest that non-discrimination interests justify their policies. But Ms. Brown isn’t asking to discriminate against anyone. She wants Defendants to refrain from pitting her daughter against males and provide her notice. If the government can constitutionally sex-separate sports without discriminating on transgender status, as *B.P.J.* held, Defendants can inform Ms. Brown if her daughter will compete against a male without doing so either.

Likewise, the District says its policies give “equal access to educational opportunities.” District.Resp.11. But under strict scrutiny, the District “cannot purport to rescue one group of students from stigma and isolation by stigmatizing and isolating another.” *Mahmoud*, 606 U.S. at 568. Defendants use perceived harm to males to justify excluding K.M.K. from the sport altogether. The District forgets

that “children’s safety is the overriding equity.” *Mirabelli*, 607 U.S. at 497. No one explains why K.M.K.’s on-the-mat forfeiture would be more stigmatizing to her opponent than to her. And that forfeit would count against K.M.K.

Defendants’ appeals to state laws miss the Supremacy Clause, to which “state law must yield.” *Martin v. United States*, 605 U.S. 395, 409 (2025). WIAA frets about what OSPI will do. WIAA.Resp.23–24. But the State can’t “prevent[] a local government” from vindicating “constitutional guarantees.” *Missouri v. Jenkins*, 495 U.S. 33, 57–58 (1990).

Defendants equally fail narrow tailoring. Their solution: K.M.K. can just not “participate in sports.” District.Resp.11. That’s the opposite of narrow tailoring. “[P]ublic education is a public benefit,” and the government cannot “condition its availability on parents’ willingness to accept a burden” on their constitutional rights. *Mahmoud*, 606 U.S. at 561. So the District can’t make her quit or forfeit. *Contra* Brobbey.Decl. ¶34.c.

Defendants’ logistical protests fail too. The District doesn’t dispute keeping records of students’ legal sex. MPI.Ex.7 (Policy 3211R, p.2). And WIAA-member schools resolve “gender identity determinations.” WIAA.Resp.26. So the systems are already in place. There’s no need for “sex-verification testing,” WIAA.Resp.26, nor must OSPI collect new information. OSPI.5. They just can’t keep schools from honoring Ms. Brown’s opt-out. Defendants can’t “craft[]” burdensome policies to evade responsibility. *Mahmoud*, 606 U.S. at 567. “There is no *de maximis* exception to the” Constitution. *Id.*

C. WIAA is liable under Section 1983.

Without disputing its state-actor status, WIAA argues it’s not liable under *Monell v. Department of Social Services*, 436 U.S. 658 (1978), because it just enforces state law. WIAA.Resp.24–25. But WIAA has its own gender-identity policies. Handbook 18.16.0. So it’s not like a city that lacks its “own independent ...

policy.” *Juzumas v. Nassau County*, 33 F.4th 681, 688 (2d Cir. 2022); *see also* *Whitesel v. Sengenberger*, 222 F.3d 861, 872 (10th Cir. 2000) (same). And even if meaningful choice were relevant, WIAA had one. In 2006, state law generally prohibited “discrimination” based on sex and gender identity without specifying what that means for sports. RCW 28A.642.010; WAC 392-190-024; *see* WIAA.Resp.3–4. WIAA chose to prioritize gender identity on sex-based teams. And WIAA cannot invoke Washington law as a shield when WIAA’s policies “hinder vindication of federal constitutional guarantees.” *North Carolina Bd. of Educ. v. Swann*, 402 U.S. 43, 45 (1971).

IV. Defendants’ policies violate Title IX.

Plaintiffs are also likely to show that allowing boys into female-designated sports violates Title IX.

A. Title IX acknowledges biological reality.

In *B.P.J.*, the Supreme Court resolved three key issues in Plaintiffs’ favor.

First, in Title IX, sex means “biological sex and not gender identity.” *B.P.J.*, 146 S. Ct. at 2371. So when the regulations refer to “separate teams for members of each sex,” that means separation by biology, not identity. 34 C.F.R. § 106.41(b).

Second, *Bostock v. Clayton County*, 590 U.S. 644 (2020), does not apply to Title IX. *B.P.J.*, 146 S. Ct. at 2373. So Defendants’ reliance on *Bostock*-based precedent is misplaced. OSPI.19 (citing, *inter alia*, *Roe v. Critchfield*, 137 F.4th 912, 928 (9th Cir. 2024), and *Doe v. Snyder*, 28 F.4th 103, 113–14 (9th Cir. 2022)); WIAA.14 (citing *Doe*).

Finally, *B.P.J.* confirms that “equal opportunity in athletics” broadly protects women’s sports. Co-ed teams alone “would deny equal opportunity to female athletes because, as all agree, females and males have inherent physical differences relevant to athletic performance.” 146 S. Ct. at 2367; *accord* MPI.17. Defendants’ conception of “equal opportunity” as limited to details like facilities or participation

1 numbers instead of the integrity of the female category misses the forest for the
2 trees. *E.g.*, WIAA.Resp.16–19; District.Resp.17.

3 **B. Title IX does not permit males in female-designated sports.**

4 Defendants say that Title IX *allows* without *requiring* sex-designated
5 athletics. OSPI.Resp.14. But Plaintiffs aren’t saying that a co-ed team *always*
6 violates Title IX. Plus, that’s not Defendants’ policy.

7 Title IX’s “default rule” under 106.41(a) “is that athletics must *not* be
8 separated by sex, and a recipient cannot restrict one’s ability to participate on an
9 athletic team based on sex.” OSPI.Resp.15 (citing *Mercer v. Duke Univ.*, 190 F.3d
10 643, 646 (4th Cir. 1999); *accord* WIAA.Resp.17. Under that default rule, a team
11 must be completely open to both sexes.

12 But Defendants’ teams aren’t. The WIAA has detailed rules for separating
13 boys’ and girls’ teams. Handbook App’x 2. They use biological distinctions—that’s
14 obviously why they allow girls to play on boys’ teams when there’s no girls’ team,
15 but not vice-versa. *Id.* And boys who identify as boys can’t join girls’ wrestling. *Id.*
16 So Defendants make *some* sex distinctions and thus fail 106.41(a).

17 What’s left is the exception allowing “separate teams for members of each
18 sex.” 34 C.F.R. § 106.41(b). But by allowing boys on girls’ teams, they don’t comply
19 with that either. MPI.21–22. So they violate 106.41(a) without satisfying the
20 106.41(b) exception.

21 They also violate 106.41(c), which requires “equal athletic opportunity” for
22 girls. Given the sexes’ “inherent physical differences related to athletic
23 performance,” allowing males into every single female sport with no protection for
24 women plainly violates that mandate. *B.P.J.*, 146 S. Ct. at 2367.

25 Defendants nonetheless insist that teams need not be “*completely* separated
26 by sex” under 106.41(b) because it uses the word “may.” OSPI.Resp.15. But the
27 exception allows separate teams for “each sex”—a biological term. And it goes on to
28

specify exceptions to that rule. So under the negative-implication canon, 106.41(b) requires complete sex separation to qualify.

Defendants' counterarguments fail.

Parents for Privacy, for example, concluded Title IX does not *require* schools to maintain separate restrooms. 949 F.3d at 1227. WIAA (at 17) and OSPI (at 15) argue the same for athletics. But even if *Parents for Privacy* remains good law post-*B.P.J.* (it doesn't), Title IX's different text and structure for athletics presume a sex-conscious system. *Compare* 34 C.F.R. § 106.41(a)–(c), *with* 20 U.S.C. § 1686, 34 C.F.R. § 106.33. Defendants refuse to grapple with those textual differences.

Tennessee v. Department of Education, 104 F.4th 577 (6th Cir. 2024), observed that the Title IX “regulations permit, but do not require” schools to organize “athletics programs ... by biological sex.” *Id.* at 610–11; *see* OSPI.Resp.15. But in *Tennessee*, that point was uncontested and irrelevant to the notice-and-comment holding, making the statement (unpersuasive) dicta. 104 F.4th at 610–11. And Defendants have not created a pure co-ed or gender-identity system anyway. They separate partially by sex.

OSPI next argues (at 15–16) that Plaintiffs' interpretation would require “sex-segregated teams, with no possible crossover,” and points out that girls do “compete (and win) on boys' teams.” That again ignores 106.41. As *Mercer* noted, when schools allow girls on (previously) boys teams, that makes them 106.41(a) teams, which are compliant provided the school otherwise accords girls equal opportunity. 190 F.3d at 646. So OSPI is wrong to claim (at 16) Plaintiffs' interpretation would put 106.41(c) in conflict with 106.41(a).

And it misses the point. Sex-designation isn't to protect males from extraordinary females. *See* OSPI.Resp.16.⁴ Girls who succeed on boys' teams don't

⁴ Plaintiffs' reading would not exclude the girls OSPI references. Girls making the football team (Doc. 44-6), succeeding in boys wrestling (Doc. 44-7, 44-8), or

1 have inherent advantages nor deprive boys of equal opportunity. Sex-designation
 2 “ensure[s] equal opportunity for *female* athletes.” *B.P.J.*, 146 S. Ct. at 2367
 3 (emphasis added). When a school has boys’ and girls’ teams, but allows males on the
 4 girls’ team, girls lose the equal opportunity that justified separation in the first
 5 place. MPI.21–23. This is asymmetrical because males and females are different.
 6 *See B.P.J.*, 146 S. Ct. at 2367.

7 Defendants also argue Plaintiffs’ claims don’t fit into the “effective
 8 accommodation” or “equal treatment” box. OSPI.Resp.17; *accord* District.Resp.16–
 9 17; WIAA.Resp.16–19. But *B.P.J.* affirms Plaintiffs’ plain-language reading of
 10 106.41(c). The text requires “equal athletic opportunity”—period. 34 C.F.R.
 11 § 106.41(c). The effective-accommodation and equal-treatment formulae just
 12 operationalize a list of ten non-exclusive factors the agency will consider when
 13 assessing equal opportunity. *B.P.J.* confirms that “the Title IX regulations
 14 guarantee ‘equal athletic opportunity,’” 146 S. Ct. at 2372–73, without having to
 15 check the factors in 106.41(c).

16 **C. Defendants’ technical arguments are unavailing.**

17 Outside the harm to K.M.K., Defendants argue they cannot be held liable for
 18 violating Title IX. These arguments fail too.

19 **1. Intentional discrimination.**

20 Defendants say Plaintiffs’ Title IX claim is improperly based on disparate
 21 impact. *See* OSPI.Resp.11–13; WIAA.Resp.19–20. That’s wrong twice over:
 22 Defendants’ policies are partially sex-based, and Defendants have been deliberately
 23 indifferent. Nor do Defendants cite a single case excusing a violation of 106.41 (as
 24 above) by re-characterizing it as a disparate impact claim.

25
 26
 27 _____
 28 coxswaining the men’s rowing team (Doc. 44-9) haven’t deprived boys of equal
 opportunity.

1 a. Defendants’ policies are not facially neutral. Indeed, “Washington
2 allows both boys and girls’ sports.” OSPI.Resp.15–16. That’s a sex-based regime.
3 Layered on top is a gender-identity exception: “student athletes can choose which
4 team according to their gender identity.” *Id.* That’s not sex-neutral.

5 WIAA rules say schools “shall designate the sex of students allowed to
6 participate on a team for each sport.” Handbook App’x 2. Throughout, there are
7 differential rules for boys and girls that only make sense as biological distinctions.
8 *Id.*; MPI.Ex.6. And Defendants are wrong that they can’t intentionally discriminate
9 without intending an “adverse effect upon [girls],” OSPI.Resp.27, or “to
10 disadvantage a protected class,” WIAA.Resp.19. Intentional discrimination doesn’t
11 require malice or animus, but simply that the recipient “intended to treat women
12 differently because of their sex.” *Pederson v. Louisiana State University*, 213 F.3d
13 858, 880 (5th Cir. 2000); *see* OSPI.Resp.13. Intentionally letting boys into a
14 previously protected female-only category easily satisfies that standard.

15 To argue otherwise, Defendants ignore WIAA’s broader system and isolate
16 the gender-identity provisions. OSPI.Resp.12 (citing *Barr*, 949 F.3d at 1228); *see*
17 *also* WIAA.Resp.16; District.Resp.13. But WIAA emphasizes (at 15) that equal
18 athletic opportunity is a holistic inquiry. And Defendants’ gender-identity policies
19 have no operation outside the broader framework providing for “athletic programs
20 ... offered separately for boys and girls.” Handbook 18.16.0 (referring to Handbook
21 App’x 2). If athletics were not already sex-designated, gender identity would be
22 irrelevant.

23 WIAA (at 19–20) and the District (at 12–14) center their facial neutrality
24 argument on *Female Athletes United v. Ellison*, 172 F.4th 1019 (8th Cir. 2026).
25 There, the Eighth Circuit merely concluded that certain allegations “conceded” the
26 challenged gender-identity policy’s neutrality, and “disclaimed that it reflected a
27 sex-based choice.” *Id.* at 1028. That isn’t the case here. *E.g.*, Compl. ¶¶ 237–39. And
28

one can sometimes infer discriminatory intent from disparate impact. *Female Athletes*, 172 F.4th at 1028–29. Here, Defendants “received and disregarded complaints outlining the negative effects of [male athletes’] participation on female athletes,” and that’s sufficient. *Id.* at 1029; Compl. ¶¶ 261–90, 301–25.

OSPI argues (at 12–13) “nondiscrimination for *all* students is a plausible neutral ground for OSPI’s policies.” Eliminating the female-only category is not a neutral act. Adding gender-identity policies to an explicitly sex-based system, too, is not sex-neutral. The Supreme Court has said it’s “impossible” to consider transgender status—the reason for the policies—without considering sex. *Bostock*, 590 U.S. at 660. At the very least, Defendants were deliberately indifferent to the sex-based harm this causes.

b. Plaintiffs are also likely to show deliberate indifference. MPI.18–20. That requires “knowledge that a harm to a federally protected right is substantially likely,” and failure “to act upon that [] likelihood.” *Duvall v. Cnty. of Kitsap*, 260 F.3d 1124, 1139 (9th Cir. 2001). It includes failing to remedy an obvious risk of sex-based harm. *See Karasek v. Regents of Univ. of Cal.*, 956 F.3d 1093, 1113 (9th Cir. 2020). In such a case, the obviousness of the risk, not notice of a “particular harassment situation,” *Mansourian v. Regents of Univ. of Cal.*, 602 F.3d 957, 967 (9th Cir. 2010), supplies the recipient’s “knowledge that a harm to a federally protected right is substantially likely,” *Duvall*, 260 F.3d at 1139. If the recipient “fail[s] to act upon that [] likelihood,” it has been deliberately indifferent. *Id.*

The risk of harm to women is obvious because allowing males to compete “*necessarily* displaces or disadvantages a female athlete” *B.P.J.*, 146 S. Ct. at 2372. Defendants did not need notice of specific incidents; the risk was obvious. But incidents of harm in Washington and elsewhere are legion. *See* MPI.19–20; Compl. ¶¶ 301–21. Without rebutting that showing, Defendants had actual knowledge.

1 The District (at 14) and OSPI (at 13) say that deliberate indifference only
 2 applies to harassment claims. Wrong. Courts have applied the standard elsewhere,
 3 like Title VI claims alleging deliberate indifference to racially motivated class
 4 assignments. *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 271–73, 294 (3d Cir.
 5 2014); *S.H. ex rel. Durrell v. Lower Merion Sch. Dist.*, 729 F.3d 248, 265 (3d Cir.
 6 2013). There’s no reason the legal principle wouldn’t apply to other forms of sex
 7 discrimination.

8 2. Clear notice.

9 OSPI (at 19) and WIAA (at 14-15) insist the Spending Clause’s clear-notice
 10 requirement is not satisfied here. But they seem to confuse Spending Clause notice
 11 with the “clearly established” standard from qualified immunity.

12 Spending Clause recipients can have clear notice that a form of sex-based
 13 discrimination violates Title IX before courts have resolved the question. The clear-
 14 notice inquiry centers on the “clear statutory language.” *Medina v. Planned*
 15 *Parenthood S. Atl.*, 606 U.S. 357, 383 (2025). It looks to “the text” as it would be
 16 understood by “state officials ... deciding whether the State should accept [federal]
 17 funds and the obligations that go with those funds.” *Arlington Cent. Sch. Dist. Bd.*
 18 *of Educ. v. Murphy*, 548 U.S. 291, 296 (2006). The inquiry incorporates “the sum
 19 total of Congress’s work.” *Exxon Mobil Corp. v. Corporacion Cimex, S. A. (Cuba)*,
 20 146 S. Ct. 1909, 1918 (2026) (finding notice required for a sovereign-immunity
 21 waiver across different provisions). It accounts for background law. *See Murphy*,
 22 548 U.S. at 297–98; *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212,
 23 220–21 (2022). And it cannot ignore the “reality” of “safety and competitive fairness
 24 issues” from males in women’s sports. *B.P.J.*, 146 S. Ct. at 2372.

25 OSPI and WIAA contend that “neither Title IX nor its regulations” gave
 26 notice that its policies were unlawful. OSPI.Resp.19; *accord* WIAA.Resp.14. But
 27 that’s wrong, *supra* 12–15.

Defendants’ analysis depends on invoking the 106.41(b) separate-teams exception by conflating sex and gender identity. That’s out of bounds: the word “sex” “*cannot plausibly* be interpreted to refer to anything other than biological sex.” *B.P.J.*, 146 S. Ct. at 2371 (emphasis added). So gender identity cannot be the basis of separate teams under 106.41(b).

Plus, “the sum total of Congress’s work,” *Exxon Mobil Corp.*, 146 S. Ct. at 1918, includes 106.41(c)’s “equal opportunity” mandate. It also includes the Javits Amendment calling specifically for athletics regulations. *See B.P.J.*, 146 U.S. at 2370. And “may” appears in context; 106.41(b)’s “contact sports and competitive skill” language “plainly recognized the inherent physical differences between biological men and biological women—as well as the safety and competitive fairness concerns that would arise if males were allowed to compete in female sports.” *Id.* at 2371.

Perhaps Congress could have “addressed the question” of gender identity “in different and arguably more obvious terms.” *Exxon Mobil Corp.*, 146 S. Ct. at 1924. But clear notice doesn’t depend on “magic words,” *id.*, and “Congress is not required to list every factual instance in which a state will fail to comply with a condition,” *Mayweathers v. Newland*, 314 F.3d 1062, 1067 (9th Cir. 2002); *accord Roe*, 137 F.4th at 929 & n.11.

3. WIAA is subject to Title IX.

WIAA argues (at 13) it’s exempt from Title IX because it does not directly receive federal funds. But Title IX binds WIAA based on its “controlling authority over a federally funded program”—its member schools’ athletics programs. *A.B. by C.B. v. Hawaii State Dep’t of Educ.*, 386 F. Supp. 3d 1352, 1357 (D. Haw. 2019), *aff’d*, 30 F.4th 828 (9th Cir. 2022). “[I]f [the law] allowed funding recipients to cede control over their programs” to outside organizations, “but did not hold [them] liable for Title IX violations,” funding recipients would “receive federal funds but

avoid” complying with Title IX. *Id.* (quoting *Williams v. Bd. of Regents of Univ. Sys. of Georgia*, 477 F.3d 1282, 1294 (11th Cir. 2007)); *see also Horner v. Kentucky High Sch. Athletic Ass’n*, 43 F.3d 265, 272 (6th Cir. 1994).

While *NCAA v. Smith* held that receiving dues from recipients did not make the NCAA “a recipient itself.” 525 U.S. 459, 469 (1999), that’s not Plaintiffs’ theory. Rather, WIAA itself exercises controlling authority over direct recipients and federally funded athletics programs. *See* Compl. ¶¶ 207–15; MPI.5.

As in *Horner*, WIAA “performs [school boards’] statutory functions with respect to athletics.” 43 F.3d at 272; *accord B.P.J. by Jackson v. W. Virginia State Bd. of Educ.*, 98 F.4th 542, 554 (4th Cir. 2024), *rev’d on other grounds*, 146 S. Ct. 2356 (2026). WIAA agrees that it “oversees athletics ... in Washington state.” Doc. 48 ¶ 4. School boards delegate to WIAA their “authority to control, supervise and regulate the conduct of interschool athletic activities.” RCW 28A.600.200. There’s even judicial review of some WIAA decisions. *See* RCW 28A.600.200(3). When using a direct recipient’s authority, WIAA must comply with the conditions on that authority.

WIAA’s governance is also intertwined with its member schools’. *See A.B.*, 386 F. Supp. 3d at 1357. WIAA admits that delegates to its Representative Assembly are “typically athletic directors at member schools.” Doc. 48 ¶ 3. And its Executive Board members are school administrators. *See* Handbook p.2.

Finally, WIAA’s rules bind recipients’ interscholastic programs, which establishes controlling authority. WIAA determines season dates, regulates the permissible number and timing of practices, and enforces detailed eligibility rules. *See, e.g.*, Handbook 17.0.0, 18.0.0. And WIAA rules and oversight govern schools’ athletics decisions. Handbook 3.3.0.

WIAA’s position “would allow federal funds to promote [sex] discrimination so long as the recipients of those funds empowered someone else to promulgate the

discriminatory policies.” *Communities for Equity*, 80 F. Supp. 2d at 734. The Court should reject that end-run of Spending Clause statutes.

V. The equities and public interest favor relief.

A. Plaintiffs seek relief to restore the status quo.

Plaintiffs request a prohibitory injunction to restore the status quo: the “legally relevant relationship between the parties before the controversy arose.” *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053 (9th Cir. 2014). The status quo here is an educational environment free of sex discrimination that honors parental decision-making. Restoring it can require action, like transfer from a discriminatory school environment. *See Am. Fed’n of Gov’t Emps., AFL-CIO v. Noem*, 785 F. Supp. 3d 833, 855–56 (W.D. Wash. 2025).

Defendants say Plaintiffs request a disfavored mandatory injunction. But a mandatory injunction would require going beyond the status quo—things like paying for gender-reassignment surgery, *Doe v. Snyder*, 28 F.4th 103, 108 (9th Cir. 2022), or extending a contract beyond its original term, *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1320 (9th Cir. 1994). This is nothing like that. Relief does not require changing gender-identity policies or barring anyone from sports—Plaintiffs seek relief for themselves only.

Regardless, mandatory relief would be appropriate here because “the facts and law clearly favor” relief, and “very serious damage would result that [i]s not compensable in damages.” *Doe*, 28 F.4th at 108. Without relief, K.M.K. must return to a hostile school and give up school sports. MPI.26–27.

B. The equities favor Plaintiffs.

WIAA says (at 10) federal courts “routinely” have enjoined “school districts from denying transgender students access to gender-designated programs.” *Accord* OSPI.19–20. But *B.P.J.* overruled those cases. 146 S. Ct. at 2367. And the equities clearly favor honoring Ms. Brown’s fundamental rights and Title IX.

1 **VI. The Court should waive any bond.**

2 The Court should waive any bond or impose only a nominal bond, as is usual
 3 in civil rights cases. *E.g., Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir.
 4 1999). The District (at 6 n.3) claims a cost of “between \$13,000 and \$15,000 per
 5 year” to bus K.M.K. to Puyallup High School. Even assuming that’s accurate—and
 6 Dr. Brobbey does not explain his assumptions—that’s nominal for an entity with a
 7 yearly pupil transportation budget approaching \$17 million.⁵ But it would be
 8 prohibitive for Ms. Brown. And she should not have to post bond for her daughter to
 9 access a nondiscriminatory school environment.

10 **CONCLUSION**

11 The Court should grant a preliminary injunction.

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⁵ The most recent financial statement available identifies the 2025-2026 pupil
 28 transportation line item as \$16,970,821. Ex.10.6.

I certify that this memorandum contains 6,283 words, in compliance with the Local Civil Rules.

DATED this 7th day of August, 2026.

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