

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

STEPHANIE LYNNE BROWN, as mother, guardian,
and next friend of minor K.M.K.; in her own capacity,
Plaintiff-Appellant,

v.

WASHINGTON INTERSCHOLASTIC ACTIVITIES ASSOCIATION, ET AL.,
Defendants-Appellees.

On Appeal from the U.S. District Court
for the Western District of Washington
Case No. 3:26-cv-05616-DGE

**APPELLANTS STEPHANIE LYNNE BROWN AND K.M.K.'S
EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL
UNDER CIRCUIT RULE 27-3
RELIEF REQUESTED BY SEPTEMBER 25, 2026**

JAMES A. CAMPBELL
JULIE MARIE BLAKE
ALLIANCE DEFENDING FREEDOM
44180 Riverside Pkwy
Lansdowne, VA 20176
(571) 707-4655
jcampbell@ADFlegal.org

JACOB P. WARNER
KATHERINE L. ANDERSON
ALLIANCE DEFENDING FREEDOM
15100 N. 90th Street
Scottsdale, AZ 85260
(480) 444-0020
jwarner@ADFlegal.org

JOHN J. BURSCH
ZACHARY E. TYREE
ALLIANCE DEFENDING FREEDOM
440 First Street NW, Suite 600
Washington, DC 20001
(616) 450-4235
jbursch@ADFlegal.org
ztyree@ADFlegal.org

NATALIE D. THOMPSON
ALLIANCE DEFENDING FREEDOM
7250 Dallas Parkway, Suite 700
Plano, TX 75024
(469) 894-8700
nthompson@ADFlegal.org

ABIGAIL ST. HILAIRE
ELLIS, LI & MCKINSTRY PLLC
1700 Seventh Avenue, Suite 1810
Seattle, WA 98101
(206) 682-0565
asthilaire@elmlaw.com

Counsel for Appellants Stephanie Lynne Brown and K.M.K.

TABLE OF CONTENTS

Table of Authorities.....	iii
Introduction.....	1
Background.....	2
Argument.....	5
I. This Court should grant Brown an injunction pending appeal to protect her parental rights.....	5
A. Brown is likely to succeed on the merits.	5
1. Brown has a fundamental right to decide whether her daughter wrestles a male.	6
2. The District’s refusal fails strict scrutiny.	7
B. The remaining injunction factors favor Brown.	10
II. This Court should grant K.M.K. an injunction pending appeal on her Title IX claim.	10
A. K.M.K. is likely to succeed on the merits.	10
1. Title IX unambiguously forbids treating females worse than males.	10
2. Defendants violated the prohibition on sex discrimination.	12
a. The policy discriminates on the basis of sex in violation of Title IX.	12
b. Defendants intended to treat girls worse than boys.	18
c. Defendants were deliberately indifferent.....	22
3. The Spending Clause is no barrier to relief.	24

B. K.M.K. will suffer irreparable harm absent an injunction.....	25
C. The equities and public interest favor K.M.K.	26
Conclusion	26
Certificate of Compliance.....	28
Certificate of Service	29

TABLE OF AUTHORITIES

Cases

<i>A.J.T. ex rel. A.T. v. Osseo Area Schs.</i> , 605 U.S. 335 (2025)	22
<i>Arana v. Bd. of Regents of Univ. of Wis. Sys.</i> , 182 F.4th 670 (7th Cir. 2026)	13
<i>Avenue 6E Invs., LLC v. City of Yuma</i> , 818 F.3d 493 (9th Cir. 2016)	19, 21
<i>B.P.J. v. W. Va. State Bd. of Educ.</i> , 98 F.4th 542, 554 (4th Cir. 2024), <i>rev'd on other grounds</i> , <i>B.P.J.</i> , 146 S. Ct. 2356 (2026)	24
<i>CSX Transp., Inc. v. Ala. Dep't of Revenue</i> , 562 U.S. 277 (2011)	10
<i>Davis v. Monroe Cnty. Bd of Educ.</i> , 526 U.S. 629 (1999)	24
<i>Disney Enters., Inc. v. VidAngel, Inc.</i> , 869 F.3d 848 (9th Cir. 2017)	10
<i>Doe v. Bonta</i> , 101 F.4th 633 (9th Cir. 2024)	7, 8
<i>Female Athletes United v. Ellison</i> , 172 F.4th 1019 (2026)	18
<i>Franklin v. Gwinnett Cnty. Pub. Schs.</i> , 503 U.S. 60 (1992)	25
<i>Fulton v. City of Philadelphia</i> , 593 U.S. 522 (2021)	9
<i>Gebser v. Lago Vista Independent School District</i> , 524 U.S. 274 (1998)	17, 26

<i>Gonzaga Univ. v. Doe</i> , 536 U.S. 273 (2002)	7
<i>Horner v. Ky. High Sch. Athletic Ass’n</i> , 43 F.3d 265 (6th Cir. 1996)	24
<i>Jackson v. Birmingham Bd. of Educ.</i> , 544 U.S. 167 (2005)	10, 18
<i>Karasek v. Regents of Univ. of Cal.</i> , 956 F.3d 1093 (9th Cir. 2020)	22, 23
<i>Mahmoud v. Taylor</i> , 606 U.S. 522 (2025)	5, 7, 8
<i>McCormick ex rel. McCormick v. Sch. Dist. of Mamaroneck</i> , 370 F.3d 275 (2d Cir. 2004)	25
<i>Mid Vt. Christian Sch. v. Saunders</i> , 151 F.4th 86 (2d Cir. 2025)	25, 26
<i>Mirabelli v. Bonta</i> , 607 U.S. 492 (2026)	passim
<i>Parents for Privacy v. Barr</i> , 949 F.3d 1210 (9th Cir. 2020)	9
<i>Parham v. J.R.</i> , 442 U.S. 584 (1979)	6
<i>Personnel Administrator of Massachusetts v. Feeney</i> , 442 U.S. 256 (1979)	19, 20, 21
<i>Pierce v. Society of Sisters of the Holy Names of Jesus and Mary</i> , 268 U.S. 510 (1925)	6
<i>Ricci v. DeStefano</i> , 557 U.S. 557 (2009)	18
<i>Rivers v. Roadway Exp., Inc.</i> , 511 U.S. 298 (1994)	24

<i>Roberts v. Colo. State Bd. of Agric.</i> , 998 F.2d 824 (10th Cir. 1993)	25
<i>Simpson v. Univ. of Colo. Boulder</i> , 500 F.3d 1170 (10th Cir. 2007)	23
<i>Small v. Avanti Health Sys., LLC</i> , 661 F.3d 1180 (9th Cir. 2011)	26
<i>Soule v. Conn. Ass’n of Schs.</i> , 755 F. Supp. 3d 172 (D. Conn. 2024)	20, 21
<i>Steiger v. U.S. R.R. Ret. Bd.</i> , 761 F.2d 1428 (9th Cir. 1985)	19
<i>Troxel v. Granville</i> , 530 U.S. 57 (2000)	5, 6
<i>Trump v. Cook</i> , 146 S. Ct. 2234 (2026)	15
<i>United States v. California</i> , 173 F.4th 1060 (9th Cir. 2026)	5
<i>United States v. Skrmetti</i> , 605 U.S. 495 (2025)	18
<i>United States v. Virginia</i> , 518 U.S. 515 (2026)	16
<i>Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.</i> , 429 U.S. 252 (1977)	18, 19, 20, 21
<i>Washington v. Glucksberg</i> , 521 U.S. 702 (1997)	5, 7
<i>West Virginia v. B.P.J.</i> , 146 S. Ct. 2356 (2026)	passim
<i>Williams v. Bd. of Regents of Univ. Sys. of Ga.</i> , 477 F.3d 1282 (11th Cir. 2007)	24

Statutes

20 U.S.C. § 1232g(b)(1).....	7, 8
20 U.S.C. § 1232g(b)(2)(B).....	7
20 U.S.C. § 1681(a).....	10
RCW 28A.600.200.....	23
RCW 28A.640.010.....	20
RCW 28A.640.020.....	21
WAC 392-190-025(2)	21

Other Authorities

<i>A Policy Interpretation: Title IX and Intercollegiate Athletics</i> , 44 Fed. Reg. 71,413, 71,418 (Dec. 11, 1979)	14
Education Amendments of 1974, Pub. L. No. 93-380, § 844, 88 Stat. 484 (1974)	11

Regulations

34 C.F.R. § 106.41(a)	11, 14
34 C.F.R. § 106.41(b)	11, 14
34 C.F.R. § 106.41(c).....	11, 12, 14, 17
34 C.F.R. § 106.41(c)(1)	17

INTRODUCTION

Plaintiff K.M.K., a female high-school wrestler, was sexually assaulted during a match last season. Only later did she learn her assailant was male. Defendants-Appellees the Washington Interscholastic Activities Association, the Office of the Superintendent of Public Instruction (OSPI), and the Puyallup School District insist that is all fine. They demand that K.M.K. continue competing against males and refuse to allow K.M.K.'s mother, Stephanie Brown, to opt K.M.K. out of such matches.

That policy violates Brown's constitutional right to make important decisions regarding K.M.K.'s health and safety. Under a long line of Supreme Court decisions, Brown is entitled to notice that K.M.K. is set to face a male and to opt K.M.K. out of those matches. *Mirabelli v. Bonta*, 607 U.S. 492, 497 (2026) (per curiam) (citing cases).

Additionally, Defendants' gender-identity-participation policy intentionally discriminates based on sex, violating Title IX. Under the policy, K.M.K. must compete against males who have inherent advantages, while males get to compete against physiological counterparts on fair footing. That treats girls worse than boys.

This Court should grant an injunction pending appeal to preserve Brown's constitutional rights and ensure K.M.K. does not miss another season of high-school sports because of Defendants' unlawful policies.

BACKGROUND

Washington added girls' wrestling as an official high school sport in 2007. 4-ER-590. The reason was plain: "We need to have girls wrestling girls and guys wrestling guys." 4-ER-591.

WIAA still regulates the sport based on sex. It sets separate weight classes for girls and boys. 4-ER-555. And any team of both boys and girls counts as a boys' team that may compete only against other boys' teams. 4-ER-551-52.

Onto that structure, WIAA layered Rule 18.16.0, which lets students compete consistent with gender identity. 4-ER-529. Eligibility lasts through graduation. 4-ER-529.

The Puyallup School District applies that rule, as OSPI requires. The District also tells parents that wrestling is dangerous. 4-ER-566, 581-83. So no student may "participate" without a registration bearing a "[p]arent permission and acknowledgment of risk signature." 4-ER-578. And that permission/release does *not* require parents to accept that "girls' wrestling" requires wrestling a male. 4-ER-565. Yet here we are.

Last season, K.M.K. ranked first in her weight class on the junior-varsity girls' wrestling team at Rogers High School. 4-ER-593. Her mother, Stephanie Brown, signed the District's permission form; she did not consent to K.M.K. wrestling males. 4-ER-647.

At the season's first tournament, K.M.K. wrestled for third place. 4-ER-594. Her opponent was male. No one told her or her mother. 4-ER-594.

K.M.K. immediately noticed her opponent was "stronger and more powerful." 4-ER-594. Midway through the match, the male reached between her legs and pushed his fingers through her clothes, penetrating her vagina for several seconds. 4-ER-594-95. Video shows her reaction. 4-ER-595. She tried to push the male off but could not. 4-ER-595. She then tried to lose. A minute later, the male groped her again, and she let herself be pinned to escape. 4-ER-595. The District's investigator determined the male "likely touched" K.M.K.'s vagina "with force in the first instance, such that it caused her discomfort." D.Ct.Dkt #53-2 at 8.

Brown emailed the school the next school day. 4-ER-598. The principal understood her complaint to be a male wrestler who "placed fingers in her daughter's private parts." D.Ct.Dkt #53-4 at 2-3. Asked whether he took that to mean penetration, he answered: "I did. But that's wrestling." *Id.* at 7. K.M.K. left the team for the rest of the season. 4-ER-599.

Three months later, Brown asked the District in writing for two things that matter here. First, notice before a male competes on her team or an opposing team in her weight class. 4-ER-571. Second, an assurance that K.M.K. "will not have to compete against any biological males ... without penalty." 4-ER-571. The District's Title IX Coordinator

refused the first on privacy grounds. 4-ER-569. On the second, he said the only possible remedy was for K.M.K. to “forfeit any such matches without any adverse consequences imposed by the district.” 4-ER-568.

So the District agreed K.M.K. may sit out these matches. But it wouldn’t tell Brown beforehand, and it wouldn’t withdraw K.M.K. itself.

Brown and K.M.K. sued. 4-ER-584-657. Brown claimed the District violated her right to direct K.M.K.’s upbringing by refusing either to withdraw her daughter from male matchups or tell her about upcoming ones. K.M.K. claimed that letting males compete on girls’ teams violates Title IX. They moved for a preliminary injunction.

The district court denied it. 1-ER-003-64. On parental rights, it called Brown’s claim a demand “to direct” school policy and “to obtain private, sensitive information about other students,” held that no such right exists, and never reached whether the District’s refusal satisfies strict scrutiny. 1-ER-005, 27-32. On Title IX, the court held that K.M.K. alleged only disparate impact, 1-ER-032-34, showed no deliberate indifference, 1-ER-041-46-52, and Defendants lacked clear notice under the Spending Clause. 1-ER-052-57.

Brown and K.M.K. appealed. The district court denied their motion for an injunction pending appeal. They need urgent relief. Wrestling season opens this fall. 4-ER-549.

ARGUMENT

To obtain an injunction pending appeal, the movant must show a likelihood of success, irreparable harm, and a favorable balance of the equities and the public interest. *United States v. California*, 173 F.4th 1060, 1066 (9th Cir. 2026). Plaintiffs satisfy each factor.

I. This Court should grant Brown an injunction pending appeal to protect her parental rights.

Brown seeks a prohibitory injunction. She asks the District to withdraw her daughter from matches against males or tell her when such a match is set so she may withdraw K.M.K. herself. This relief is materially indistinct from that ordered in *Mahmoud v. Taylor*, which directed a school to notify parents before certain books were “to be used in any way” and to excuse their child from the instruction. 606 U.S. 522, 569 (2025). The District told Brown that K.M.K. may sit out matches; then Defendants refused every way of realizing that.

A. Brown is likely to succeed on the merits.

Parents have a fundamental right to direct “the care, custody, and control of their children.” *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality). That right applies “at school” and “during school hours.” *Mirabelli*, 607 U.S. at 497. A State may not infringe it unless its policy is “narrowly tailored to serve a compelling state interest.” *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997).

The District says K.M.K. can “forfeit” matches against a male without “adverse consequences.” 4-ER-568. But it won’t schedule around such a match, tell Brown one is coming, or withdraw K.M.K. on its own. 4-ER-568-69. The District says Brown may keep her daughter from wrestling males while refusing her a way to do it. That is unlawful.

1. Brown has a fundamental right to decide whether her daughter wrestles a male.

Parents have the right to direct their children’s upbringing and education, *Pierce v. Soc’y of Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 534-35 (1925), including the physical risks they face at school, *Parham v. J.R.*, 442 U.S. 584, 603 (1979); *Mirabelli*, 607 U.S. at 497. Fit to parent, Brown can decide whether her daughter wrestles males. That call demands respect without further justification. See *Troxel*, 530 U.S. at 70.

The District accepts as much. It treats wrestling as dangerous—classifying the sport among the “contact sports...in which the major activity involves bodily contact.” 4-ER-566. It warns parents about dangers wrestlers face—concussion, 4-ER-581-82, cardiac arrest, 4-ER-583, and more. The District won’t allow students to wrestle without “parent permission.” 4-ER-578. But that permission does not require parents to accept that “girls’ wrestling” requires wrestling a male. 4-ER-565. And Brown does not consent to that. 4-ER-647.

The District may not condition public benefits on the surrender of constitutional rights. *Mahmoud*, 606 U.S. at 561. Brown seeks no student’s name or records—only notice and opt-out. The district court denied that right because of its concern about student privacy. 1-ER-061. But the District can honor Brown’s choice without disclosing protected information. And any such concern does not negate a constitutional right.

2. The District’s refusal fails strict scrutiny.

The District must show its refusal is “narrowly tailored to serve a compelling state interest.” *Glucksberg*, 521 U.S. at 721. It can’t.

Start with the interests. The District says its refusal ensures privacy, safety, and nondiscrimination. Privacy falls short. Brown does not ask for a name, record, roster, or status—only that her daughter not wrestle a male. The District can accomplish that and disclose no protected information to anyone. And even if a student’s sex became apparent, such “innocuous biographical data” implicates no privacy right. *Doe v. Bonta*, 101 F.4th 633, 637 (9th Cir. 2024).

The District invokes FERPA. But that statute conditions federal funds rather than prohibiting disclosure, 20 U.S.C. § 1232g(b)(1). It creates no privately enforceable right. *Gonzaga Univ. v. Doe*, 536 U.S. 273, 287 (2002). And it authorizes release “in compliance with judicial order.” 20 U.S.C. § 1232g(b)(2)(B).

The safety point likewise adds nothing. It's downstream from the alleged privacy interest and isn't compelling for the same reasons.

Nor is the nondiscrimination interest. Brown's parental-rights claim does not ask Defendants to discriminate based on gender identity. Brown asks only that her daughter be withdrawn from a match. No student is excluded, benched, or denied a place, and the opponent assigned to wrestle K.M.K. takes the win.

Next is tailoring. Brown is entitled to notice and opt-out without the penalty of exiting sports entirely. *Mahmoud*, 606 U.S. at 569; *Mirabelli*, 607 U.S. at 497. The District says disclosing an opponent's sex risks revealing private information. But such notice reveals no constitutionally protected information. *Bonta*, 101 F.4th at 637. And the District can say a match falls outside Brown's consent without naming an opponent, noting a status, or giving a reason. That releases no student education record or its contents. 20 U.S.C. § 1232g(b)(1).

The District could also simply not send K.M.K. to wrestle males. That tracks the accommodation the District offers (in theory). Its Title IX Coordinator wrote that K.M.K. may forfeit matches against a male "without any adverse consequences." 4-ER-568. So the District accepts that K.M.K. may sit out matches, that doing so is workable, and that it will impose no penalty. Yet it withholds implementation.

Nothing stops the District. Entry is by form and precedes the match. 4-ER-555. Schools hold wrestlers out for illness, injury, grades, attendance, and discipline. 4-ER-575, 578, 580. And WIAA does not penalize withdrawal for “injury, illness, religious observance or unforeseen events.” 4-ER-531. Three things follow: (1) holding a student out because a parent has withdrawn consent requires no new machinery or information; (2) an interest in continued play cannot be compelling when it yields to four exceptions, *Fulton v. City of Philadelphia*, 593 U.S. 522, 542 (2021), and (3) the religious-observance exemption shows that WIAA already excuses withdrawal based on conviction alone. Brown’s parental right deserves equal respect.

Nor is this directing “school policy.” 1-ER-031. Parents may not direct curriculum, school hours, examinations, hiring, “the extracurricular activities offered at the school,” or dress codes. *Parents for Privacy v. Barr*, 949 F.3d 1210, 1231 (9th Cir. 2020). Whether a single wrestler is entered in a single match is none of those.

The District’s asserted interests cannot justify this refusal. If notice is the problem, the District can withdraw K.M.K. and disclose nothing. If withdrawal is the problem, it can tell Brown and let her decide. What it cannot do is refuse both and call that narrow tailoring.

In short, the District offered Brown an “accommodation” but denied a way to implement it. Brown is likely to succeed on her parental-rights claim.

B. The remaining injunction factors favor Brown.

Because Brown has shown likely success on the merits, this Court “need not consider the other factors.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017). Regardless, the denial of parental rights is “irreparable harm,” and “children’s safety” is paramount. *Mirabelli*, 607 U.S. at 497. Wrestling season opens this fall. And an injunction requires the District only to honor a decision it already agreed is Brown’s to make. *Supra*, § I.A.

II. This Court should grant K.M.K. an injunction pending appeal on her Title IX claim.

K.M.K. is also entitled to relief pending appeal.

A. K.M.K. is likely to succeed on the merits.

1. Title IX unambiguously forbids treating females worse than males.

Title IX forbids “discrimination” or “den[ial]” of “benefits” by federal-funding recipients “on the basis of sex.” 20 U.S.C. § 1681(a). “Sex” in Title IX and its implementing regulations means “biological sex.” *West Virginia v. B.P.J.*, 146 S. Ct. 2356, 2371 (2026).

“Discrimination” means treating similarly situated groups differently without a reasonable basis. *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 174 (2005) (“being subjected to differential treatment”); *CSX Transp., Inc. v. Ala. Dep’t of Revenue*, 562 U.S. 277, 286-87 (2011) (collecting sources).

Title IX's athletics regulations confirm this. Although the statute initially did not address sports explicitly, the Javits Amendment clarifies that Title IX governs sports, authorizing "*reasonable provisions*." *B.P.J.*, 146 S. Ct. at 2370 (quoting § 844, 88 Stat. 612). And what is reasonable "must and does" account for the "reality" that allowing males in girls' sports "*necessarily* displaces or disadvantages" female athletes. *Id.* at 2372. Consistent with this reality and the statutory text, the regulations generally prohibit funding recipients from providing "athletics separately" based on sex. 34 C.F.R. § 106.41(a). But, "[n]otwithstanding" that generic prohibition, schools may establish "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." *Id.* § 106.41(b). The overarching principle remains "equal athletic opportunity," including effective accommodation, "for members of both sexes." *Id.* § 106.41(c).

Sex-separated sports are the typical mechanism for *providing* equal athletic opportunity "because of the biological differences between the sexes." *B.P.J.*, 146 S. Ct. at 2371. Those "inherent physical differences," which the regulations "plainly recognized," justify sex-separated teams to "reduce the risk of physical injury and ensure fair competition." *Id.* at 2371-72. "Without a gender-based classification in competitive contact sports, there would be a substantial risk that boys would dominate the girls' programs and deny them an equal opportunity to

compete.” *Id.* at 2371. But other differential treatment of boys and girls—like distinctions that detract from “equal athletic opportunity,” 34 C.F.R. § 106.41(c)—violates the statute.

The upshot: Title IX allows separation of males and females based on basic biological distinctions but forbids unequal treatment.

2. Defendants violated the prohibition on sex discrimination.

a. The policy discriminates on the basis of sex in violation of Title IX.

Defendants long maintained sex-separated sports teams to ensure equal opportunity for girls. 4-ER-621. The current policy nominally maintains sex-separated sports but authorizes some males—those who identify as girls—to play on girls’ teams, undermining the sex-separated system. 4-ER-529, 551-52.

The policy treats girls (and girls’ sports) worse than boys (and boys’ sports). Boys have “inherent physical advantages” over girls in sports: “height, weight, strength, speed, endurance, jumping ability, and the like.” *B.P.J.*, 146 S. Ct. at 2374; 3-ER-186-187, 202-22, 224-34; 4-ER-196-97, 453-62. The policy means boys can make—and dominate—girls’ teams, like wrestling. *B.P.J.*, 146 S. Ct. at 2372; 3-ER-234-47; 2-ER-75. So boys continue to enjoy the same fair, effectively single-sex teams as before; girls have little chance to make a boys’ team and no inherent advantage if they do. Girls have no forum of their own.

That makes girls' high-school sports in Washington unfair and unsafe. As the Supreme Court explained and the record shows, letting boys play on girls' teams puts "female athletes at a serious disadvantage." *B.P.J.*, 146 S. Ct. at 2372; 3-ER-373-75; 2-ER-161-65.

"[B]ecause sports are generally zero sum," authorizing a boy to join a girls' team "*necessarily* displaces or disadvantages a female athlete." *B.P.J.*, 146 S. Ct. at 2372; 3-ER-186-87, 234-47. It also poses "particularly severe" "safety risks" for girls in "contact sports," like wrestling. *B.P.J.*, 146 S. Ct. at 2372; 4-ER-427-31, 464-78, 497-500. "Even if only one or a few males were to play on a... girls' team," that would harm "specific individual female athletes" and might deter others from playing. *B.P.J.*, 146 S. Ct. at 2375; 2-ER-78.

The policy has tilted the playing field against girls' sports—and only girls' sports. Boys have effectively all-male teams, giving boys a level field on which to compete with others who have no inherent advantages. And now some boys can play on girls' teams based on gender identity. Girls are left with only effectively mixed-sex teams, where they must compete against boys with inherent biological advantages. That is sex discrimination. See *Arana v. Bd. of Regents of Univ. of Wis. Sys.*, 182 F.4th 670, 687 (7th Cir. 2026) (Brennan, J., concurring) ("Title IX unambiguously forbids biological males from competing in women's sports.").

It also violates the Javits Amendment and the regulations' plain language. Defendants generally provide "athletics separately" based on sex, *contra* 34 C.F.R. § 106.41(a). But after the policy, Defendants do not provide "separate teams for... each sex." *Id.* § 106.41(b). Instead, the policy maintains effectively male-only teams *and* authorizes males to compete on girls' teams when doing so accords with gender identity. 4-ER-529, 551-52. That exception defeats the only valid basis for sex-separated teams—boys' inherent advantages over girls. 34 C.F.R. § 106.41(b). And it leaves girls with *no* fair opportunities and thus does not provide "equal athletic opportunity." *Id.* § 106.41(c); *see A Policy Interpretation: Title IX and Intercollegiate Athletics*, 44 Fed. Reg. 71,413, 71,418 (Dec. 11, 1979). That, too, is a Title IX violation.

K.M.K., an experienced and gifted wrestler, suffered such discrimination. 4-ER-614. Last season, she was first in her weight class on her school's junior-varsity girls' wrestling team. 4-ER-593. During the season's first tournament, she was matched against a male without being told. 4-ER-594. She noticed her "opponent was stronger and more powerful" than her. 4-ER-594. Midway through the match, the opponent sexually assaulted K.M.K., pushing through three layers of clothing to penetrate her vagina for several seconds. 4-ER-594-95. Horrified and in pain, K.M.K. tried to give up and, after the opponent groped her again, allowed herself to be pinned—losing the match, the third-place prize, and the qualifying status. 4-ER-595-96. The trauma from the assault,

fear for her safety, and school officials' failure to address the issue led K.M.K. to withdraw from the team that season. 4-ER-597-99. That violates Title IX.

The district court's mistakes. The district court said *B.P.J.* reserved this question. 1-ER-039-41. But that doesn't mean ignoring what *B.P.J.* did say: Title IX addresses "biological sex," Title IX requires "equal opportunity" for boys and girls, and boys have "inherent physical advantages" over girls based on biology that "*necessarily*" place girls at a safety risk and a competitive disadvantage. 146 S. Ct. at 2367, 2371-72, 2374. K.M.K.'s harms confirm this.

The district court said there was a fact question whether boys participating in girls' sports "increases the risk of physical injury [or] competitive disadvantage to girls." 1-ER-042. But *B.P.J.* was clear: "[S]afety risks" from "allowing biological males to play on women's and girls' sports teams" are "particularly severe in contact sports" like wrestling. 146 S. Ct. at 2372. And letting boys play "*necessarily* displaces or disadvantages a female athlete." *Id.* Otherwise, the regulation's allowance for sex-separated teams would *not* be reasonable. *But see id.* (holding regulation *is* reasonable for these reasons).

The district court discounted that reasoning because "*B.P.J.* does not identify what evidence supported these statements." 1-ER-040 n.10. But a district court is not free to reject the Supreme Court's reasoning. *Trump v. Cook*, 146 S. Ct. 2234, 2253 (2026). And the Supreme Court

determined as a matter of law, consistent with longstanding precedent and common sense, that males’ “inherent physical advantages”—which “*necessarily*” create “severe” “safety risks” and competitive disadvantages for girls—are a “reality” that transcends any record. *B.P.J.*, 146 S. Ct. at 2372, 2374 (citing *United States v. Virginia*, 518 U.S. 515, 533 (2026)).

Besides, the record here is stronger than in *B.P.J.* because the experts surveyed more detailed and intervening evidence. *E.g.*, 3-ER-188-89; 4-ER-428-31. The district court’s nitpicking and discounting of the evidence was misguided. For example, the court talked about the effects of puberty blockers, 1-ER-042-43, but Defendants’ policy does not require males to use puberty blockers, nor is there any evidence that K.M.K.’s male opponent did. The court also noted that women have a higher injury rate than men even without males competing on women’s teams, 1-ER-042, 058-59, as if (contrary to the expert’s clear conclusion) competing against men wouldn’t significantly increase that rate, 4-ER-435-46. And the court discounted one study because it was about rugby, 1-ER-042—as though wrestling were not a high-contact sport like rugby—and ignored other studies about contact sports more generally, 4-ER-429-30, 499-500.

Most surprising, the district court said K.M.K.’s experts did not conclude that male opponents would “*necessarily* put [K.M.K.] at an increased risk of harm.” 1-ER-043, 058-59; *contra B.P.J.*, 146 S. Ct. at

2372 (it “*necessarily* displaces or disadvantages a female athlete”).

Wrong. Boys’ participation in girls’ sports “must be expected to create predictable, identifiable, increased, and unequal risks of injuries to the participating women.” 4-ER-498; *see* 4-ER-473, 477. And the court’s appeal to deference, 1-ER-041, disregards Title IX’s judgment and the “reality of sports,” *B.P.J.*, 146 S. Ct. at 2372.

The district court confusingly rejected K.M.K.’s argument on the regulations. The court acknowledged that an effective-accommodation claim under 34 C.F.R. § 106.41(c)(1) “concern[s] the *opportunity* to participate in athletics.” 1-ER-038. That’s K.M.K.’s argument. 4-ER-615, 621-23, 640-41, 644. Yet the court treated it as an argument about resource sufficiency. 1-ER-044. The district court also said violating the regulations does not violate the statute, citing *Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1998). 1-ER-038. But *Gebser* did not establish a categorical rule, and it addressed a regulation that required establishing a grievance procedure. A violation of the equal-opportunity requirement is a Title IX violation. *B.P.J.*, 146 S. Ct. at 2370-72.

At bottom, the district court concluded that K.M.K.’s rights were not violated because she was on the team and the District “provided separate wrestling teams for boys and girls—albeit subject to the [gender-identity] policy.” 1-ER-038-39. But a team with males *and* females is not what Title IX means by sex-separated teams. And K.M.K.’s ability

to participate isn't enough. She wants what Title IX guarantees—a fair shot “to start, to win the game, to win a championship, to hang a banner, to bring home a medal, to be all-tournament, all-county, all-State, or all-American.” *B.P.J.*, 146 S. Ct. at 2381. The policy denies her that.

b. Defendants intended to treat girls worse than boys.

Title IX's private right of action extends to “intentional sex discrimination.” *Jackson*, 544 U.S. at 173. Disparate treatment occurs when a defendant “treats persons less favorably ‘because’ of their sex”—*i.e.*, “intended to treat women differently.” *Female Athletes United v. Ellison*, 172 F.4th 1019, 1028 (2026) (“*FAU*”); *see Ricci v. DeStefano*, 557 U.S. 557, 577 (2009). Defendants “need not have intended to violate Title IX or acted out of animus.” *FAU*, 172 F.4th at 1028.

A policy intentionally discriminates on the basis of sex if (1) the classification is not neutral—*i.e.*, it is covertly or overtly based on sex—or (2) if the adverse effects permit an inference of intent based on all circumstances. *United States v. Skrametti*, 605 U.S. 495, 516 (2025) (citing *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977)). K.M.K. satisfies both routes.

1. The policy is not neutral because it denies girls benefits and subjects them to discrimination based on sex under Title IX. Context and common sense reveal that the policy “cannot be explained on a neutral ground.” *Steiger v. U.S. R.R. Ret. Bd.*, 761 F.2d 1428, 1431 (9th Cir.

1985). Before and after WIAA adopted the policy, it maintained sex-separated teams to provide equal opportunity for girls. But now—because of the policy—girls’ sports are open to biological females *and* some biological males.

And because of those males’ inherent athletic advantages, they now have *greater* athletic opportunities than girls. Disfavoring girls like this in sports, where well-known physical differences necessarily matter, is intentional sex discrimination, as *B.P.J.* acknowledged. *B.P.J.*, 146 S. Ct. at 2372 (“Allowing a biological male athlete to compete on a girls’ team *necessarily* displaces or disadvantages a female athlete”). In fact, the policy places *only* biological girls (and no biological boys) at a disadvantage—which distinguishes this case from *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256, 275 (1979).

2. The record also shows that discriminatory intent was a motivating factor. *Avenue 6E Invs., LLC v. City of Yuma*, 818 F.3d 493, 504 (9th Cir. 2016). Discerning discriminatory intent “demands a sensitive inquiry into” all existing “circumstantial and direct evidence.” *Arlington Heights*, 429 U.S. at 266. That includes a policy’s discriminatory impact, the historical background, and the administrative history. *Id.* at 266-68; *see Avenue 6E*, 818 F.3d at 504.

Disparate impact. The policy undisputedly had an effect only on girls. That’s because, as Defendants knew, boys have inherent biological advantages over girls in sports. 4-ER-623-25. That clear, known, disparate impact favors an inference of intentional discrimination. *Arlington Heights*, 429 U.S. at 266. Indeed, it creates “a strong inference” of intent. *Feeney*, 442 U.S. at 279 n.25.

Historical background. Washington has recognized the “[i]nequality in the educational opportunities afforded women and girls” in its “public schools.” RCW 28A.640.010. Until 1967, the WIAA sponsored no girls’ sports. 4-ER-620. Gradually, Washington consciously added girls’ teams. In 2007, Washington finally established girls’ wrestling. 4-ER-621.

WIAA still maintains separate teams—with separate championships—for boys and girls. 4-ER-532-52. And it has adopted different standards for girls’ and boys’ sports, including wrestling. 4-ER-554, 635-36. These policies recognize the physical differences between boys and girls and the history of girls’ exclusion from sports.

Yet Defendants gave that up with the policy, leading to a “reasonable[er] perception” that Defendants “regarded girls’ sports as less worthy of consideration and support than boys’ sports.” *Soule v. Conn. Ass’n of Schs.*, 755 F. Supp. 3d 172, 199 (D. Conn. 2024). They would not adopt such a policy if it would upend boys’ sports.

Administrative history. WIAA administrators adopted the policy without a vote and have refused school-district petitions to change it. 4-ER-637-39. Since then, Defendants have ignored complaints from parents, female athletes, and schools; media reports; and U.S. Department of Education investigations that confirm what they knew to be “reality”: males will injure or disadvantage girls in girls’ sports. *B.P.J.*, 146 S. Ct. at 2372; 4-ER-628-40. And Defendants have made clear they will stick by the policy. 4-ER-630, 638.

Defendants point to state-law requirements, but under Washington law, “[s]chools may provide separate teams for each sex.” RCW 28A.640.020; WAC 392-190-025(2). Defendants’ alleged “rebuff[ing]” of complaints, alongside an indefensible alternative motive, further suggests Defendants did not care about girls’ sports as much as boys’ sports. *Soule*, 755 F. Supp. 3d at 199.

Viewed together, K.M.K. has shown that Defendants acted at least in part because they did not care about girls’ sports as much as boys’ sports. *Id.*; *contra Feeney*, 442 U.S. at 279.

The district court said K.M.K. claims only disparate impact. Not so. And the court did not engage with the foregoing evidence. 1-ER-035-36. Even a purportedly facially neutral policy can be intentionally discriminatory. *Arlington Heights*, 429 U.S. at 266; *Avenue 6E*, 818 F.3d at 504; *contra* 1-ER-035. This one is.

c. Defendants were deliberately indifferent.

The record also shows that Defendants were deliberately indifferent to the sex discrimination the policy caused. They had a policy of disregarding reports of sex discrimination that creates a “heightened risk” of discrimination that is “known or obvious” and the plaintiff suffers discrimination as a result. *Karasek v. Regents of Univ. of Cal.*, 956 F.3d 1093, 1112 (9th Cir. 2020); see *A.J.T. ex rel. A.T. v. Osseo Area Schs.*, 605 U.S. 335, 345 (2025). A defendant is liable even if it did not have prior knowledge of—or responds with indifference to—the specific situation. *Karasek*, 956 F.3d at 1112.

Defendants were deliberately indifferent. To begin, in enacting and standing by the policy, they disregarded the “reality” of male athletic advantage and the harms it causes females. *B.P.J.*, 146 S. Ct. at 2372; 4-ER-635-36. Beyond that, Defendants disregarded numerous reports of sex discrimination caused by the policy—acting with deliberate indifference to them.

Defendants ignored significant media coverage and U.S. Department of Education notices regarding a male runner who won back-to-back WIAA girls’ track-and-field championships in 2024 and 2025, and a male basketball player who sidelined girls. 4-ER-636-37. Parents and school boards filed Title IX complaints detailing the unfairness of Defendants’ policy. 4-ER-628-29. The U.S. Department of Education launched Title IX investigations. 4-ER-630, 637. Parents and schools

proposed measures to amend WIAA policy to protect girls. 4-ER-637. Defendants ignored it all. 4-ER-627-40.

Those two policies together—allowing males to compete on girls’ teams based on gender identity and consistently disregarding the resulting discrimination—caused the discrimination against K.M.K. She had to wrestle against a stronger, more powerful male opponent who assaulted and defeated her. That violates Title IX. *See Karasek*, 956 F.3d at 1112-14; *Simpson v. Univ. of Colo. Boulder*, 500 F.3d 1170, 1180-85 (10th Cir. 2007).

The district court said there was “no evidence” Defendants could have known “K.M.K. could encounter a heightened risk of injury.” 1-ER-043. But Defendants “need not have had actual knowledge of a specific instance of [sex discrimination] or responded with deliberate indifference to that [discrimination] before ... liability may attach.” *Karasek*, 956 F.3d at 1112. And the record is replete with reports of Washington girls suffering those harms because males were allowed to play in girls’ sports, *supra*, pp. 22-23. Defendants’ decision to double-down despite that known discrimination—leading to K.M.K.’s harms—is deliberate indifference.¹

¹ WIAA is liable under Title IX because WIAA exercises control over athletic programs ceded to it by school districts pursuant to a state statute, establishing binding rules and imposing penalties on school districts. RCW 28A.600.200; *see B.P.J. v. W. Va. State Bd. of Educ.*, 98 F.4th 542, 554 (4th Cir. 2024), *rev’d on other grounds*, *B.P.J.*, 146 S. Ct.

3. The Spending Clause is no barrier to relief.

The district court concluded Defendants lacked sufficient notice their policy violates Title IX and thus cannot be liable. 1-ER-052-57. That’s wrong for two reasons.

First, Defendants had clear notice. Just as Title IX “proscribe[d]” harassment “with sufficient clarity to satisfy *Pennhurst*’s notice requirement,” *Davis v. Monroe Cnty. Bd of Educ.*, 526 U.S. 629, 650 (1999), it also clearly prohibits treating girls worse than boys, *B.P.J.*, 146 S. Ct at 2371.

The district court said *B.P.J.* was decided “[o]nly recently” and the question was “open” beforehand. 1-ER-056. But when the Supreme Court construes a statute, it says what the statute has “*always* meant.” *Rivers v. Roadway Exp., Inc.*, 511 U.S. 298, 313 n.12 (1994). So Title IX—“continuously since the date when it became law,” *id.*—has unambiguously barred treating girls worse than boys, *B.P.J.*, 146 S. Ct. at 2371.

The district court also said *B.P.J.* did not address whether a state may allow males on girls’ sports teams. 1-ER-056-57. But no matter the answer to that broad question in the abstract, Title IX is clear that Defendants cannot treat girls worse than boys in sports.

2356 (2026); *Williams v. Bd. of Regents of Univ. Sys. of Ga.*, 477 F.3d 1282, 1294 (11th Cir. 2007); *Horner v. Ky. High Sch. Athletic Ass’n*, 43 F.3d 265, 272 (6th Cir. 1996). WIAA sets the eligibility rules for high-school sports under OSPI’s direction. 4-ER-529.

Second, the Supreme Court has held that clear notice is required only for unintentional discrimination, as the district court recognized. 1-ER-053-55; *see Franklin v. Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 74 (1992). Both K.M.K.’s disparate-treatment and deliberate-indifference theories are species of intentional discrimination, so clear notice poses no obstacle.

B. K.M.K. will suffer irreparable harm absent an injunction.

K.M.K. is now in her junior year, and the wrestling season starts this fall. Because of the policy, she will either sit out for fear of being injured by a male, or she will play and be denied equal opportunity—“*necessarily* displace[d] or disadvantage[d]” by the males allowed to compete. *B.P.J.*, 146 S. Ct. at 2372.

“Those lost opportunities constitute irreparable harm.” *Mid Vt. Christian Sch. v. Saunders*, 151 F.4th 86, 96 (2d Cir. 2025); *accord McCormick ex rel. McCormick v. Sch. Dist. of Mamaroneck*, 370 F.3d 275, 302 n.25 (2d Cir. 2004); *Roberts v. Colo. State Bd. of Agric.*, 998 F.2d 824, 833 (10th Cir. 1993).

The district court said K.M.K. had not shown she would “suffer a competitive disadvantage” or “a greater risk of harm” from being forced to compete against boys. 1-ER-058. That was wrong as a matter of law and as a matter of fact. *Supra*, pp. 16-17.

C. The equities and public interest favor K.M.K.

In taking Title IX funds, Defendants agreed to abide by the law's nondiscrimination requirement. *Gebser*, 524 U.S. at 286. The public's true interest "favors applying federal law correctly." *Small v. Avanti Health Sys., LLC*, 661 F.3d 1180, 1197 (9th Cir. 2011). There's also "a strong public interest in ensuring that students" like K.M.K. "do not lose out on valuable athletic opportunities." *Mid Vt.*, 151 F.4th at 96.

Defendants, by contrast, provided sex-separated sports for decades and can easily return to that regime. And if the policy were enjoined, all biological males could continue to compete on male-designated teams.

CONCLUSION

The Court should grant an injunction pending appeal.

Dated: September 3, 2026

Respectfully submitted,

By: /s/ John J. Bursch

JAMES A. CAMPBELL
JULIE MARIE BLAKE
ALLIANCE DEFENDING FREEDOM
44180 Riverside Pkwy
Lansdowne, VA 20176
(571) 707-4655
jcampbell@ADFlegal.org
jblake@ADFlegalo.org

JACOB P. WARNER
KATHERINE L. ANDERSON
ALLIANCE DEFENDING FREEDOM

JOHN J. BURSCH
ZACHARY E. TYREE
ALLIANCE DEFENDING FREEDOM
440 First Street NW, Suite 600
Washington, DC 20001
(616) 450-4235
jbursch@ADFlegal.org
ztyree@ADFlegal.org

NATALIE D. THOMPSON
ALLIANCE DEFENDING FREEDOM
7250 Dallas Parkway, Suite 700
Plano, TX 75024
(469) 894-8700

15100 N. 90th Street
Scottsdale, AZ 85260
(480) 444-0020
jwarner@ADFlegal.org
kanderson@ADFLlegal.org

nthompson@ADFlegal.org
ABIGAIL ST. HILAIRE
ELLIS, LI & MCKINSTRY PLLC
1700 Seventh Avenue, Suite 1810
Seattle, WA 98101
(206) 682-0565
asthilaire@elmlaw.com

Counsel for Appellants Stephanie Brown and K.M.K.

CERTIFICATE OF COMPLIANCE

This motion complies with the word limit of Circuit Rules 27-1(1)(d) and 32-3 because it contains 5,595 words, excluding parts exempted by Fed. R. App. P. 32(f).

This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in Word 365 using a proportionally spaced typeface, 14-point Century Schoolbook.

Dated: September 3, 2026

/s/ John J. Bursch

John J. Bursch

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2026, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate ACMS system. I certify that all participants in the case are registered ACMS users, and that service will be accomplished by the ACMS system.

/s/ John J. Bursch
John J. Bursch