

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

STEPHANIE LYNNE BROWN ,

Plaintiff,

v.

WASHINGTON INTERSCHOLASTIC
ACTIVITIES ASSOCIATION et al.,

Defendant.

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

ORDER ON MOTION FOR
PRELIMINARY INJUNCTION
(DKT. NO. 36)

Plaintiffs K.M.K. and her mother Stephanie Brown assert that during a December 2025 high school girls' wrestling match, K.M.K.'s transgender opponent sexually assaulted her. They also assert the Puyallup School District (the "District") acted with deliberate indifference to an email Brown sent to K.M.K.'s wrestling coach after the alleged assault, which Plaintiffs assert was a report of sexual assault. The email identified that K.M.K.'s transgender opponent had "Oil

1 Checked her”¹ during the match, that such conduct was a “huge issue and something that [was]
2 100% not ok,” and that it was an “even bigger issue” for Brown because it “was done by . . . a
3 biological male who identifies as a female[.]” (Dkt. No. 1-10 at 2.) Plaintiffs further allege that
4 the participation of any transgender girl in girls’ high school sports reduces competitiveness and
5 increases the risk of physical injury to girls.

6 Based on these allegations, Brown asserts she has a substantive due process parental right
7 that requires Defendants to provide her with notice anytime K.M.K. is matched against a
8 transgender girl in any sport and a corresponding right to opt out of such competition without
9 K.M.K. suffering any negative effect. Plaintiffs also assert that Defendants’ transgender-
10 inclusive athletics policies violate Title IX because the participation of transgender girls on girls’
11 teams is discriminatory and otherwise fails to provide equal athletic opportunity for girls.
12 Plaintiffs further argue the District’s response to Brown’s email and its investigation to date
13 proves an independent Title IX violation for failing to address Plaintiff’s complaint of sexual
14 assault.

15 Plaintiffs request a preliminary injunction ordering, among other things, K.M.K.’s transfer
16 to a different high school within the District, District-funded transportation to and from the new
17 high school, notice of the participation of any transgender girl competing against K.M.K., and
18 the right to decline to compete against any transgender girl without any negative impact on
19 K.M.K. or her team.

20 Considering the nature of the legal rights asserted together with the limited record
21 presented, Plaintiffs fail to establish a likelihood of success on the merits. First, the Court finds
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23 ¹ Plaintiffs explain that an “oil check” in wrestling “generally refers to a form of flagrant
24 misconduct that involves one wrestler digitally penetrating an opponent’s anus or vagina to cause
shock and so gain an advantage.” (Dkt. No. 1 at 14.)

no legal authority for the proposition that parents possess a substantive due process right to direct the administration of extracurricular student sports activities and the ability to obtain private, sensitive information about other students. Second, Title IX prohibits discrimination on the “basis of sex.” 20 U.S.C. § 1681(a). Defendants’ transgender policies, as Plaintiffs acknowledge, “allow[] participation on teams by members of either sex on grounds *unrelated* to sex.” (Dkt. No. 1 at 39) (emphasis added). Third, the limited record presented at this stage is inconclusive as to whether there is a known or obvious risk associated with the participation of transgender girls in girls’ sports such that girls are not provided an equal opportunity to participate. Equal opportunity under Title IX is premised on resources devoted to supporting female participation in sports, not on individual performances in a particular match or event. *See* 34 C.F.R. § 106.41(c). Fourth, Title IX and its accompanying regulations do not provide clear notice that transgender participation in girls’ sports is prohibited. And finally, there are questions of fact surrounding the District’s response to Plaintiffs’ allegations of sexual assault.

For these reasons, and as further explained in this order, Plaintiffs are unable to meet the heightened standard for a mandatory preliminary injunction. Accordingly, Plaintiffs’ motion is DENIED.

I FACTUAL AND PROCEDURAL BACKGROUND

A. Statutory, Regulatory, and Policy Framework

Defendant Washington Office of Superintendent of Public Instruction (“OSPI”) supervises public K–12 education in Washington and serves more than 1,147,000 students in more than 2,400 schools. (Dkt. No. 45 at 1.) Part of OSPI’s “supervisory duties” include monitoring “compliance with state anti-discrimination laws, including requirements regarding sex equity in athletics and ensures that school districts provide equal opportunities and equal

1 treatment on the basis of sex, including opportunities to participate in athletics.” (*Id.* at 1–2);
2 Washington Revised Code § 28A.642.020 (OSPI “shall develop rules and guidelines to eliminate
3 discrimination” as it applies to, among other things, “recreational and athletic activities for
4 students”). OSPI also develops “[p]olicies and complaint procedures related to discrimination
5 including, sexual harassment and addressing transgender students.” Wash. Rev. Code
6 § 28A.300.286(1)(a).

7 In 2010, the Washington Legislature recognized the “deleterious effect of discrimination
8 on the basis of sex” and vested OSPI with the authority to “monitor and enforce compliance.”
9 *Id.* § 28A.642.005.² Discrimination on the basis of sex encompasses “sexual orientation, gender
10 expression, [and] gender identity[.]” *Id.* § 28A.642.010. In 2019, the Legislature amended the
11 EEOL and required the Washington State School Directors’ Association to work alongside OSPI
12 to develop a “model transgender student policy” which would incorporate OSPI’s requirements
13 in § 28A.642.020 to “eliminate discrimination in Washington public schools on the basis of
14 gender identity and expression; [and] address the unique challenges and needs faced by
15 transgender students in public schools[.]” Wash. Rev. Code § 28A.642.080(3); (*see also* Dkt.
16 Nos. 44-1–44-3). However, OSPI’s role in athletics is “limited”; its primary function in this
17 context is “to ensure that school districts do not discriminate in school-based athletics.” (Dkt.
18 No. 45 at 3.)

19 The Washington Interscholastic Activities Association (“WIAA”) is a “private, nonprofit
20 501(c)(3) service organization and rule-making body” first founded in 1905 to “create equitable
21 playing conditions between high school sports teams in Washington.” (Dkt. No. 48 at 2.) It
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23 ² Washington Revised Code §§ 28A.640 and 28A.642 are referred to together as the Equal
24 Education Opportunity Laws (“EEOL”).

1 oversees and manages the “structure of athletic competitions” in the state. (Dkt. No. 45 at 3.)
2 WIAA consists of “nearly 800-member high schools and middle/junior high schools, both public
3 and private, and is divided into nine geographic service districts.” (Dkt. No. 48 at 2.) It has a
4 Representative Assembly that consists of 35 high school delegates and 18 middle school
5 delegates, who are “typically athletic directors at member schools.” (*Id.*) The WIAA
6 Representative Assembly and Executive Board have exclusive authority to approve rules for the
7 WIAA handbook; WIAA staff “simply help[] member schools understand and enforce the
8 school’s adopted rules.” (*Id.*) Since 2007, WIAA has implemented Rule 18.16.0, “Gender
9 Identity Participation,” which requires that all students “have the opportunity to participate in
10 WIAA athletics and/or activities in a manner that is consistent with their gender identity.”³ (Dkt.
11 No. 36-6 at 43.) Pursuant to the policy, “[s]chool personnel responsible for student eligibility
12 will work collaboratively with the student athlete to determine eligibility[,]” and at that point,
13 “eligibility is granted for the duration of the student’s participation and does not need to be
14 renewed every sports season or school year.” (*Id.*) According to WIAA, Rule 18.16.0 “directly
15 aligns” with the EEOL and OSPI’s implementing guidelines. (Dkt. No. 47 at 9.)

16 The District has implemented Policy 3205 and Regulation 3205R, which “set forth the
17 framework for both reporting and investigating complaints of sexual harassment of students.”
18 (Dkt. No. 41 at 2.) Regulation 3205R also details the process for the investigation of a Title IX
19 Formal Complaint. (*Id.* at 3; Dkt. No. 41-2.) The District has also implemented Policy 3207 and
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³ The WIAA notes in its response brief that Rule 18.16.0 was originally designated as Rule 18.15.0 but was renumbered in the 2025–2026 version of the WIAA handbook when a new rule regarding transfer students was added. (Dkt. No. 47 at 8 n.3) (citing Dkt. No. 36-16 at 2). The Court will refer to it as Rule 18.16.0 for clarity.

1 Regulation 3207R, which “set forth the framework for both reporting and investigating reports of
2 harassment, intimidation, and bullying (HIB) of students.” (Dkt. No. 41 at 9.)

3 **B. December 6, 2025 Wrestling Match and Aftermath**

4 K.M.K. is a sixteen-year-old student who attends Rogers High School, which is in the
5 District. (Dkt. No. 1 at 3.) She participates in soccer and wrestling. (*Id.*) In the 2025–2026
6 season, when she was a sophomore, K.M.K. was ranked first for her weight class on the junior
7 varsity girls’ wrestling team. (*Id.* at 10.) The Lady Jag Kickoff tournament at Emerald Ridge
8 High School was the first wrestling tournament of her season and it took place on Saturday,
9 December 6, 2025. (*Id.*) WIAA staff were not at the Lady Jag tournament. (Dkt. No. 48 at 3.)

10 At the end of the tournament, K.M.K. was scheduled to compete in a fifth match, the
11 winner of which would receive third place overall in her weight class at the tournament. (Dkt. 1
12 at 11.) She did not know prior to the match that her opponent, who was from Emerald Ridge
13 High School, was a transgender female. (*Id.* at 11, 14.) Brown watched and recorded the match,
14 as did K.M.K.’s coaches, her opponent’s coach, and a videographer from the WIAA. (*Id.* at 11.)
15 During the second period, K.M.K.’s opponent apparently “reached between K.M.K.’s legs” and
16 through her singlet and undergarments “digitally penetrated her vagina for several seconds,
17 causing great pain.” (*Id.* at 11–12.) K.M.K. was “horrificed and shocked and felt deeply
18 violated” and began trying to give up so that the match would end. (*Id.* at 12.) Brown
19 apparently could not see exactly what was happening but recognized that “something was wrong
20 with K.M.K.” (*Id.*) A second incident occurred shortly after the first, where the opponent
21 grabbed K.M.K.’s “pelvic region” but did not penetrate her vagina. (*Id.*) K.M.K. alleges that
22 after the match, as she was trying to speak with her mother about what happened, a coach from a
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1 different team informed Plaintiffs that the opponent was male, which “deepened [K.M.K.’s]
2 feeling of violation and shock.” (*Id.* at 14.)

3 On Monday, December 8, 2025, Brown sent an email to Rogers High School wrestling
4 coaches Lucia Scott and Daniel Carlson, explaining that she “wanted to bring a couple of things
5 to [their] attention.” (Dkt. No. 1-10 at 2.) Regarding the second issue Brown sought to identify,
6 Brown explained that K.M.K. was “Oil Checked” during her match, which was “a huge issue
7 and something that is 100% not ok[.]” (*Id.*) Brown added that the fact this was done by a
8 “biological male who identifies as a female [was] an even bigger issue for [her].” (*Id.*) Brown
9 added, “[W]here do we go from here? If she is able to continue this season, she will absolutely
10 not compete against this student again.” (*Id.*) Scott responded and shared she was unaware the
11 opponent was a “mixed gender wrestler” and said she would investigate. (*Id.*) Later that
12 evening, Scott requested, and Brown sent, the video Brown took at K.M.K.’s wrestling match.
13 (Dkt. Nos. 1-11; 1-12.) Plaintiffs allege they relied on K.M.K.’s coaches and the District to
14 report the assault right away, in compliance with Washington law. (Dkt. No. 1 at 15.) Plaintiffs
15 allege they did not hear anything from Scott for several weeks but trusted that the school was
16 investigating. (*Id.* at 16.)

17 According to the declaration of probable cause for Principal Jason Smith’s pending
18 criminal charges related to the incident, Scott forwarded Brown’s email to Rogers High School
19 Assistant Principal Conor Collins at 12:09 P.M. on December 8, 2026, and Collins copied Smith
20 on his reply at 12:53 P.M. (Dkt. No. 53-3 at 7.) Scott and Smith met later that afternoon, and
21 Smith “indicated he would contact the athletic director at Emerald Ridge High School and start
22 an investigation.” (*Id.*) According to interview notes from the Title IX investigator dated
23 February 27, 2026, Smith called Jesse Kase, one of the Emerald Ridge coaches, and spoke with
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1 Kase about Brown’s email; this conversation was summarized in the report as “about it not being
 2 appropriate [K.M.K. was] wrestling with a male student, and not appropriate that the opponent
 3 placed fingers in her daughter’s private parts.” (Dkt. No. 53-4 at 2–3.) Smith explained that he
 4 “understood” the reported conduct to mean penetration but that he “believe[d] that happens in
 5 wrestling.” (*Id.* at 3.) He further explained he did not understand the conduct to be sexual
 6 assault because it was in the course of the match and “[t]here was no indication to [him] that it
 7 was of a sexual nature or gratifying to the other student.” (*Id.*) Later on December 8, Smith
 8 requested, and Scott provided, the name of K.M.K.’s opponent. (Dkt. No. 53-3 at 7.) Scott
 9 apparently spoke with K.M.K. at wrestling practice on the evening of December 8 and informed
 10 K.M.K. she had spoken with Smith and that there would be an investigation but that she (Scott)
 11 would not be part of the investigation. (*Id.*) Smith and Scott spoke again on December 9, 2026
 12 and Scott informed Smith of her conversation with K.M.K. (*Id.*)

13 Smith noted the incident was “investigated as an inappropriate wrestling move, which is
 14 why [he] addressed it immediately with [the Emerald Ridge] athletic department.”⁴ (Dkt. No.
 15 53-4 at 3.) He noted that he discussed Brown’s report with his “AD,”⁵ Kase, and later, Smith’s
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17 ⁴ John Morrison, the Emerald Ridge girls’ head wrestling coach, was not present at the match but
 18 after watching the video taken by Brown stated that K.M.K.’s opponent “appeared to be trying to
 19 perform a move called a Jake leg where the athlete lifts the opponent’s leg.” (Dkt. No. 42 at 2.)
 He stated his program “teach[es] athletes to grab at the knee” but in a match, “athletes do not
 20 always execute the technique properly.” (*Id.*) Nate L. Schmutz, the assigned Title IX
 investigator, concluded the following based on two videos of the incident:

21 “The videos of the match show, by both the angle and observed force applied, that
 Respondent likely touched Complainant’s vagina with force in the first instance, such
 22 that it caused [K.M.K.] discomfort. Her contemporaneous reaction shown in the video
 corresponds with the Respondent’s hand and arm being between her legs, reinforcing the
 likelihood of being touched in such a way as to have caused discomfort.”

23 (Dkt. No. 53-2 at 8.)

24 ⁵ The Court presumes “AD” refers to “athletic director.”

1 “admin team.” (*Id.*) The athletic director and admin team apparently did not think it was a “CPS
2 or Title IX situation.” (*Id.*) OSPI and WIAA were unaware of Plaintiffs’ report until later. (*See*
3 Dkt. Nos. 48 at 3 (Mick Hoffman, the Executive Director of WIAA, stating that WIAA was not
4 aware of Plaintiff’s claims “until weeks later when news outlets were reporting on the events.”);
5 45 at 3 (Sarah Albertson, the Managing Attorney and Director of the Equity and Civil Rights
6 Office at OSPI stating that her office has not received an official complaint related to the facts
7 underlying this case).) Eventually, in early January, Plaintiffs made the decision that K.M.K.
8 would not return to the wrestling team for the remainder of the season. (Dkt. No. 1 at 16.)

9 In late January, K.M.K. “saw a video from local journalist Brandi Kruse” reporting on 13
10 female students from Emerald Ridge High School who “expressed discomfort to their school
11 administrators because two males were competing in girls wrestling and that they had been
12 allowed in the girls bathroom and locker room.” (*Id.* at 17.) Plaintiffs put the pieces together
13 that one of the transgender students was K.M.K.’s opponent from the tournament on December
14 6. (*Id.* at 18.) In the video, Kruse stated the Emerald Ridge students reported their discomfort to
15 District officials roughly a week after K.M.K.’s incident. (*Id.*) Based on this video, Plaintiffs
16 concluded that Morrison had “full knowledge” that K.M.K.’s opponent was a transgender girl,
17 witnessed the assault on K.M.K., and continued to let the opponent compete with the girls’
18 wrestling team. (*Id.* at 19.) K.M.K. subsequently submitted her experience to Kruse’s tip line.
19 (*Id.*)

20 On January 28, 2026, K.M.K. reached back out to Scott to request an update on the
21 investigation. (*Id.*) Scott responded that she did not have any information about the situation
22 and told K.M.K. that if she wanted to pursue sexual assault charges, she should speak with
23 “admin.” (Dkt. No. 1-12 at 3.) Plaintiffs apparently understood “admin” to refer to Smith, the
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1 District’s Title IX Coordinator Dr. Gordon Brobbey, and District Interim Superintendent Richard
2 Lasso. (Dkt. No. 1 at 19.) The next day, on January 29, K.M.K. approached Collins in a school
3 hallway to request a meeting with Smith. (*Id.* at 20.) She alleges she felt “forced” to disclose
4 her sexual assault “in a very public open setting.” (*Id.*) When they met later that day, Smith
5 apparently told K.M.K. he had reported the incident to the Emerald Ridge High School athletic
6 director. (*Id.* at 21.) Also on January 29, Kruse’s producer Nicole Thompson reached out to
7 Rogers High School for comment. (*Id.*) The next day, Smith apparently called Brown and
8 informed her the school was taking K.M.K.’s allegations seriously. (*Id.*) Around this time, the
9 District reported the alleged assault to the Pierce County Sheriff’s Office (“PCSO”), which
10 proceeded to open an investigation. (*Id.*) On February 3, a school resource officer employed by
11 PCSO asked for statements from Plaintiffs and collected the video taken by Brown. (*Id.*) On
12 February 9, Kruse published an article and video interview with K.M.K. that became a viral
13 national news story and apparently prompted the U.S. Department of Education to investigate.
14 (*Id.* at 22; *see also* Dkt. No. 36-14.) K.M.K. alleges she experienced hostility at school during
15 this time related to her report and Kruse’s article. (Dkt. No. 1 at 26–27.)

16 On June 10, 2026, a Pierce County prosecuting attorney issued a memorandum formally
17 declining to file criminal charges against K.M.K.’s opponent. (*See* Dkt. No. 36-15.) The
18 prosecutor stated, “[a]ny harmful and offensive touching/penetration was a direct by-product of
19 the [wrestling match], and this type of behavior is sufficiently common as to be foreseeable.”
20 (Dkt. No. 36-15 at 9.) Acknowledging the impact on K.M.K., the prosecutor noted the decision
21 did not mean they approved of the conduct but explained they would be unable to prove a third-
22 degree rape charge at trial or overcome a consent defense. (*Id.*)

1 **C. Title IX Procedure and Process**

2 Dr. Brobbey learned of K.M.K.’s allegations of assault on January 30, 2026, when he was
3 “alerted to a media inquiry regarding a student who alleged she had been sexually assaulted
4 during a wrestling match and that the school and district had failed to report the incident to law
5 enforcement or investigate it.” (Dkt. No. 41 at 2.) At that point, the District began gathering
6 evidence to understand K.M.K.’s claim and engaged an outside investigator on February 10; the
7 investigator was “formally retained” on February 17. (*Id.* at 2, 4.)

8 Dr. Brobbey notes that the investigator was required to coordinate with the PCSO
9 “because criminal investigations take precedence over Title IX investigations[,]” but the
10 investigator finally received PCSO authorization to contact the involved parties on the week of
11 April 6, 2026. (Dkt. No. 41 at 4–5.) On April 13, K.M.K., through counsel, declined to
12 participate in an interview; the investigator consequently obtained written responses to questions
13 on April 27 and May 8. (*Id.* at 5.) The parties received updates on the status of the investigation,
14 including the reasons for the initial delay, on March 26, April 21, and May 20. (*Id.*)

15 On June 22, the investigator provided the Title IX Related Evidence to the parties and
16 notified them of their ten-day opportunity to review and submit a written response for the
17 investigator’s consideration prior to the completion of the investigative report. (*Id.* at 5) (citing
18 Dkt. No. 41-2). Counsel for K.M.K. provided a written response and additional evidence on July
19 6, including portions of the complaint and filings in this lawsuit. (*Id.* at 5–6.) On July 13, after
20 retrieving and reviewing the additional evidence from K.M.K., the investigator provided new
21 notice and a renewed ten-day period to review and submit a written response. (*Id.* at 6.) Under
22 the District’s Title IX policy, once the ten-day review period has elapsed with no need for further
23 questioning and no additional documents provided, the investigator will prepare a preliminary
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1 report that considers all gathered evidence. (*Id.*) At that point, the parties will have an additional
2 ten days to provide a written response to the preliminary report. (*Id.*) This process is required
3 before the investigator reaches a final determination regarding responsibility. (*Id.*) Dr. Brobbey
4 states the “investigation is ongoing at this time.” (*Id.* at 4.)

5 On February 20, 2026, the District provided written notice of the Title IX investigation to
6 Plaintiffs, “including offering supportive measures that may be necessary for K.M.K. to restore
7 or preserve her access to her education.” (Dkt. Nos. 41 at 4; 41-5.) According to the District,
8 supportive measures in the Title IX context are ““non-disciplinary, nonpunitive, individualized
9 services offered as appropriate and reasonably available[.]”” (Dkt. No. 41 at 6–7) (citing Dkt.
10 No. 41-5 at 8). Per Dr. Brobbey, supportive measures are “*interim* measures before the final
11 outcome of the District’s investigation.” (*Id.* at 7.) According to District policy, supportive
12 measures may include:

- 13 • An opportunity for the complainant to explain to the alleged harasser that his
14 or her conduct is unwelcome, offensive, or inappropriate, either in writing or
15 face-to-face;
- 16 • A statement from a staff member to the alleged harasser that the alleged
17 conduct is not appropriate and could lead to discipline, if proven or repeated;
- 18 • A general public statement from an administrator in a building reviewing the
19 district sexual harassment policy without identifying the complainant;
- 20 • Developing a safety plan;
- Modifications of work or class schedules;
- Separating students and/or staff;
- Mutual restrictions on contact between the parties;
- Increased security and monitoring of certain areas of the campus or school
building; or
- Providing staff and/or student training.

21 (Dkt. No. 41-2 at 3.) Supportive measures “should be designed to restore or preserve access to
22 the District’s education program or activity without unreasonably burdening the other party.”
23 (*Id.*)
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1 On March 27, 2026, Brown sent the District a list of supportive measure requests. One
2 such request was that K.M.K. be reassigned to a different state testing room so her exam would
3 not be proctored by a wrestling coach. (Dkt. No. 1 at 29.) This request was granted on April 3.
4 (*Id.* at 30.) Brown also requested a variety of supportive measures so K.M.K. could return to
5 wrestling, including at a minimum that Brown would receive notice before K.M.K. was set to
6 wrestle against transgender athletes and an opportunity for Brown to opt K.M.K. out of
7 participating in those matches without penalty or adverse consequences. (*Id.*) Dr. Brobbey
8 denied these requests based on WIAA Rule 18.16.0, Washington Administrative Code § 392-
9 190-025,⁶ OSPI mandates, District policy that prevents the categorical exclusion of transgender
10 athletes, and the Family Education Rights and Privacy Act (“FERPA”). (*See* Dkt. Nos. 36-16 at
11 2–3 (Dr. Brobbey explaining the bases for denial of Brown’s requests); 41 at 8–9.)

12 On June 29, 2026, the District received another supportive measure request from
13 Plaintiffs covering the following: an approval for K.M.K. to transfer to Puyallup High School for
14 the 2026–2027 school year; no-cost transportation for K.M.K. to bring her to and from Puyallup
15 High School beginning in the 2026–2027 school year; expedited review of these requests so that
16 K.M.K. could start at Puyallup High School in fall 2026 and would have her varsity eligibility
17 determined before soccer tryouts; and the District’s agreement that these circumstances would
18 constitute a hardship so that K.M.K. would remain varsity eligible with the WIAA. (Dkt. Nos.
19 36-21 at 2–4; 41 at 10–11.) This request was likewise denied by the District’s counsel. (Dkt.
20 No. 36–21 at 2.) Dr. Brobbey notes in his declaration that these requests are inconsistent with
21 supportive measures as contemplated by District policies, and that the “purpose of interim
22 supportive measures during an investigation are to ‘restore or preserve access to the District’s
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24 ⁶ § 392-190-025 is an implementing regulation of the EEOL.

1 education program or activity without unreasonably burdening the other party.” (Dkt. No. 41 at
2 11) (quoting Dkt. No. 41-2 at 3). According to Dr. Brobbey, “[s]ponsoring a school transfer, and
3 providing transportation to support a school transfer, does not make sense as a supportive
4 measure when K.M.K. has alleged sexual harassment by a student who does not attend Rogers
5 High School with K.M.K.” (*Id.*) Plaintiffs were apparently encouraged to follow the District’s
6 policy to pursue a school transfer but as of July 30, 2026, the District had not received a transfer
7 request from Plaintiffs. (*Id.* at 12.)

8 **D. Expert Reports**

9 Plaintiffs provide two expert reports in support of their motion. Dr. Gregory A. Brown is
10 a professor of exercise science in the Department of Kinesiology and Sport Sciences at the
11 University of Nebraska Kearney. (Dkt. No. 36-3 at 5.) He was retained to offer his opinions
12 about “whether males have inherent advantages in athletic performance over females, and if so[,]
13 the scale and anatomical and physiological basis of those advances,” as well as “whether the sex-
14 based performance advantage enjoyed by males is eliminated if feminizing hormones are
15 administered to male athletes who identify as transgender[.]” (*Id.* at 12.) Dr. Brown identifies
16 “there is very limited research on how puberty blockers affect physical fitness and none on sports
17 performance.” (*Id.* at 126.) He also identifies, “no studies exist comparing fitness and
18 performance measures between trans individuals who commenced before and after the onset of
19 puberty, and the related effects of puberty blockers.” (*Id.*) (citation and quotation marks
20 omitted). Notwithstanding, Dr. Brown concludes that males have an advantage over similarly
21 situated females, and that “[b]iological male anatomy and physiology” is the primary basis for
22 that performance advantage[.]” (*Id.* at 13.)
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1 Dr. Chad Thomas Carlson is a medical doctor practicing sports medicine at Stadia Sports
2 Medicine in West Des Moines, Iowa. (Dkt. No. 36-4 at 9.) His opinion includes information on
3 “the potential for increased injury risk to females in contact sports . . . when they compete
4 against biologically male athletes.” (*Id.* at 12.) Dr. Carlson identifies that “when females
5 compete against each other, they already have higher rates of concussive injury than males,
6 across most sports.” (*Id.* at 51.) He cites to a model where males were introduced into women’s
7 rugby and highlighted the “resulting increases in forces and acceleration (and injury risk)
8 experienced in the head and neck of female players.” (*Id.* at 50.) While conceding that rugby is
9 “notoriously contact-intensive,” Dr. Carlson concluded “similar increases in the risk of head and
10 neck injury to women are predictable in any sport context in which males and females collide at
11 significant speed or with significant force.” (*Id.* at 51.)

12 The District explained that “[d]ue to the procedural posture of this case, [it] has not had
13 an opportunity to engage experts[]”; however, it attached the expert declarations of Dr. Mollie T.
14 McQuillan and Dr. A. Kade Goepferd, which were both “filed in a remarkably similar case and
15 [which] respond to the expert declarations provided by Plaintiffs.” (Dkt. No. 40 at 2 n.2; *see*
16 *also* Dkt. Nos. 40-2; 40-3.) OSPI has submitted the expert report of Dr. Kate Millington, who is
17 a pediatric endocrinologist and assistant professor of pediatrics at Brown University. (Dkt. No.
18 46 at 1.) Dr. Millington’s opinion focuses, among other things, on the impact of gender
19 affirming hormone therapy on sports performance both pre- and post-puberty; other factors that
20 may impact sport performance, and a response to the allegations raised in Plaintiffs’ motion. (*Id.*
21 at 5–11, 16–20.)

1 **E. Procedural History**

2 Plaintiffs initiated this lawsuit on June 9, 2026 during the pendency of the Title IX
3 investigation. (Dkt. No. 1.) The Court granted successive motions for extension of time for
4 Defendants to answer or otherwise respond to Plaintiffs' complaint. (Dkt. Nos. 28, 34, 37.) On
5 July 10, 2026, Plaintiffs filed their motion for preliminary injunction. (Dkt. No. 36.) The Court
6 then granted a collective motion for extension of time filed by Defendants, pushing their
7 deadline to answer or otherwise respond until September 30, 2026 in light of the motion for
8 preliminary injunction. (Dkt. No. 39.) On July 31, 2026, Defendants Dr. Brobbey, the District,
9 Reykdal, OSPI, and the WIAA filed their responses. (Dkt. Nos. 40, 43, 47.) Plaintiffs filed their
10 reply on August 7 (Dkt. No. 53) and the matter is now fully briefed. Oral argument was
11 presented on August 18, 2026.

12 In their complaint, Plaintiffs allege several Title IX violations against WIAA, OSPI, and
13 the District. (Dkt. No. 1 at 59–62.) They also bring a claim for violation of the Fourteenth
14 Amendment's fundamental right to parenting against Reykdal, WIAA and the District (*id.* at 62–
15 65), an Equal Protection Clause violation against Dr. Brobbey and Smith (*id.* at 66–67), and a
16 Fourteenth Amendment state-created danger claim against Reykdal, Morrison, WIAA, and the
17 District (*id.* at 67–68).

18 In their request for a preliminary injunction, Plaintiffs argue that Brown's fundamental
19 parental rights under the Fourteenth Amendment entitle her to notice that K.M.K. is wrestling
20 against transgender athletes and an opportunity to opt K.M.K. out of these matches without
21 penalty. (Dkt. No. 36 at 19–23.) Next, they argue WIAA, OSPI, and the District have adopted
22 athletic policies that violate Title IX and intentionally discriminate based on sex in their athletic
23 programs. (*Id.* at 23–31.) Finally, Plaintiffs argue the District violated Title IX through its
24

1 deliberate indifference to the sexual assault K.M.K. suffered and the hostile environment she
 2 continues to endure as a result. (*Id.* at 31–34.) Plaintiffs assert they will suffer irreparable harm
 3 if injunctive relief is not granted because K.M.K. will be unable to safely participate in sports
 4 and Brown will continue to have her parental rights violated. (*Id.* at 34–35.) They request a
 5 ruling from this Court in time for K.M.K.’s soccer season. (*Id.* at 36.)

6 II LEGAL STANDARD

7 Federal Rule of Civil Procedure 65(a) governs the issuance of a preliminary injunction.
 8 To obtain a preliminary injunction, the moving party must show: (1) a likelihood of success on
 9 the merits; (2) a likelihood of irreparable harm to the moving party in the absence of preliminary
 10 relief; (3) that the balance of equities tips in favor of the moving party; and (4) that an injunction
 11 is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Generally,
 12 a preliminary injunction is “an extraordinary remedy that may only be awarded upon a clear
 13 showing that the plaintiff is entitled to such relief.” *Id.* at 22. The moving party has the burden
 14 of persuasion. *Hill v. McDonough*, 547 U.S. 573, 584 (2006). “The third and fourth
 15 factors . . . merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418,
 16 435 (2009). Courts consider the same factors when ruling on a motion for TRO as a motion for
 17 preliminary injunction. *See Stuhlbarg Int’l Sales Co. Inc. v. John D. Brush and Co., Inc.*, 240
 18 F.3d 832, 839 n.7 (9th Cir. 2001) (the analysis for a TRO and a preliminary injunction are
 19 “substantially identical”).

20 The Ninth Circuit has also articulated an alternative “sliding scale” approach pursuant to
 21 which the first and third *Winter* factors are analyzed on a continuum; under such standard, a
 22 weaker showing on the merits, combined with a stronger demonstration on the balancing test,
 23 might warrant preliminary injunctive relief, assuming the second and fourth *Winter* elements are
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met. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131–1135 (9th Cir. 2011). Under this “sliding scale” method, the movant need only raise “serious questions going to the merits,” but the balance of hardships must tip “sharply” in the movant’s favor. *Id.* at 1131–1132; *see also Farris v. Seabrook*, 677 F.3d 858, 864 (9th Cir. 2012).

A motion for preliminary injunction seeks mandatory relief when it asks a court to order a party to take action. *Garcia v. Google, Inc.* 786 F.3d 733, 741 (9th Cir. 2015) (“relief is treated as a mandatory injunction because it orders a responsible party to take action” (internal quotations omitted)). It goes beyond maintaining the status quo *pendente lite*. *Id.* Such relief is disfavored and “should not issue in ‘doubtful cases.’” *Id.* (quoting *Park Vill. Apartment Tenant Ass’n v. Mortimer Howard Tr.*, 636 F.3d 1150, 1160 (9th Cir. 2011)).

III DISCUSSION

A. Article III Standing

As a threshold matter, OSPI argues Plaintiffs have not alleged an Article III injury sufficient to confer standing. (Dkt. No. 43 at 13–15.) It argues Plaintiffs’ allegations of harm “rest on assumptions that physical injury, ‘competitive’ injury, and sexual assault are ‘obvious’ risks when transgender girls compete in girls’ sports.” (*Id.* at 13) (citing Dkt. No. 36 at 11, 26). In reply, Plaintiffs argue there is a strong likelihood K.M.K. will have to wrestle a male student again in the future, because Rogers High School and Emerald Ridge High School compete against each other frequently, and the past has “significant ‘predictive value.’” (Dkt. No. 53 at 13) (quoting *Murthy v. Missouri*, 603 U.S. 43, 59 (2024)). Plaintiffs further argue the risk of harm is not unclear because there is no dispute that allowing transgender girls to play on girls’ sports teams puts girls at risk of harm, and that K.M.K.’s exclusion is not self-imposed because Defendants’ actions have prevented her from engaging in desired activity. (*Id.*)

1 To establish Article III standing, a plaintiff “must have suffered an ‘injury in fact’—an
2 invasion of a legally protected interest which is (a) concrete and particularized; and (b) actual or
3 imminent, not conjectural or hypothetical.” *Patel v. Facebook, Inc.*, 932 F.3d 1264, 1270 (9th
4 Cir. 2019) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (citation omitted and
5 cleaned up)). The injury must be “‘fairly traceable to the challenged action of the defendant[.]’”
6 *Lujan*, 504 U.S. at 560 (citation omitted and cleaned up). An “[a]bstract injury is not enough,”
7 and the plaintiff must show they have “‘sustained or is immediately in danger of sustaining some
8 direct injury’ as the result” of the defendant’s conduct. *City of L.A. v. Lyons*, 461 U.S. 95, 101–
9 102 (1983) (citations omitted). “For injunctive relief, plaintiffs must allege ‘either continuing,
10 present adverse effects due to [their] exposure to defendants’ past illegal conduct or a sufficient
11 likelihood that [plaintiffs] will again be wronged in a similar way.’” *Dickinson v. Trump*, 818 F.
12 Supp. 3d 1209, 1218 (D. Or. 2026) (quoting *Villa v. Maricopa Cnty.*, 865 F.3d 1224, 1229 (9th
13 Cir. 2017) (internal citations and quotation marks omitted and cleaned up)); *see also DZ Reserve*
14 *v. Meta Platforms, Inc.*, 96 F.4th 1223, 1240 (9th Cir. 2024) (citations and quotation marks
15 omitted) (explaining that “[p]ast exposure to harmful or illegal conduct” may confer standing
16 when the plaintiff “continue[s] to suffer adverse effects[.]” and that the “plaintiff must
17 demonstrate that he has suffered or is threatened with a concrete and particularized legal harm,
18 coupled with a sufficient likelihood that he will again be wronged”). “[S]peculation or
19 ‘subjective apprehension’ about future harm [does not] support standing.” *DZ Reserve*, 96 F.4th
20 at 1240 (citations and quotation marks omitted).

21 In evaluating standing, “courts must accept as true all material allegations of the
22 complaint and must construe the complaint in favor of the complaining party.” *May v. Centex*
23 *Corp.*, 658 F.3d 1060, 1068 (9th Cir. 2011) (citation and quotation marks omitted). A plaintiff
24

1 also must “demonstrate standing for each claim they seek to press”; “[s]tanding as to one claim
2 does not ‘suffice for all claims arising from the same ‘nucleus of operative fact.’” *California v.*
3 *Azar*, 911 F.3d 558, 570 (9th Cir. 2018) (quoting *DaimlerChrysler Corp v. Cuno*, 547 U.S. 332,
4 352 (2006)). The Court will therefore separately analyze the bases for relief raised in Plaintiffs’
5 motion for preliminary injunction.

6 **1. Brown’s Fourteenth Amendment Claim Against Reykdal, WIAA, and the**
7 **District**

8 Brown alleges Reykdal, WIAA, and the District “adopted and maintained policies that
9 deliberately concealed” whether K.M.K. would compete against biologically male athletes and
10 then failed to give her an opportunity to opt her daughter out of these competitions. (Dkt. No. 1
11 at 63.) She alleges WIAA’s and the District’s policy “shuts parents out of the consequential
12 decision” regarding whether their child will wrestle an athlete of the opposite sex and denies
13 parents necessary information to “protect their children and direct their care, upbringing, and
14 education.” (*Id.* at 64.) Brown alleges there is no compelling state interest that “justifies secretly
15 overriding parents’ decisions about their children’s safety and privacy.” (*Id.* at 65.) In her reply,
16 Brown clarifies that the injury underlying her Fourteenth Amendment claim is the fact that
17 Defendants’ policies force her to “sideline her daughter or cede her parental decision-making
18 authority.” (Dkt. No. 53 at 14.)

19 The Court concludes Brown has sufficiently established standing to bring her Fourteenth
20 Amendment claim. Brown alleges Defendants’ policies have violated her right not to be “shut
21 out of participation in decisions” regarding K.M.K.’s upbringing and education, including who
22 K.M.K. competes against in wrestling. (*Id.*) (citations omitted). Though there are issues with
23 the substance of this claim, *see* Section (B)(1) *infra*, accepting Brown’s allegations as true, she
24 has sufficiently identified an injury to an alleged constitutional right. Next, Brown’s injury is

1 “fairly traceable” to Defendants’ various transgender-inclusive policies, because under these
2 policies, athletes may participate in the sport that aligns with their gender identity. According to
3 Plaintiffs, the District’s high school teams participate against each other “multiple times every
4 season,” and neither transgender student on Emerald Ridge’s girls wrestling team has graduated
5 or quit. (Dkt. Nos. 53 at 12–13; 53-10.) The conclusion, according to Brown, is that her alleged
6 constitutional rights will continue to be violated each time K.M.K. is scheduled to compete
7 against a transgender athlete because she will be unable to opt her daughter out of these
8 competitions. Though perhaps less concretely than one might prefer, Brown has sufficiently
9 alleged there is a “sufficient likelihood” her parental rights will again be harmed. *DZ Reserve*,
10 96 F.4th at 1240 (citation and quotation marks omitted). Finally, Brown has established
11 redressability, because a favorable decision, i.e., one that conferred opt-out rights on Brown
12 pursuant to her requested injunctive relief (*see* Dkt. No. 1 at 70), would likely eliminate the
13 alleged constitutional injury.

14 **2. K.M.K.’s Title IX Discrimination and Deliberate Indifference/Hostile** 15 **Environment Claims Against WIAA, OSPI, and the District**

16 K.M.K. alleges WIAA, OSPI, and the District intentionally discriminate against girls by
17 enacting policies that “create[e] a protected category for girls wrestling and then destroy[] that
18 category . . . via policies permitting some males to participate in girls wrestling.” (*Id.* at 60.)
19 K.M.K. also alleges WIAA, OSPI, and the District acted with deliberate indifference toward a
20 known risk of physical injury, lack of competitive opportunities, and sexual assault in violation
21 of Title IX because they had actual knowledge of their own policies, the risk of sex-based sexual
22 assault, and the alleged assault of K.M.K., but nonetheless failed to take appropriate remedial
23 action. (*Id.* at 61–62.) OSPI argues Plaintiffs’ allegations of “a universal connection between
24 transgender girls in girls’ sports and increased risk of harm to cisgender girls” is speculative, and

1 further, that Plaintiffs have not demonstrated anything more than a possibility that K.M.K. may
2 encounter a transgender female competitor in a future athletic competition. (Dkt. No. 43 at 13–
3 14.)

4 “Past wrongs [are] evidence bearing on ‘whether there is a real and immediate threat of
5 repeated injury.’” *Lyons*, 461 U.S. at 102 (citation omitted). However, those “past wrongs do
6 not in themselves amount to that real and immediate threat of injury necessary to make out a case
7 or controversy.” *Id.* at 103. In order to satisfy Article III’s standing requirements for injunctive
8 relief, the plaintiff must establish “the imminent ‘prospect of future injury.’” *Ervine v. Desert*
9 *View Reg’l Med. Ctr. Holdings, LLC*, 753 F.3d 862, 868 (9th Cir. 2014) (citation omitted).

10 As summed up by the District, Plaintiffs’ allegations of harm are premised on (1)
11 physical injury, (2) “competitive” injury, and (3) sexual assault. (Dkt. No. 43 at 13; *see also*
12 Dkt. No. 53 at 13 (arguing the risk of harm is not unclear because there is no “serious dispute”
13 that “allowing biological males to play on women’s sports teams puts women and girls at a
14 significant risk of sometimes severe injuries”) (citing *West Virginia v. B.P.J. by Jackson*, 609
15 U.S. ----, 146 S. Ct. 2356, 2372 (2026)).) As discussed, the District’s wrestling schedule,
16 combined with the fact that both transgender wrestlers at Emerald Ridge High School are
17 apparently still on the team (*see* Dkt. Nos. 53 at 12–13; 53-10), establish the “imminent
18 prospect” that K.M.K. may have to compete against one of them in a future competition and
19 therefore could be harmed in the same way. *Ervine*, 753 F.3d at 868 (citation omitted); *see also*
20 *Female Athletes United v. Ellison*, 172 F.4th 1019, 1026 (8th Cir. 2026) (“FAU”) (finding
21 plaintiff had standing when she submitted a declaration that showed her softball team was
22 scheduled to play a game against a transgender athlete’s team and the plaintiff and transgender
23 athlete were “likely to compete against one another in that game”). At the hearing, Plaintiffs
24

1 clarified that K.M.K.’s withdrawal from sports and her obligation to participate in athletics under
2 policies she contends violate Title IX provide additional Article III injuries.

3 Next, “[t]he central inquiry [for causation] is whether there is ‘a causal connection
4 between the injury and the conduct complained of.’” *Viernes v. DNF Assocs., LLC*, 582 F. Supp.
5 3d 738, 648 (D. Haw. 2022) (quoting *Lujan*, 504 U.S. at 560); *see also Juliana v. United States*,
6 947 F.3d 1159, 1169 (9th Cir. 2020) (citations omitted) (“Causation can be established ‘even if
7 there are multiple links in the chain,’ . . . as long as the chain is not ‘hypothetical or
8 tenuous[.]’”). Plaintiffs allege Defendants (1) facially discriminate against K.M.K. based on her
9 sex because their transgender-inclusive athletic policies subordinate cisgender girls’ interests to
10 males’ interests; and (2) demonstrate a deliberate indifference towards her safety because they
11 had knowledge of their policies and the enhanced risk of physical injury and/or sexual assault yet
12 did nothing to alleviate the harm or risk. (Dkt. No. 1 at 59–62.) Put differently, K.M.K.’s
13 alleged Title IX injury is “fairly traceable” to Defendants’ policies that permit transgender
14 athletes to participate on the sports teams of their gender identity. *Lujan*, 504 U.S. at 560
15 (citation omitted); *accord City of Oakland v. Oakland Raiders*, 20 F.4th 441, 452 (9th Cir. 2021)
16 (citation omitted) (the plaintiff “need only plausibly allege that, but for [the challenged] conduct,
17 there is a ‘substantial probability’” the injury would not have occurred).

18 Finally, the Court concludes K.M.K.’s injuries “are likely to be redressed by a favorable
19 judicial decision.” *Viernes*, 582 F. Supp. 3d at 748. K.M.K. does not need to show that
20 redressability is “guaranteed”; rather, she “must show there will be a ‘change in a legal status’
21 that will ‘amount to a significant increase in the likelihood that [she] would obtain relief that
22 directly redresses the injur[ies] suffered.’” *Id.* (quoting *Renee v. Duncan*, 686 F.3d 1002, 1013
23 (9th Cir. 2012) (alterations omitted)). Plaintiffs request injunctive relief that would, in effect,
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1 overhaul Defendants’ existing athletic policies as they pertain to transgender athlete participation
2 and would prevent transgender athletes from participating in girls’ sports. (Dkt. No. 1 at 70–71.)
3 Such relief would redress K.M.K.’s alleged injuries because she would no longer suffer the
4 imminent risk of injury and/or discrimination based on sex she argues she is currently facing.

5 All that said, “case or controversy considerations ‘obviously shade into those determining
6 whether the complaint states a sound basis for equitable relief[.]’” *Lyons*, 461 U.S. at 103
7 (citation omitted). Put differently, it is possible for a complaint to present an existing case or
8 controversy and yet still not present an adequate basis for the trial court to grant an injunction.
9 *Id.*; *O’Shea v Littleton*, 414 U.S. 488, 502 (1974) (equitable relief requires the plaintiff to
10 establish “likelihood of substantial and immediate irreparable injury, and the inadequacy of
11 remedies at law”). As the Court will discuss, *see* Section III(C) *infra*, much of the future harm
12 alleged by Plaintiffs is speculative and the requested relief is disproportionate to the alleged
13 harms or not otherwise appropriate for a mandatory injunction. However, it concludes Plaintiffs
14 have established Article III standing sufficient for the Court to consider their request for
15 injunctive relief.

16 **B. Likelihood of Success on the Merits**

17 The Ninth Circuit considers the likelihood of success on the merits as “‘the most
18 important’ *Winter* factor; if a movant fails to meet this ‘threshold inquiry,’ the court need not
19 consider the other factors[.]” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir.
20 2017) (citation omitted). Even if a likelihood of success is not established, a preliminary
21 injunction may be appropriate “if a movant raises ‘serious questions going to the merits’ and the
22 ‘balance of hardships . . . tips sharply towards’ it, as long as the second and third *Winter* factors
23 are satisfied.” *Id.* (quoting *Cottrell*, 632 F.3d at 1134–1135).

1. Parental Rights Under the Fourteenth Amendment

“[T]he Fourteenth Amendment’s Due Process Clause ‘specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s history and tradition, and implicit in the concept of ordered liberty.’” *Parents for Priv. v. Barr*, 949 F.3d 1210, 1229 (9th Cir. 2020) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720–721 (1997) (internal citation and quotation marks omitted)). This includes “‘the fundamental right of parents to make decisions concerning the care, custody, and control of their children.’” *Id.* (quoting *Troxel v. Granville*, 530 U.S. 57, 66 (2000)). “That right, however, ‘is not without limitations.’” *City of Huntington Beach v. Newsom*, 790 F. Supp. 3d 812, 827 (C.D. Cal. 2025) (quoting *Fields v. Palmdale Sch. Dist.*, 427 F.3d 1197, 1204 (9th Cir. 2005), *opinion amended on denial of reh’g en banc*, 447 F.3d 1187 (9th Cir. 2006)); *accord Glucksberg*, 521 U.S. at 720 (courts should “exercise the utmost care whenever we are asked to break new ground in this field”). “In line with this admonition, courts, including the Ninth Circuit, have rejected attempts to expand the contours of this parental right into areas not recognized by Supreme Court precedent.” *Huntington Beach*, 790 F. Supp. 3d at 827 (collecting cases). “When a fundamental right is recognized, substantive due process forbids the infringement of that right ‘at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest.’” *Witt v. Dep’t of Air Force*, 527 F.3d 806, 817 (9th Cir. 2008) (quoting *Reno v. Flores*, 507 U.S. 292, 301–302 (1993) (emphasis omitted in *Witt*)).

Brown argues her fundamental parental rights have been violated by the District’s transgender-inclusive athletics policies, which prevent Brown from making “consequential decisions” about the physical safety of her daughter, including whether K.M.K. will competitively wrestle against transgender girls. (Dkt. No. 36 at 20–21.) She argues her parental

1 rights require that the District be prohibited from matching her daughter against a transgender
2 competitor, but if that is not possible, she argues she is entitled to notice from the District so that
3 she may opt K.M.K. out of the match without athletic penalty of any kind. (*Id.* at 19.)
4 Defendants collectively counter that Brown’s claimed fundamental parental rights do not extend
5 as far as she perceives. (*See* Dkt. Nos. 40 at 7 (“Brown’s right to parent her child does not give
6 her the right to require the District to discriminate against other children participating in
7 sports.”); 43 at 15 (“The U.S. Supreme Court has never held that there is a constitutional right for
8 parents to pick and choose the students in a public school that their child interacts with,
9 athletically or otherwise.”); 47 at 18 (“While a parent has the right to guide their *own* child’s
10 upbringing, they do not possess the authority to override the statutory and constitutional rights of
11 other families’ children.”).)

12 Brown primarily bases her conception of parental rights and authority on *Mirabelli v.*
13 *Bonta*, 607 U.S. 492 (2026) (per curiam). There, the Supreme Court reinstated an injunction
14 against the enforcement of several California school policies pending the underlying appeal but
15 cautioned its assessment was “preliminary.” *Id.* at 500 (Barrett, J., concurring). The policies at
16 issue required schools to conceal information regarding a child’s gender dysphoria from the
17 child’s parents and “facilitate[d] a degree of gender transitioning during school hours.” *Id.* at
18 497. The Supreme Court held that the plaintiff parents were likely to proceed on the merits of
19 their Due Process claim because they had a right not to be shut out of decisions about their
20 child’s mental health, upbringing, and education, including decisions about their child’s gender
21 presentation. *Id.* In other words, *Mirabelli* stands for the proposition that parents have a right to
22 receive information from schools regarding *their own* child’s gender dysphoria. *Id.* It does not,
23 as Plaintiffs suggest, sweep so broadly as to include information about *other* children’s gender
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1 identities or who their children interacted with. (*E.g.*, Dkt. No. 36 at 20 (“A parent has authority
2 to direct the conditions under which her child interacts with others, even at school—especially
3 when physical safety and bodily privacy are at issue.”), 21 (Brown cannot make decisions for
4 K.M.K. about whether to “engage in a high-contact, physically demanding sport” if Defendants
5 “hide” transgender student participation).)

6 Leaning on *Barr*, Reykdal and OSPI point out that parents do not have the right to control
7 the actions of schools or state officials when it comes to matters of school policy. (Dkt. No. 43
8 at 16–17); 949 F.3d at 1231 (parents “lack constitutionally protected rights to direct school
9 administration more generally”). In that case, parents objected to a school policy that permitted
10 transgender students to use the bathrooms and locker rooms that aligned with their gender
11 identity, rather than their biological sex at birth. *Barr*, 949 F.3d at 1217. The parents argued
12 their fundamental rights encompassed the right to determine whether and when their child would
13 be exposed to opposite-sex nudity at school or be put at risk of exposing their own bodies to
14 members of the opposite sex. *Id.* at 1229–1230. The court explicitly held the parents did not
15 have a right to direct the school’s bathroom policy and further, that the “fundamental right to
16 control the upbringing of one’s children does not extend so far as [the parents] hypothesize.” *Id.*
17 at 1233. Similarly here, Brown alleges her fundamental rights have been violated because the
18 District’s policies “conceal[]” whether K.M.K. will wrestle transgender opponents (Dkt. No. 36
19 at 21), and she argues Defendants’ reliance on *Barr* is inapposite, because *Barr* dealt with school
20 bathrooms rather than contact sports, which carry a higher degree of risk. (Dkt. No. 53 at 16.)
21 But the Court sees no meaningful difference, because in both situations, the parents are
22 impermissibly attempting to “dictat[e] how schools conduct their operations.” *Doe No. 1 v.*
23 *Bethel Loc. Sch. Dist. Bd. of Educ.*, Case No. 3:22-cv-337, 2023 WL 5018511, at *13 (S.D. Ohio
24

1 Aug. 7, 2023) (citing *Barr* and collecting cases). In simple terms, Brown is attempting to use her
2 fundamental right to parent as a sword (dictating the conduct of the school) rather than as a
3 shield (choosing to remove her child from certain scenarios she deems inappropriate), and such
4 actions are not protected by the Constitution. *Barr*, 949 F.3d at 1231; *Fields*, 472 F.3d at 1206.

5 The recent decision in *Mahmoud v. Taylor* supports this conclusion. There, the Supreme
6 Court held that a school curriculum that included LGBTQ+-inclusive storybooks for children in
7 elementary school “place[d] an unconstitutional burden on the parents’ religious exercise if it is
8 imposed with no opportunity for opt outs.” 606 U.S. 522, 533, 568 (2025). The Court dismissed
9 the school board’s contention that it would notify parents when the books were being read,
10 stating that the parents did not need to “wait and see” before raising their First Amendment
11 claims. *Id.* at 560. Here, Plaintiffs argue, “[j]ust as general notice that LGBTQ books would be
12 taught was not enough in *Mahmoud*, general notice that males compete in girls’ sports is not
13 enough here.” (Dkt. No. 36 at 22.) But Plaintiffs miss the point—*Mahmoud* permitted the
14 parents to opt their own children out of a “particular educational requirement” but it did not give
15 the parents the right to “micromanage the public school curriculum[.]” 560 U.S. at 568. By
16 contrast, Brown seeks more than the right to remove her daughter from athletic competitions; she
17 requests the District provide information about other students on a case-by-case basis so that she
18 may decide whether K.M.K. will participate. (Dkt. Nos. 1 at 63–65, 70; 36 at 22.) As explained
19 by the District, “Brown may remove her child [from athletic competitions] if she disagrees with
20 inclusive policies[.]” but she is entitled to no further relief. (Dkt. No. 40 at 11.)

21 At the hearing, Plaintiffs repeatedly emphasized that the parental right claimed by Brown
22 does not conflict with the privacy rights of others and instead is narrowly focused on receiving
23 notice about whether K.M.K. would be paired against a transgender opponent. Plaintiffs argued
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1 a need for such notice would be obviated if the District simply agreed that it would not schedule
2 K.M.K. to compete against a transgender athlete and that the information required to do so (i.e.,
3 information about students' transgender status) is within Defendants' control.⁷ But Plaintiffs
4 identified no case law that supports Brown's understanding that her fundamental parental right
5 may infringe into someone else's fundamental right to privacy, and in order to grant Brown's
6 requested relief, the Court must find that she has made a "clear showing" that her claimed
7 substantive due process right exists. *Winter*, 555 U.S. at 22 (2008). She has not done so.

8 At bottom, the Ninth Circuit and Supreme Court have clearly expressed that substantive
9 Due Process rights are not to be expanded lightly. *Fields*, 427 F.3d at 1204; *Glucksberg*, 521
10 U.S. at 720. Though Plaintiffs insist their claim is not novel (*see* Dkt. No. 53 at 15), the Court
11 concludes the existing case law defining the contours of parental rights does not support
12 Plaintiffs' view. *Mirabelli* dealt with parents' right to information about their *own* child's gender
13 identity and suggested that schools could not, by policy, conceal that information; it said nothing
14 about a parental right of access to information about other children. 607 U.S. at 497. *Barr* held
15 that parents had a right to remove their children from school if they disapproved of the school's
16 transgender-inclusive bathroom policy, but explicitly noted that the parents' Fourteenth
17 Amendment liberty interest did not permit the parents to direct school policy. 949 F.3d at 1230–
18 1231. *Mahmoud* is in accord. 606 U.S. at 568. *B.P.J.* says nothing at all about fundamental
19 parental rights. *See generally* 146 S. Ct. 2356. In sum, the Court concludes Brown's conception
20 of her right "not to be shut out" of consequential decisions involving the upbringing and physical

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22 ⁷ Defendants disputed at the hearing that this kind of information is readily available because
23 according to counsel for WIAA, students' medical records maintained by the District and/or the
24 WIAA do not provide any information other than the student's clearance for sports by a medical
doctor. In any case, WIAA notes in its response that providing this type of personal information
about other students would run afoul of FERPA, 20 U.S.C. § 1232g. (Dkt. No. 47 at 18.)

1 safety of K.M.K. does not stretch as far as she argues. The Court therefore does not find a
 2 likelihood of success on the merits of Brown’s Fourteenth Amendment claim that would support
 3 the preliminary injunctive relief requested.

4 **2. Title IX: Intentional Discrimination**

5 Title IX provides, “[n]o person . . . shall, on the basis of sex, be excluded from
 6 participation in, be denied the benefits of, or be subjected to discrimination under any education
 7 program or activity receiving Federal financial assistance[.]” 20 U.S.C. § 1681(a). This same
 8 prohibition applies in the student athletics context. *See* 34 C.F.R. § 106.41(a).

9 a. There is a question of fact as to whether WIAA is subject to Title IX in 10 this case.

11 As an initial matter, WIAA has raised the argument that all of Plaintiffs’ Title IX claims
 12 against it are precluded because it is not a “recipient” of federal funding as contemplated by the
 13 statute. (Dkt. No. 47 at 18–19.)

14 “Entities that receive federal assistance, whether directly or through an intermediary, are
 15 recipients within the meaning of Title IX; entities that only benefit economically from federal
 16 assistance are not.” *Nat’l Collegiate Athletic Ass’n v. Smith*, 525 U.S. 459, 468 (1999). The
 17 receipt of membership dues from public schools that are federally funded, on its own, is
 18 “insufficient to trigger Title IX coverage.” *Id.* On remand, the Third Circuit dismissed the
 19 plaintiff’s argument that an athletic association “exercised controlling authority over its
 20 federally-funded member institutions because it had the power to establish rules governing
 21 intercollegiate athletics at member schools and made individual eligibility and waiver decisions.”
 22 *Smith v. Nat’l Collegiate Athletic Ass’n*, 266 F.3d 152, 157 (3d Cir. 2001) (“*Smith II*”). Courts
 23 outside the Ninth Circuit have held, “an entity that has controlling authority over a federally
 24 funded program is also subject to the anti-discrimination provisions of Title IX.” *A.B. by C.B. v.*

1 *Haw. State Dep't of Educ.*, 386 F. Supp. 3d 1352, 1357 (D. Haw. 2019) (collecting cases). In
2 *A.B.*, the court distinguished *Smith*, noting that employees of the Hawaii State Department of
3 Education, which was a federally funded program, “not only take part in, but serve as executive
4 directors and members of the [private athletic association’s] governing body.” *Id.*

5 Here, Plaintiffs argue the District has “delegated control over its interscholastic athletic
6 programs” to WIAA, and that WIAA rules bind the District and other member schools, thus
7 subjecting WIAA to Title IX. (Dkt. No. 36 at 13.) In their reply, Plaintiffs add that WIAA
8 governance is “intertwined” with its member schools because most of its Representative
9 Assembly and Executive Board are athletic directors and/or school administrators at member
10 schools. (Dkt. No. 53 at 27.) WIAA argues it is a private, non-profit organization that does not
11 receive direct federal funding and that Plaintiffs’ allegations of operational control are “flatly
12 contradicted by the factual record.” (Dkt. No. 47 at 18.)

13 For purposes of the present motion, the Court need not decide whether WIAA is a
14 recipient as understood by § 1681(a) and *Smith* because the pertinent policy giving rise to
15 Plaintiffs’ Title IX claims makes clear WIAA’s policy merely implements state law and leaves
16 the determination of athletic eligibility for transgender athletes to the school districts and the
17 individual schools. Rule 18.16.0 acknowledges that “local, state, and federal rules and
18 regulations require schools to provide transgender and other gender-diverse student-athletes with
19 equal opportunities to participate in athletics.” (Dkt. No. 36-6 at 43.) Accordingly, “[a]ll
20 students have the opportunity to participate in WIAA athletics and/or activities in a manner that
21 is consistent with their gender identity.” (*Id.*) Moreover,

22 [s]chool personnel responsible for student eligibility will work collaboratively
23 with the student-athlete to determine eligibility. Once the student has been
24 granted eligibility to participate in the sport consistent with their gender identity,

1 the eligibility is granted for the duration of the student’s participation and does
2 not need to be renewed every sports season or school year.

3 (*Id.*) As a result, Plaintiffs’ likelihood of success against WIAA is wholly dependent on the
4 success of their claims against OSPI and the District.

5 b. The current record does not support a finding that Defendants intentionally
discriminated against K.M.K.

6 Title IX includes “a private right of action to enforce its prohibition on intentional sex
7 discrimination.” *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 173 (2005) (referring to
8 implied right of action first recognized in *Cannon v. Univ. of Chi.*, 441 U.S. 677, 690–693
9 (1979)). “In the Title IX context, intentional sex discrimination occurs whenever a defendant
10 treats persons less favorably ‘because’ of their sex.” *FAU*, 172 F.4th at 1028. “A defendant
11 need not have intended to violate Title IX or acted out of animus, but ‘need only have intended
12 to treat women differently.’” *Id.* (citation omitted). “In contrast, a disparate impact claim arises
13 when a defendant adopts policies or practices ‘that are facially neutral in their treatment of
14 different groups but that in fact fall more harshly on [one sex] than another.’” *Id.* (quoting *Int’l*
15 *Bhd. of Teamsters v. United States*, 431 U.S. 324, 335 n.15 (1977)). Disparate impact claims are
16 not cognizable under Title IX. *Id.* (“[W]e are bound to conclude . . . that Title IX affords a
17 private right of action only for claims of intentional sex discrimination.”). However, “a plaintiff
18 could bring a Title IX claim based on allegations of disparate impact that allow an inference of
19 discriminatory intent.” *Id.*

20 The District and OSPI first argue Plaintiffs’ Title IX claim fails because her arguments
21 boil down to the position that transgender-inclusive athletics policies negatively affect K.M.K.,
22 which sound in disparate impact theories, rather than intentional discrimination. (Dkt. Nos. 40 at
23 12–14; 43 at 19–20.) Plaintiffs acknowledge Defendants’ policies apply equally to boys and
24

1 girls (*see* Dkt. No. 36 at 26) and that Defendants allow “participation on teams by members of
2 either sex on grounds *unrelated* to sex” (Dkt. No. 1 at 39) (emphasis added). Despite these
3 acknowledgments, Plaintiffs suggest the transgender policies constitute intentional
4 discrimination because they “intentionally elevate the interests of males identifying as female
5 over the interests of girls in previously-protected, girls-only sports.” (Dkt. No. 36 at 25.) They
6 have done so, according to Plaintiffs, by “expand[ing] athletic opportunities for males by
7 contracting those of women.” (*Id.* at 26.)

8 The Court is persuaded by the Eighth Circuit’s decision in *FAU*, which addressed a
9 challenge to transgender athlete participation in high school sports on substantially similar
10 grounds. There, the plaintiff conceded the “facial neutrality” of the transgender-inclusive
11 athletic policy, but also claimed the policy reflected a sex-based choice to discriminate against
12 girls. 172 F.4th at 1028. Plaintiffs make nearly identical arguments here. (*E.g.*, Dkt. No. 36 at
13 26) (boys’ teams are “theoretically” subject to gender-inclusive policies but that does not make
14 the policies “sex-neutral”). Plaintiffs argue that physiological differences between males and
15 females are the only rationale for creating a girls’ wrestling program instead of leaving it as a co-
16 ed sport, then conclude that implementing transgender-inclusive policies “intentionally elevate
17 the interests of males identifying as female over the interests of girls[.]” (*Id.* at 25; *see also* Dkt.
18 No. 53 at 23 (“Intentionally letting boys into a previously protected female-only category easily
19 satisfies [the intentional discrimination] standard.”). But Plaintiffs point to no record evidence
20 that shows Defendants acted with the *intent* to treat girls differently, nor do they attempt to
21 square this conclusion with their acknowledgement that transgender-inclusive policies, on their
22 face, are unrelated to sex and apply equally in boys’ and girls’ sports. What is left are
23 “paradigmatic disparate impact allegations”—rooted in the assumption that K.M.K. is negatively
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1 impacted by transgender athlete participation—that are insufficient to give rise to an intentional
2 discrimination claim. 172 F.4th at 1028.

3 It is true that discriminatory intent “‘can be inferred from the mere fact of differences in
4 treatment’” or “‘established by evidence of ‘deliberate indifference,’ which the Supreme Court
5 has characterized as ‘disregard[ing] a strong likelihood that the challenged action would result in
6 a violation of federally protected rights.’” *FAU*, 172 F.4th at 1028 (citation omitted). But again,
7 Plaintiffs do not allege that Defendants’ transgender-inclusive policies were enforced “*because*
8 *of* [their] disparate impact on female athletes[,]” nor that Defendants “received and disregarded
9 complaints outlining the negative effects of [the transgender opponent]’s participation on female
10 athletes[.]” and chose to implement their policies anyway. *Id.* at 1029 (emphasis added). WIAA
11 convincingly argues that Plaintiffs’ expert opinions also do not provide evidence of Defendants’
12 intent to discriminate. (See Dkt. No. 47 at 25 (explaining that Dr. Brown’s report states that
13 facially neutral policies such as Defendants’ “[have] a *disparate impact* on cisgender female
14 competitors due to generalized physiological differences[.]”; it does not show that Defendants
15 “enacted trans-inclusive policies *because of* a desire to inflict a disparate impact on female
16 athletes.”⁸.) Without providing case law or any other factual support for their claims that
17 Defendants’ policies and actions demonstrated an intent to discriminate against K.M.K. or other
18 cisgender female athletes, Plaintiffs cannot show a likelihood of success on the merits of their
19 intentional Title IX discrimination claim.

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⁸ WIAA further points out that in *FAU*, the plaintiffs’ arguments also rested on an expert report
24 by Dr. Brown, which was rejected by the district court. (Dkt. No. 47 at 21.)

c. The District’s transgender-inclusive athletics policy does not violate Title IX’s implementing regulations or policy interpretation.

34 C.F.R. § 106.41(a) “establishes a baseline prohibition against sex discrimination” in athletics, which “[s]tanding alone” would require covered institutions to integrate all sports teams. *Mercer v. Duke Univ.*, 190 F.3d 643, 646 (4th Cir. 1999). But the following section provides an “explicit exception” to that default rule, which permits covered institutions to ““operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport[.]”” rather than integrating those teams. *Id.* (quoting 34 C.F.R. § 106.41(b)). The regulations also mandate that schools provide “equal athletic opportunity for members of both sexes” and identify a number of factors for assessing equal opportunity, including participation opportunity, coaching, facilities, equipment, scheduling, travel, and more. 34 C.F.R. § 106.41(c).

Plaintiffs frame the Title IX regulations as providing two distinct “compliance pathways[.]” (Dkt. No. 36 at 29.) They argue that the current setup for girls’ wrestling does not comply with either, as the wrestling teams are not truly co-ed (because a cisgender boy would be prohibited from joining the girls’ wrestling team but a transgender girl would not) and because there are not truly separate wrestling teams for boys and girls (because the teams are not divided exclusively on the basis of biological sex). (*Id.* at 29–30.) Plaintiffs allege the “result is an incomplete sex-designation that falls outside the bounds” of § 106.41(a) and § 106.41(b), thus amounting to intentional discrimination. (*Id.* at 30.) However, the Court agrees with the District that nothing in § 106.41(b) says that a recipient violates Title IX “whenever it allows transgender students to participate consistent with their gender identity[.]” and “no court has held that a gender-inclusive policy violates § 106.41(a).” (Dkt. No. 40 at 16.) And § 106.41(c)(1) identifies factors for assessing effective accommodation cases—a distinct breed of Title IX claim separate

1 from Plaintiffs’ claims of discrimination. *See Mansourian v. Regents of Univ. of Cal.*, 602 F.3d
2 957, 964–965 (9th Cir. 2010) (emphasis added) (“Effective accommodation claims [under
3 § 106.41(c)(1)] thus concern the *opportunity* to participate in athletics, while equal treatment
4 claims [under § 106.41(c)(2)–(10)] allege sex-based differences in the schedules, equipment,
5 coaching, and other factors affecting participants in athletics.”).

6 A school’s ““alleged failure to comply with the [Title IX] regulations . . . does not itself
7 constitute discrimination in violation of Title IX.”” *Moore v. Regents of the Univ. of Cal.*, Case
8 No. 15-cv-05779-RS, 2016 WL 4917103, at *3 (N.D. Cal. Sept. 15, 2016) (quoting *Gebser v.*
9 *Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 291–292 (1998)). Without legal support for their
10 position, Plaintiffs cannot show a likelihood of success on the merits that Defendants’
11 transgender-inclusive policies are in violation of Title IX’s regulations.

12 Plaintiffs’ reliance on Title IX policy interpretation fares no better. They argue,
13 [E]ffectively accommodating girls “means that if an institution sponsors a team
14 for members of one sex in a contact sport, it must do so for members of the other
15 sex,” provided (1) opportunities for the excluded sex were historically limited and
16 (2) there’s sufficient interest for a viable team and interschool competition.
17 (Dkt. No. 36 at 30) (quoting Policy Interpretation: Title IX and Intercollegiate Athletics, 44 Fed.
18 Reg. 71,413, 71,418 (Dec. 11, 1979)). But as the District points out, Plaintiffs do not argue that
19 K.M.K. was prohibited from participating on the wrestling team, nor that any of her cisgender
20 female teammates were prohibited from participating either (Dkt. No. 40 at 17); indeed,
21 Plaintiffs repeatedly point out that Rogers High School maintains separate boys and girls
22 wrestling teams, which would seem to satisfy the policy interpretation guidance. (*E.g.*, Dkt. No.
23 36 at 23–24.) Plaintiffs conclude that per the policy interpretation, the District must sponsor a
24 girls’ wrestling team, and they have failed to do so, because girls’ teams in the District include
transgender girls. (*Id.* at 31.) But for the same reasons as with Plaintiffs’ discrimination claims

premiered on the Title IX statute itself, this argument is unavailing. The District has followed the policy interpretation’s mandate and provided separate wrestling teams for boys and girls—albeit subject to the District policy that allows transgender students to participate consistent with their gender identity. (Dkt. Nos. 1-34; 1-35 at 4.) Plaintiffs point to no authority that prohibits this arrangement. Moreover, as explained succinctly by the Eighth Circuit, “[t]he problem with [Plaintiffs’ argument] is that executive guidance and agency findings, in and of themselves, do not reflect settled law. As such, they cannot independently establish a likelihood that certain policies or conduct violate federal rights.” *FAU*, 172 F.4th at 1029 (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024)).

d. *West Virginia v. B.P.J.* also does not support Plaintiffs’ position.

Plaintiffs rely heavily on the Supreme Court’s recent decision in *B.P.J.* in making their Title IX discrimination argument. (See generally Dkt. No. 36 at 23–34.) In *B.P.J.*, the Court concluded that Title IX did not *require* schools to allow transgender girls to compete on girls’ sports teams. 146 S. Ct. at 2370. The Court reasoned that Title IX “*allowed* separate sports teams precisely because of the biological differences between the sexes—namely, the inherent physical differences between biological women and biological men.” *Id.* at 2371 (emphasis added). Looking closely at the statute, regulations, and Javits Amendment,⁹ the Court concluded that there was nothing in Title IX that said “schools must allow certain biological males to participate in women’s and girls’ sports[,]” and further, that regulations providing for separate

⁹ The Javits Amendment was passed in 1974 and authorized the then-Department of Health, Education, and Welfare to “promptly issue ‘regulations implementing the provisions of’ Title IX with respect to ‘the prohibition of sex discrimination’” and “specified that the regulations ‘shall include with respect to’ ‘athletic activities *reasonable provisions considering the nature of particular sports.*’” 146 S. Ct. at 2366 (emphasis added by *B.P.J.*) (quoting Pub. L. No. 93-380, § 844, 88 Stat. 484, 612 (1974)).

1 sports teams for males and females were reasonable, because (1) “allowing biological males to
2 play on women’s and girls’ sports teams can put women and girls at significant risk of injuries[]”
3 and (2) “allowing biological males to play on women’s and girls’ sports teams can put female
4 athletes at a serious [competitive] disadvantage.”¹⁰ *Id.* at 2371–2372.

5 Here, Plaintiffs essentially argue the inverse. According to them, Title IX actually
6 *prohibits* states and school districts from allowing students to participate on the athletic team that
7 aligns with their gender identity (or, when phrased in the affirmative, Title IX *requires* states and
8 schools to adopt policies prohibiting transgender student participation). (*See* Dkt. No. 1 at 60)
9 (alleging Defendants violated § 1681(a) “by implementing sex-based policies creating a
10 protected category for girls wrestling and then destroying that category and removing it from the
11 regulatory safe harbor via policies permitting some males to participate in girls wrestling”). But
12 *B.P.J.* suggests no such thing. Indeed, in a footnote, the Supreme Court explicitly noted the case
13 “[did] not present the distinct question of whether, under Title IX and the Equal Protection
14 Clause, schools may *allow* biological males who identify as female to participate on girls’ and
15 women’s sports teams.” 146 S. Ct. at 2367 n.1. Though Plaintiffs seek to characterize it
16 differently (*e.g.*, Dkt. Nos. 36 at 23; 53 at 20), *B.P.J.* affirmatively answered only the question of
17 whether states were permitted to limit women’s and girls’ sports teams to biological females.
18 146 S. Ct. at 2372.

19 In sum, Plaintiffs have failed to establish a likelihood of success on the merits of their
20 claim that Title IX is violated when states or schools implement transgender-inclusive athletics

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22 ¹⁰ *B.P.J.* does not identify what evidence supported these statements, which means the Court is
23 unable to analyze whether *B.P.J.* relied on the same evidence presented in support of Plaintiffs’
24 motion. And as discussed in this order, the present record is inconclusive as to whether
transgender girls increase the risk of physical injury or reduce competitiveness by participating
in girls’ sports. *See* Section III(B)(3)(a) *infra*.

1 policies. As noted in *B.J.P.*, “[w]hether biological males may participate on women’s and girls’
2 sports teams may be a debated *policy* question.” 146 S. Ct. at 2372; *accord United States v.*
3 *Skrmetti*, 605 U.S. 495, 524 (2025). Plaintiffs’ lawsuit highlights this debate. But the Supreme
4 Court explicitly cautioned that the judiciary “must be cautious about swooping in and
5 invalidating laws[,]” especially on “medical and scientific matters where there is serious debate
6 and disagreement[.]” 146 S. Ct. at 2380. This is because “the Judiciary is not the proper
7 institution to make what would often be arbitrary and highly intrusive athlete-by-athlete
8 assessments.” *Id.* at 2378. In the absence of legal authority that supports Plaintiffs’ request to
9 wade into such policy considerations, the Court finds it imprudent to do so. Plaintiffs’ motion
10 for preliminary injunction premised on Title IX intentional discrimination therefore fails.

11 3. Title IX: Deliberate Indifference

12 Plaintiff also brings deliberate indifference claims in two forms. Plaintiffs first raise the
13 argument that Defendants have implemented an official policy that demonstrates deliberate
14 indifference, which in turn violates Title IX. This theory brushes up against the intentional
15 discrimination claim. Citing *Karasek v. Regents of Univ. of Cal.*, 956 F.3d 1093, 1113 (9th Cir.
16 2020), Plaintiffs argue, “[w]hen a heightened *risk* of injury is ‘obvious,’ a recipient’s ‘failure to
17 remedy that risk constitute[s] an official policy of deliberate indifference that violate[s] Title
18 IX.’” (Dkt. No. 36 at 26.) Plaintiffs clarified at the hearing the harms they rely on are (1) the
19 increased risk of physical injury and (2) competitive disadvantage. (*See also id.* (a Title IX
20 recipient’s failure to remedy an obvious heightened risk of injury constitutes deliberate
21 indifference), 27 (Defendants are aware their policies harm females but not males); 43 at 13
22 (“Plaintiffs’ allegations of harm rest on assumptions that physical injury, ‘competitive’ injury,
23 and sexual assault are ‘obvious’ risks when transgender girls compete in girls’ sports.”).)

Second, Plaintiffs argue that the District demonstrated a deliberate indifference to K.M.K.'s report of sexual assault and that the District's failure to protect K.M.K. created a hostile environment in and of itself. (Dkt. No. 36 at 31.) The Court takes each argument in turn.

- a. There are questions of fact as to whether transgender athlete participation increases the risk of physical injury of competitive disadvantage to girls.

First, Plaintiffs' evidence and expert reports are less than clear as to whether there is a higher risk of injury to cisgender girls when competing against transgender athletes. Citing various studies, Dr. Carlson posits the following:

- I have reviewed physiological differences that result in the male body bringing greater weight, speed, and force to the athletic field, ring, mat, or court, and how these differences can result in a greater risk of injury to females when males compete against them, through the transmission of greater impact forces. That said, it is also true that the female body appears more vulnerable than the male body to certain types of injury even when subject to comparable forces. In general, when sex specific sports are analyzed, adolescent females are injured at a higher rate than males. (Ritzer 2021)
- In analyz[ing] both-sex sports (i.e., sex-separated sports that both girls and boys play, like soccer), girls sustained higher injury rates, and greater rates of time-loss injury. (Beachy 2014)
- Another study of over 2,000 middle school students at nine schools showed that the injury rate was higher for girls' basketball than for football (39.4 vs. 30.7/1000 AEs), and injury rates for girls' soccer were nearly double that of boys' soccer (26.3 vs. 14.7/1000 AEs). (Caswell 2017)

(Dkt. No. 36-4 at 42–43.) These opinions suggest that biological girls have a higher rate of injury in general, even without transgender athletes competing on girls' teams. And Dr. Carlson's assumption that females risk higher rates of concussions while competing against males is premised on a model involving rugby, which is a "notoriously contact-intensive sport." (*Id.* at 51.) Rugby is not only distinct from wrestling and soccer, but as confirmed at the hearing, it is not a WIAA sport. Dr. Brown likewise states that there is "very limited research on how

1 puberty blockers affect physical fitness and none on sports performance” yet concludes the
2 “existing data demonstrate that puberty blockers do not eliminate male advantages in lean body
3 mass, muscle strength, or body height, all of which unquestionably contribute meaningfully to
4 male athletic advantages.” (Dkt. No. 36-3 at 126.) Indeed, neither of Plaintiffs’ experts go so far
5 as to say that permitting transgender students to participate in girls’ sports with K.M.K.
6 *necessarily* puts her at an increased risk of harm, and the evidence contained in Dr. Millington’s
7 expert report indicates “the risks of K.M.K. suffering physical . . . harm are, at best, disputed.”
8 (Dkt. No. 43 at 13; *see also, e.g.*, Dkt. No. 46 at 8 (explaining that VO₂ peak and markers of
9 cardiorespiratory capacity are no different between cisgender and transgender girls when
10 differences in height and fat amount are taken into account), 18 (to determine the “prevalence” of
11 injuries because of transgender athletes, one would need to compare data of injury rates in all
12 sports with transgender athlete participation and data in all sports without; “[i]n the absence of
13 such data, claims that transgender women pose a unique danger to other athletes are not
14 supported by evidence”).) Additionally, there is no evidence Defendants had received reports
15 about K.M.K.’s opponent that would have put Defendants on notice that K.M.K. could encounter
16 a heightened risk of injury. (*See* Dkt. No. 45 at 4) (OSPI notes that in the 20 years since
17 Washington first barred gender identity discrimination in athletics, it has not received an official
18 complaint “regarding any particular transgender student’s athletic participation[.]”).

19 Plaintiffs’ position regarding the known risk of athletic and competitive disadvantage is
20 similarly unavailing. Relying on *B.P.J.*, Plaintiffs argue sports are “zero sum”; in their view,
21 allowing just one transgender athlete to compete on a girls’ team necessarily means that a
22 cisgender girl would lose playing time, a roster spot, or other opportunities. (*E.g.*, Dkt. No. 36 at
23 27 (“gender-identity participation eliminates the competitive fairness . . . that justified the
24

1 separate teams[]”); 146 S. Ct. at 2372 (sports are generally zero sum”). Plaintiffs explained at
2 the hearing they are not bringing an effective accommodation claim by arguing girls have not
3 been given an opportunity to participate in athletics from the outset; instead, their position is that
4 putting transgender girls on female sports teams deprives girls of equal athletic opportunity,
5 point blank. But the factors considered in determining equal athletic opportunity claims focus on
6 the resources provided to female sports programs to ensure the opportunity to participate, not on
7 athletic performance in individual matches or competitions. *See* 34 C.F.R. 106.41(c)(2)–(10);
8 *Mansourian*, 602 F.3d at 964–965. There are no allegations that Defendants have failed to
9 provide sufficient resources to girls’ sports, including wrestling or soccer, such that girls lack an
10 equal opportunity to participate.

11 Further, District wrestling is undeniably a no-cut sport (Dkt. No. 1 at 8), so there is no
12 evidence that Defendants’ transgender-inclusive athletics policies prevented K.M.K. from
13 earning a place on the team. And even if there were limited roster spots, scientific evidence
14 demonstrating that transgender girls are at an inherent athletic advantage is not conclusive. (*See*
15 Dkt. No. 36-3 at 126) (there is “very limited research on how puberty blockers affect physical
16 fitness and none on sports performance”). Plaintiffs argue the loss of equal opportunity applies
17 to loss of the actual competition as well, or the loss of participation after voluntarily withdrawing
18 from athletics altogether. Again though, Title IX does not guarantee particular *results* in athletic
19 competitions—it guarantees only the equal opportunity to participate. *See Clausen v. Nat’l*
20 *Geographic Soc.*, 664 F. Supp. 2d 1038, 1048 (D.N.D. 2009), *aff’d*, 378 Fed. App’x 595 (8th Cir.
21 2010) (“Title IX neither guarantees nor suggests that females must win as often as males.”).
22 There is no dispute K.M.K. has been given that opportunity.

Moreover, the case law Plaintiffs cite does not support their theory that Defendants' transgender-inclusive policies constitute a deliberate indifference towards the safety of girls. In *Karasek*, the court discussed the case *Simpson v. Univ. of Colo. Boulder*, 500 F.3d 1170 (10th Cir. 2007), where the football program had a policy of hosting football recruits on campus in the fall and pairing them with female "ambassadors"; some of the recruits were promised the opportunity to have sex and "there was evidence that the coaching staff not only knew of this conduct, but encouraged it." 956 F.3d at 1112 (citing *Simpson*, 500 F.3d at 1173–1174). The university was apparently "aware of prior complaints of sexual misconduct" and had been "warned by the district attorney that the university needed to supervise the recruits and implement sexual assault prevention training." *Id.* at 1112–1113 (citing *Simpson*, 500 F.3d at 1173–1174, 1179–1184). The *Karasek* court explained that because the risk of sexual assault in *Simpson* was "obvious," the university's "failure to remedy that risk constituted an official policy of deliberate indifference that violated Title IX." 956 F.3d at 1113 (citation omitted).

In *Karasek*, the plaintiffs overcame a motion to dismiss by alleging (1) the California State Auditor concluded that in a five-year period, the university resolved 76 percent of Title IX complaints in an early-resolution process in a "generally inadequate manner"; (2) the university's Title IX coordinator stated in an interview that using an early-resolution process for sexual assault claims was not an appropriate mechanism; and (3) the university took the position that resolving Title IX claims informally did not require it to report those claims as required by statute. *Id.* at 1113–1114. The court commented that if it was true that "early resolution is not an appropriate mechanism for resolving sexual-assault claims[.]" the university's conduct during the relevant timeframe "appears inexplicable." *Id.* at 1114. Taken together, these allegations

were therefore sufficient to show the university had a policy of deliberate indifference that “heightened the risk of sexual harassment on campus[.]” *Id.*

The situations in *Karasek* and *Simpson* are different than the situation here. First, as previously discussed, the question of whether there is a heightened risk of injury or a guaranteed competitive disadvantage to cisgender girls when competing against transgender girls is unclear. Even taking this heightened risk of harm as true, however, there is no evidence in the record Defendants were aware of such risks and chose to implement their transgender-inclusive athletics policies anyway. This is distinct from both *Karasek* and *Simpson*, where there was documented evidence that showed the schools were on notice of ongoing sexual assault issues at their institutions and still did not act to mitigate the associated risks.

At this preliminary stage, Plaintiffs have not shown a likelihood of success on the merits that Defendants’ transgender-inclusive athletics policies have demonstrated a deliberate indifference toward a known risk of injury or competitive disadvantage in violation of Title IX.

b. There is a question of fact as to whether Defendants demonstrated a deliberate indifference toward discrimination on the basis of K.M.K.’s sex.

The private right of action underlying Title IX “encompasses intentional sex discrimination in the form of a recipient’s deliberate indifference” to sexual harassment of a student by another student. *Jackson*, 544 U.S. at 173; *see also Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 642–647 (1999) (explaining and recognizing liability for school district’s deliberate indifference to student-on-student sexual harassment). To prevail on a Title IX claim against the school for student-on-student harassment, a plaintiff must show:

(1) that the educational institution had ‘substantial control over both the harasser and the context in which the known harassment occurs’; (2) that the harassment was so ‘severe, pervasive, and objectively offensive that it denies its victims the equal access to education that Title IX is designed to protect’; (3) that a school official with ‘authority to address the alleged discrimination and to institute

corrective measures . . . has actual knowledge of [the] discrimination’; (4) that the school acted with ‘deliberate indifference’ to the harassment; and (5) that the school’s ‘[d]eliberate indifference must, at a minimum, cause students to undergo harassment, or make them liable or vulnerable to it[.]’”

Brown v. Arizona, 82 F.4th 863, 874 (9th Cir. 2023) (citations omitted and cleaned up).

Title IX does not require specific disciplinary or remedial actions to avoid liability. *Karasek*, 956 F.3d at 1105. Rather, “the school must have acted with ‘deliberate indifference’ to the harassment, such that the school’s ‘response to the harassment or lack thereof [was] clearly unreasonable in light of the known circumstances.’” *Id.* (quoting *Davis*, 526 U.S. at 648). A response that is “‘negligent, lazy, or careless’” will not suffice. *Id.* (quoting *Oden v. N. Marianas Coll.*, 440 F.3d 1085, 1089 (9th Cir. 2006)). “Absent an unreasonable response, [courts] cannot ‘second-guess[] the disciplinary decisions made by school administrators.’” *Id.* (quoting *Davis*, 526 U.S. at 648).

Plaintiffs argue the District violated Title IX because it demonstrated a deliberate indifference towards the sexual assault she allegedly suffered and in turn, subjected her to ongoing harassment and hostility. (Dkt. No. 36 at 31.) The Court understands this to be two separate deliberate indifference theories: one centered on the alleged sexual assault itself and the other centered on the District’s response to Plaintiffs’ report.

i. Deliberate indifference based on alleged harassment of K.M.K. by wrestling opponent

The first element of Plaintiffs’ deliberate indifference claim is not disputed. (Dkt. No. 40 at 19.) The District does, however, dispute the remaining four elements. Plaintiffs first argue the harassment was severe and pervasive enough to deny K.M.K. equal education opportunities, suggesting the second element can be established because she allowed herself to be pinned to end the December 2025 wrestling match, thus losing third place. (Dkt. Nos. 1 at 12–13; 36 at

32.) It is doubtful, however, that not achieving third place in a single competition alone rises to the level of the denial of an opportunity to compete in athletics. As discussed, the factors for evaluating equal opportunity do not include individual performances, losses, or wins. *See* Section III(B)(3)(a) *supra*. And while the Court has no doubt that the experience of the December 2025 wrestling match could lead an athlete to stop wrestling, the present record does not point to a denial of equal education opportunities sufficient to violate Title IX.

Plaintiffs also argue K.M.K.’s withdrawal from wrestling was a denial of equal education opportunities, because “officials first took no action” in response to the alleged sexual assault by her wrestling opponent. (Dkt. No. 36 at 32.). As support for the second element, they cite *Williams v. Bd. of Regents of Univ. Sys. of Ga.*, 477 F.3d 1282, 1296 (11th Cir. 2007) for the proposition that a “victim’s withdrawal from university ‘was reasonable and expected,’ and then the school ‘failed to take any precautions that would prevent future attacks.’” (*Id.*) But as explained below, there is a debate whether District officials have taken “no action” in response to the alleged sexual assault, and the record does not establish that the transgender opponent K.M.K. faced would again engage in the same conduct against any future opponent.

Third, the Court concludes there is a question of fact as to whether a District official had “actual knowledge” of the alleged harassment prior to the media request on January 29. *Brown*, 82 F.4th at 874 (citation and internal quotation marks omitted). The December 8 email Brown sent to the wrestling coaches arguably does not make it clear that Brown desired to report a sexual assault. Brown identified she “wanted to bring a couple of things to [their] attention.” (Dkt. No. 1-10 at 2.) The first item in the email is redacted. Regarding the second item, Brown stated that, “during [K.M.K.’s] last match of the day, the student she wrestled . . . [did] what the kids call Oil Checked her.” (*Id.*) Brown went on to explain, “[t]his is a huge issue and

1 something that is 100% not ok” and the fact this was done by a “biological male who identifies
2 as a female is an even bigger issue for me.” (*Id.*) The email did not explain that Brown
3 considered this incident a sexual assault, nor that she sought to file a formal complaint—which,
4 as a District employee, she presumably had some knowledge about how to accomplish. (*See*
5 Dkt. No. 41 at 10.)

6 The fourth element flows directly from the third; the Court cannot evaluate whether the
7 District acted with deliberate indifference if it is unclear when the District obtained knowledge of
8 the alleged sexual assault. Assuming knowledge did not occur until January 30, 2026, when Dr.
9 Brobbey was “alerted to a media request” related to K.M.K.’s alleged assault (*id.* at 2), the
10 District began the Title IX process by hiring an outside investigator, gathering statements and
11 evidence from both sides, and referring the allegations to the PCSO. (*Id.* at 2, 4.) The Title IX
12 investigation ran concurrently with the criminal investigation to the extent possible, but after the
13 PCSO decided not to proceed with charges, the investigation has continued according to Title IX
14 procedure. (*Id.* at 4–6; Dkt. No. 36-15.) There is no dispute the Title IX investigation remains
15 ongoing. (Dkt. No. 41 at 4.)

16 But even assuming that District officials were undeniably aware that Brown’s December
17 8 email was a sexual assault complaint, it still remains a question of fact as to whether the
18 District acted with deliberate indifference. Title IX liability does not automatically lie when a
19 school’s delayed response is “negligent, lazy, or careless,” rather than a “deliberate attempt to
20 sabotage” the plaintiff’s complaint. *Karasek*, 956 F.3d at 1105 (citation omitted). Here, the
21 present record does not suggest the District sought to thwart the resolution of K.M.K.’s report;
22 based on all the evidence, the trier of fact could conclude that the District’s delayed response was
23 merely negligent, lazy, or careless. The Court acknowledges the frustrations Plaintiffs felt when
24

1 the District did not immediately begin addressing their concerns. However, the present record
2 indicates there is a factual question on whether the District responded in a “manner that is not
3 clearly unreasonable in light of the known circumstances[,]” even taking into consideration the
4 investigation delay. *Id.* (citation omitted).

5 Finally, Plaintiffs do not establish a likelihood of success as to the fifth element. They
6 argue the District has caused sex-based harassment through its policies that expose female
7 students to sexual assault and by failing to take corrective action. (Dkt. No. 36 at 34.) To hold
8 the District liable, Plaintiffs must show that the school’s deliberate indifference made them
9 susceptible or vulnerable to harassment. *Brown*, 82 F.4th at 874 (citation omitted). In other
10 words, Plaintiffs must establish a link between the District’s deliberate indifference and the
11 harassment she suffered. *See Karasek*, 956 F.3d at 1105 (citation and quotation marks omitted)
12 (describing fifth element as the defendant “caus[ing]” the plaintiff to undergo harassment).
13 Plaintiffs have not identified any actions taken by the District that made K.M.K. susceptible to
14 harassment by her wrestling opponent. The best Plaintiffs can do is point to the District’s
15 transgender-inclusive athletics policy, then draw the conclusion that this policy *in and of itself*
16 has exposed her to sexual harassment. (*See* Dkt. No. 36 at 34) (citation omitted) (“[The
17 District’s policies have created ‘a sexually hostile environment in which female students are
18 more prone to [sexual] assault.’”). However, there is no evidence in the record nor legal
19 authority that supports such a conclusion.

20 *ii. Deliberate indifference based on hostile environment created*
21 *by the District*

22 Plaintiffs also assert the District *itself* has subjected K.M.K. to a hostile environment
23 through its handling of her sexual assault report. Though Plaintiffs may argue this hostile
24 environment flows from K.M.K.’s original allegation of sexual assault, it is derived from the

1 *District’s* alleged actions or inactions, not on continuing alleged harassment by K.M.K.’s
2 transgender opponent. Accordingly, Plaintiffs fail to show a likelihood of success on the merits
3 on all elements besides the first. For element two, Plaintiffs argue the District engaged in official
4 misconduct by “tolerat[ing] hostility” towards K.M.K. from other students and coaches. (Dkt.
5 No. 36 at 32.) In the verified complaint, K.M.K. alleges she felt uncomfortable around her
6 wrestling coaches and school staff; teammates apparently suggested it was K.M.K.’s fault their
7 coach was ““in trouble.”” (Dkt. No. 1 at 26–27.) Brown declares K.M.K. has suffered anxiety
8 about the school’s failure to protect her from harm and that she does not feel comfortable
9 returning to Rogers High School in the fall “given this hostility.” (Dkt. No. 36-19 at 5.) The
10 Court does not dispute that K.M.K. suffered adverse social effects during this time. However,
11 there is no evidence this hostile environment denied K.M.K. equal access to education
12 guaranteed by Title IX—in other words, that she was subjected to such actions *because of her*
13 *sex*. *See Davis*, 526 U.S. at 649–650 (sexual harassment is a form of discrimination for Title IX
14 purposes).

15 Plaintiffs also cannot meet the third and fourth elements. The District explained at the
16 hearing that Plaintiffs have not filed a Title IX complaint related to any *ongoing* harassment or
17 hostile environment, nor have they received a direct report that K.M.K. has been subjected to
18 bullying or harassment. (*See also* Dkt. No. 41 at 10.) Arguably, the District has provided
19 K.M.K. with interim supportive measures during the pendency of the Title IX investigation to
20 “ensure [she] has access to the education environment.” (*Id.* at 7.) On August 5, 2026, K.M.K.
21 filed a HIB complaint with the District. (Dkt. No. 53-6 at 2–10.) The District represented at the
22 hearing that it was working on arranging a meeting with K.M.K. to discuss the details of the HIB
23 complaint and begin an investigation. The Court therefore cannot say that at this stage, the
24

District's actions are "unreasonable in light of the known circumstances." *Karasek*, 956 F.3d at 1105 (citation omitted). Again, the Court appreciates Plaintiffs' desire for a speedy resolution of their complaints. But the fact that the District has not granted Plaintiffs the relief they want on the timeline they prefer does not turn the District's actions into harassment. *See Davis*, 526 U.S. at 648 (citations omitted) (no "particular disciplinary action" by the school is required and plaintiffs have no right to "particular remedial demands[]").

Finally, Plaintiffs cannot establish the fifth element because they have not submitted evidence to show that the *District* has subjected K.M.K. to sexual harassment. Though Plaintiffs argue K.M.K. has struggled to be around her coaches and peers because of their response to her report of sexual assault (Dkt. Nos. 1 at 26–27; 36-19 at 5), Plaintiffs do not explain, nor point to evidence that shows, that the District's actions are so "severe, pervasive, and objectively offensive" that they have discriminated against her on the basis of her sex. *Davis*, 526 U.S. at 650.

In conclusion, Plaintiffs have not shown a likelihood of success of the merits on their various deliberate indifference claims.

4. *Pennhurst* Clear Notice Doctrine

OSPI and WIAA argue Plaintiffs' Title IX claims separately fail because the plain text of Title IX does not "unambiguously mandate the categorical exclusion of transgender student-athletes from girls' sports[,]" therefore violating the clear notice doctrine announced in *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1 (1981). (Dkt. Nos. 43 at 25–27; 47 at 19.) Plaintiffs assert at various points that Defendants' acts were intentional, which would negate the need for clear notice. (*See, e.g.*, Dkt. No. 36 at 25 (Defendants' "intentionally elevate the interests of males identifying as female over the interests of girls"), 27 ("Defendants know

1 their policies harm females, not males”). In their reply, Plaintiffs also argue that Defendants
2 have clear notice that transgender athlete participation violates Title IX before courts resolve the
3 question based on the “‘clear statutory language.’” (Dkt. No. 53 at 25) (quoting *Medina v.*
4 *Planned Parenthood S. Atl.*, 606 U.S. 357, 383 (2025)).

5 In simple terms, the clear notice doctrine goes as follows: Congress is permitted to “fix”
6 the terms on which it disperses federal money to the states under the Spending Clause, assuming
7 the state “voluntarily and knowingly accepts the terms of the ‘contract.’” *Pennhurst*, 451 U.S. at
8 17. Conversely, there can be “no knowing acceptance” if the state is unaware of the conditions
9 attached to the grant of money. *Id.* “Accordingly, if Congress intends to impose a condition on
10 the grant of federal moneys, it must do so unambiguously.” *Id.* The clear notice rule applies in
11 cases requesting retrospective relief (i.e., damages) and in those requesting injunctive relief. *Roe*
12 *v. Critchfield*, 137 F.4th 912, 930 (9th Cir. 2025). However, the clear notice requirement “does
13 not bar a private damages action under Title IX where the funding recipient engages in
14 intentional conduct that violates the clear terms of the statute.” *Davis*, 526 U.S. at 642. “This is
15 because the plain terms of Title IX place a duty on a funding recipient to not discriminate
16 intentionally on the basis of sex.” *Soule v. Conn. Ass’n of Schs., Inc.*, 90 F.4th 34, 91–92 (2d
17 Cir. 2023) (en banc) (Chin, J., dissenting, joined in full by Carney and Kahn, JJ., and in part by
18 Lohler and Robinson, JJ.); *see also Franklin v. Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 75
19 (1992) (“Congress surely did not intend for federal moneys to be expended to support the
20 intentional actions it sought by statute to proscribe.”).

21 One aspect of the “‘contractual nature’” of Title IX is the idea that “a remedy is
22 ‘appropriate relief’” only when the recipient is “*on notice* that, by accepting federal funding, it
23 exposes itself to liability of that nature.” *Barnes v. Gorman*, 536 U.S. 181, 187 (2002) (citation
24

omitted). Indeed, “[s]tates cannot knowingly accept conditions of which they are ‘unaware’ or which they are ‘unable to ascertain.’” *Arlington Cent. Sch. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006) (citation omitted). When viewing the statute “from the perspective of a state official who is engaged in the process of deciding” whether Washington or the District should accept Title IX funds, the Court “must ask whether such a state official would clearly understand that one of the obligations of [Title IX] is the obligation to compensate” plaintiffs such as K.M.K. who are scheduled to compete against transgender athletes in District competitions, or those such as Brown, whose children are in the same position as K.M.K. *Id.* Aside from attempting to rely on *B.P.J.* and Title IX’s implementing regulations, Plaintiffs point to no legal authority that supports the conclusion that athletic policies permitting transgender athlete participation *necessarily* violate Title IX. (*See* Dkt. No. 53 at 25–26.) Rather, Plaintiffs argue that Congress did not need to use “‘magic words’” or “‘list every factual instance in which a state will fail to comply with a condition’” in order to put Defendants on notice. (*Id.* at 26) (citations omitted). But the fact remains that *Pennhurst* and its progeny establish that a state cannot knowingly accept federal funds if the state is “unaware of the conditions [attached to the money] or is unable to ascertain what is expected of it.” *Pennhurst*, 451 U.S. at 17.

Soule is a factually similar case that helps illustrate the distinction between intentional acts and intentional discrimination for purposes of applying the *Pennhurst* bar. There, four cisgender female high school athletes sued their interscholastic athletic organization, arguing its policy permitting students to participate on a team consistent with their gender identity was discriminatory. 90 F.4th at 42–43. They requested the court “fashion a rule holding that *Pennhurst*’s notice requirement is inapplicable to Title IX claims that rest on a funding recipient’s ‘official policies,’ which are ‘always known and intended.’” *Id.* at 92 (Chin, J.,

1 dissenting) (citations omitted and cleaned up). But the dissenting judges disagreed, explaining
2 that adopting this approach “would run afoul of the very essence of the *Pennhurst* doctrine,” and
3 further, it “would conflate the requirement that a recipient’s actions be *intentional* with the
4 requirement that a recipient have notice of its legal obligations.” *Id.* The dissent drew a
5 distinction between the “intentionality” of a Title IX recipient’s actions and intentional action
6 that clearly violates Title IX, i.e., intentional discrimination. *Id.* The latter “removes the
7 *Pennhurst* bar”; the former does not. *Id.* This means that “[a] policy made in good faith and
8 without clear notice that it violates Title IX is unintentional discrimination and cannot be a basis
9 for damages retrospectively, even if it is ultimately deemed to be unlawful.” *Id.* A recent report
10 and recommendation from a magistrate judge from the District of Oregon, also involving
11 substantially similar facts, recently arrived at the same conclusion. *See Castaneda v. Or. Dep’t*
12 *of Educ.*, Case No. 3:25-cv-01170-SB, Dkt. No. 70.

13 The question, then, becomes whether Defendants intended to discriminate against
14 cisgender girls like K.M.K. in adopting their transgender-inclusive athletics policies, or whether
15 such actions were taken in good faith. Plaintiffs argue the word “sex” cannot plausibly be
16 interpreted to refer to anything other than biological sex, and so Defendants should have known
17 its transgender-inclusive policies were unlawful. (Dkt. No. 53 at 25–26) (citations omitted). At
18 the hearing, Plaintiffs argued the statute and its surrounding legal context should have put the
19 District on notice that its policy violates Title IX because it discriminates against girls. But
20 “[t]he plain text of Title IX’s nondiscrimination mandate does not ‘unambiguously’ prohibit
21 trans-inclusive policies like those adopted by [Defendants]; indeed, a substantial body of law
22 suggests that Title IX allows . . . such policies.” *Soule*, 90 F.4th at 93 (Chin, J., dissenting); *see*
23 *also Barr*, 949 F.3d at 1227 (“Nowhere does the statute explicitly state, or even suggest, that
24

1 schools may not allow transgender students to use the facilities that are most consistent with their
2 gender identity.”).

3 Only recently did the Supreme Court appear to endorse the position that “sex” in the Title
4 IX context should be understood to mean biological sex. *See B.P.J.*, 146 S. Ct. at 2371 (“The
5 term ‘sex’ in the 1972 Title IX statute, the 1974 Javits Amendment, and the 1975 Title IX
6 regulations cannot plausibly be interpreted to refer to anything other than biological sex.”).

7 Before then, it was an open question. *E.g., L.B. v. Premera Blue Cross*, 781 F. Supp. 3d 1128,
8 1138–1139 (W.D. Wash. 2025) (explaining that some courts define “sex” for purposes of Title
9 IX as a person’s biological sex and other courts conclude that discrimination on the basis of
10 sexual orientation or transgender status constituted sex-based discrimination) (collecting cases).

11 In any case, the recent guidance from the Supreme Court does not change the fact that a school
12 district can satisfy the mandates of Title IX while simultaneously allowing for more inclusive
13 athletic participation based on gender identity. *E.g., Barr*, 949 F.3d at 1227 (“[J]ust because

14 Title IX authorizes sex-segregated facilities does not mean that they are required, let alone that
15 they must be segregated based only on biological sex and cannot accommodate gender

16 identity.”). Recall that *B.P.J.* answered only the question of whether a school district was
17 *required* to allow transgender girls from participating on girls’ and women’s sports teams. 146
18 S. Ct. at 2372. It did not answer the question currently before the Court, i.e., whether states are
19 *prohibited* under Title IX from allowing transgender girls to participate on girls’ and women’s

20 sports teams. (Dkt. No. 36 at 23.) As observed by Defendants during the hearing, even

21 assuming Plaintiffs’ conception of *B.P.J.* is accurate, *B.P.J.* was decided *after* Plaintiffs initiated
22 their lawsuit—meaning there is no way that Defendants would have been on clear notice of their
23 Title IX violations at the time they were faced with this lawsuit. “[I]t is precisely because of this

1 ‘confusion’ and lack of clarity in the law that Defendants did not have notice that [their policies]
2 violated Title IX—even assuming that it does.” *Soule*, 90 F.4th at 94 (Chin, J., dissenting).

3 Accordingly, the Court concludes Plaintiffs have not met their burden to show that
4 Defendants had clear notice of the conditions and potential for liability undergirding their
5 acceptance of Title IX funding. *Pennhurst*, 451 U.S. at 17; *Roe*, 137 F.4th at 930; *Arlington*, 548
6 U.S. at 300. Therefore, Plaintiffs fail to establish a likelihood of success on the merits on these
7 claims.

8 **C. Irreparable Harm**

9 Though the first *Winter* factor is dispositive, the Court next addresses whether Plaintiffs
10 have established a likelihood of irreparable harm. For purposes of injunctive relief, irreparable
11 harm constitutes “harm for which there is no adequate legal remedy, such as an award of
12 damages.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014). “It is well
13 established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable
14 injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427
15 U.S. 347, 373 (1976)). “Where the constitutional claim is tenuous, however, irreparable harm
16 will not be found likely to occur.” *Cal. Pawnbrokers Ass’n, Inc. v. Carter*, Case No. 2:16-cv-
17 02141-JAM-KJN, 2016 WL 6599819, at *11 (E.D. Cal. Nov. 8, 2016) (citing *Goldies Bookstore,*
18 *Inc. v. Superior Ct. of State of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984)). Further, “[s]peculative
19 injury does not constitute irreparable injury sufficient to warrant granting a preliminary
20 injunction.” *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988).

21 Brown argues she will suffer irreparable harm as long as she cannot ensure that K.M.K.
22 will not wrestle against a transgender opponent, meaning that if injunctive relief is not granted,
23 she will be forced to either “cede her parental decision-making rights or to let K.M.K. be
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1 excluded from wrestling[.]” (Dkt. No. 36 at 34–35.) K.M.K. argues the deprivation of her
2 educational opportunities and athletic participation constitutes irreparable harm, and further, she
3 cannot compete in wrestling and soccer for her remaining two years of high school because
4 Defendants have made participation “unsafe and unfair.” (*Id.* at 35.) The District argues
5 Brown’s alleged harm is speculative, because K.M.K.’s “*voluntary* removal from sports
6 participation is not an irreparable harm subject to protection[.]” (Dkt. No. 40 at 22.) Defendants
7 also argue it is speculative K.M.K. will suffer future harm, because there is no evidence she
8 would be subjected to a greater risk of harm in competing against a transgender athlete than she
9 does when participating in the sport generally. (Dkt. Nos. 40 at 22–23; 43 at 28; 47 at 29.)

10 Based on the limited evidence presented, the Court is unable to conclude Plaintiffs will
11 suffer an irreparable injury that warrants granting a preliminary injunction. First, as the Court
12 has identified, the present record has not established a colorable Fourteenth Amendment or Title
13 IX violation claim, which leads to the absence of an irreparable injury. Second, the Court agrees
14 with Defendants that it is speculative to assume K.M.K. will necessarily suffer a competitive
15 disadvantage or injury when competing against a transgender opponent. (Dkt. Nos. 40 at 22–23;
16 43 at 28); *April in Paris v. Becerra*, 494 F. Supp. 3d 756, 769 (E.D. Cal. 2020) (citing *Baldrige*,
17 844 F.2d at 674) (“A merely speculative injury is insufficient to constitute irreparable injury.”);
18 *Ness v. Law Enf’t Support Agency*, Case No. C10-5111 KLS, 2012 WL 13176243, at *4 (W.D.
19 Wash. Aug. 9, 2012) (“While worrying that something may happen can be difficult, it does not
20 rise to the level of irreparable harm.”). As previously discussed, the evidence from Plaintiffs’
21 experts does not point to the conclusion that a greater risk of harm to cisgender girls inherently
22 exists when transgender girls participate on girls’ teams. For example, though Dr. Carlson
23 assumes allowing biological male athletes into female sports will “inevitably increase the risk of
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1 concussive injury to girls and women” because of the biological advantages of males, he also
2 acknowledges that female athletes “already have higher rates of concussive injury than males”
3 even when competing against other females. (Dkt. No. 36-4 at 51.) Dr. Carlson notes only that
4 “we can predict with some confidence” that if gender-identity based athletic participation
5 increases, more biological female athletes will suffer. (*Id.*) It is not clear what “with some
6 confidence” means, nor whether it rises to the level of “immediate threatened injury” to warrant
7 injunctive relief. *Baldrige*, 844 F.2d at 674. At the hearing, Plaintiffs were unable to articulate
8 how to quantify this increased risk of harm, which in the Court’s view, underscores the lack of
9 conclusive evidence supporting Plaintiffs’ claims that there is a known and obvious risk of injury
10 when cisgender and transgender girls compete against each other. Dr. Millington’s report is in
11 accord. (*See* Dkt. No. 46 at 18) (“In the absence of [specific injury rate] data, claims that
12 transgender women pose a unique danger to other athletes are not supported by evidence
13 (Hamilton et al., 2021).”).

14 It is also important to note that the relief Plaintiffs seek is not narrowly tailored to remedy
15 the alleged harm. Though district courts have broad discretion to fashion a remedy, *see Sharp v.*
16 *Weston*, 233 F.3d 1166, 1173 (9th Cir. 2000), “[i]njunctive relief . . . must be tailored to remedy
17 the specific harm alleged.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009)
18 (citation omitted). “Where injunctive relief is warranted, the order must be narrowly tailored to
19 ‘remedy only the specific harms shown by the plaintiffs, rather than to enjoin all possible
20 breaches of the law.’” *Gallagher Benefit Servs., Inc. v. De La Torre*, 283 Fed. App’x 543, 546
21 (9th Cir. 2008) (quoting *Price v. City of Stockton*, 390 F.3d 1105, 1117 (9th Cir. 2004) (per
22 curiam) (citation omitted)); *see also Kifle v. YouTube LLC*, Case No. 21-cv-01752-CRB, 2021
23 WL 1530942, at *7 (N.D. Cal. Apr. 19, 2021) (citing *Stormans*, 586 F.3d at 1141) (“If YouTube
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1 were engaging in copyright or trademark infringement, the proper remedy would be an order
2 requiring YouTube to take the steps necessary to stop engaging in copyright or trademark
3 infringement. An order that also requires YouTube to restore Kifle’s channel would be
4 impermissibly ‘overbroad.’”). Further, an injunction against state actors “‘must directly address
5 and relate to the constitutional violation itself’ . . . and must not ‘require more of state officials
6 than is necessary to assure their compliance with the [C]onstitution.’” *Melendres v. Arpaio*, 784
7 F.3d 1254, 1265 (9th Cir. 2015) (“*Melendres II*”) (citations omitted). An overly broad injunction
8 is an abuse of discretion. *Stormans*, 586 F.3d at 1140 (citation omitted).

9 To address the harms alleged in their motion for preliminary injunction, Plaintiffs request
10 a broad swath of remedies, including (1) Brown must be given notice and the right to opt K.M.K.
11 out of competing against a biological male, without any penalty and without forfeiting the
12 competition for K.M.K. or her team; (2) Defendants are prohibited from allowing any biological
13 male athletes to compete with or against K.M.K.; (3) the District must approve K.M.K.’s transfer
14 to Puyallup High School and must pay for K.M.K.’s transportation to and from Puyallup High
15 School; (4) the District must facilitate K.M.K.’s participation in girls’ soccer and girls’ wrestling
16 without athletic eligibility penalty such that her varsity eligibility be maintained; and (5) WIAA
17 must grant K.M.K. a hardship waiver or otherwise approve her varsity eligibility. (Dkt. No. 36-1
18 at 4–5.) These requests for relief are disproportionate to Plaintiffs’ alleged harms. For example,
19 it is not clear how transferring schools within the school district would remedy the alleged
20 constitutional and/or Title IX violations, because even if she attends Puyallup High School,
21 K.M.K. would presumably still be competing in district events against Emerald Ridge High
22 School and therefore could potentially compete against the same transgender opponent from the
23 Lady Jag tournament. And as discussed, the Court is unaware how it could grant Brown’s
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1 requested relief in a manner that did not simultaneously violate other students’ privacy rights.
2 Plaintiffs do not meaningfully engage with the practical challenges associated with the relief they
3 seek. (*See* Dkt. No. 36 at 23) (“Notice [provided to Brown that K.M.K. was set to wrestle a
4 transgender opponent] could be discreet and handled with compassion and appropriate
5 confidentiality safeguards.”).

6 Further, to the extent Plaintiffs seek particular relief for the alleged sexual assault (rather
7 than for a continuing harm), this type of relief seems ill-suited for a motion for preliminary
8 injunction, which inherently deals with ongoing and irreparable harm in the absence of relief.
9 *Winter*, 555 U.S. at 20; *Great N. Res., Inc. v. Coba*, Case No. 3:20-cv-01866-IM, 2020 WL
10 6820793, at *2 (D. Or. Nov. 20, 2020) (quoting *O’Shea*, 414 U.S. at 495–496) (“A preliminary
11 injunction stops ongoing harm to a plaintiff or prevents it from occurring. ‘Past exposure to
12 illegal conduct does not in itself show a present case or controversy regarding injunctive relief, [
13] if unaccompanied by any continuing, present adverse effects.’”).

14 Perhaps anticipating the argument that the relief they request is attenuated from the
15 alleged harms they will suffer, Plaintiffs argue they are requesting a prohibitory injunction in
16 order to “restore the status quo[,]” which Plaintiffs describe as “an educational environment free
17 of sex discrimination that honors parental decision-making.” (Dkt. No. 53 at 28.)

18 “A prohibitory injunction prohibits a party from taking action and ‘preserve[s] the status
19 quo pending a determination of the action on the merits.’” *Marlyn Nutraceuticals, Inc. v. Mucos*
20 *Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th Cir. 2009) (citation omitted). By contrast, “[a]
21 mandatory injunction ‘orders a responsible party to take action.’” *Id.* (citation omitted). “The
22 relevant status quo is that ‘between the parties pending a resolution of a case on the merits.’”
23 *Ariz. Dream Act Coal.*, 757 F.3d at 1061 (citation omitted). In other words, the “status quo”
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1 “refers to the legally relevant relationship *between the parties* before the controversy arose.” *Id.*
2 The distinction is important because generally speaking, “mandatory injunctions ‘are not granted
3 unless extreme or very serious damage will result and are not issued in doubtful cases or where
4 the injury complained of is capable of compensation in damages.’” *Marlyn*, 571 F.3d at 879
5 (citation omitted).

6 This is one such doubtful case. Plaintiffs seek affirmative relief, i.e., an order from this
7 Court that Defendants must take specific actions to remedy the imminent and ongoing harms
8 alleged by Plaintiffs. (*See* Dkt. No. 36-1 at 4–5.) Plaintiffs challenge Defendants’
9 administration of *existing* policy; they are not challenging the enactment of a *new* policy or law
10 and seeking to stave off enforcement until the case is litigated. *Cf. Ariz. Dream Act Coal.*, 757
11 F.3d at 1061 (“Plaintiffs do not challenge any particular refusal to grant driver’s licenses to them
12 as individuals. Instead, Plaintiffs challenge the Arizona Department of Transportation’s driver’s
13 license eligibility standards, in general.”). The relevant status quo, then, goes back to before the
14 Lady Jag wrestling tournament in December 2025, and necessarily includes Defendants’
15 implementation of transgender-inclusive athletics policies, which have been in effect for some
16 time. The status quo is not, as Plaintiffs vaguely suggest, “an educational environment free of
17 sex discrimination that honors parental decision-making.” (Dkt. No. 53 at 28.) Because
18 Plaintiffs request a mandatory injunction, and because they have not established a likelihood of
19 success on the merits of their Fourteenth Amendment and Title IX claims, the Court finds no
20 basis to grant Plaintiffs’ requested relief.¹¹ *See Sakr v. City of Portland*, Case No. 3:24-cv-

21
22 ¹¹ After considering all the information presented, even if it could be concluded that Plaintiffs
23 have raised serious questions going to the merits of their claims, the Court would be unable to
24 find the balance of hardships tips sharply enough in Plaintiffs’ favor to support preliminary
injunctive relief because the record does not establish irreparable harm would likely occur if

01265-AN, 2025 WL 1554431, at *2 (D. Or. June 2, 2025) (quoting *Anderson v. United States*, 612 F.2d 1112, 1114 (9th Cir. 1979)) (“When a mandatory preliminary injunction is requested, the district court should deny such relief ‘unless the facts and law clearly favor the moving party.’”).

D. Public Interest and Balance of the Equities

The final two *Winter* factors require the Court to “‘balance the competing claims of injury and [] consider the effect on each party of the granting or withholding of the requested relief.’” 555 U.S. at 24 (citation omitted). These factors “merge when the Government is the opposing party.” *Nken*, 556 U.S. at 435. “Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.” *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005); *Melendres*, 695 F.3d at 1002) (citation omitted) (“[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.”).

Plaintiffs argue that Defendants lack an interest in interfering with Brown’s fundamental parental rights and that the public has a strong interest in ensuring athletic opportunities are safe and fair for girls. (Dkt. No. 36 at 36.) The District agrees there is a strong public interest in addressing Title IX complaints but argues it has satisfied that interest by providing K.M.K. with appropriate interim supportive measures while the Title IX investigation proceeds. (Dkt. Nos. 40 at 24–25; 41.) Defendants also posit there is a strong public interest in not violating the law.

(Dkt. Nos. 40 at 25–26 (explaining that Plaintiffs’ requested relief would require District employees to violate Washington antidiscrimination law, which prohibits discrimination on the

relief were not granted. *See Cottrell*, 632 F.3d at 1131–1132 (under “sliding scale” approach, the movant need only raise “serious questions going to the merits,” but the balance of hardships must tip “sharply” in the movant’s favor).

1 basis of sex and gender); 43 at 30 (explaining that Plaintiffs' requested relief would require
2 Defendants to violate FERPA).)

3 The Court appreciates the sensitive nature of the issues in this case, and the strong
4 emotional reaction these issues trigger on all sides. It also acknowledges the legitimacy of all
5 Parties' interests at stake. However, because Plaintiffs have not shown a likelihood of success
6 on the merits of their claims, these final *Winter* factors are not dispositive.

7 IV CONCLUSION

8 Having considered Plaintiffs' motion for preliminary injunction (Dkt. No. 36),
9 Defendants' responses (Dkt. Nos. 40, 43, 47), Plaintiffs' reply (Dkt. No. 53), and the remainder
10 of the record, Plaintiffs' motion is DENIED.

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12 Dated this 23rd day of August 2026.

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David G. Estudillo
United States District Judge