FOR PUBLICATION

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U.S. COURT OF APPEALS

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; OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION; CHRIS REYKDAL, in his official capacity as Washington Superintendent of Public Instruction and in his individual capacity; PUYALLUP SCHOOL DISTRICT; GORDON BROBBEY, in his official capacity as Puyallup District Title IX Coordinator and in his individual capacity; JASON SMITH, in his official capacity as Principal of Rogers High School and in his individual capacity; JOHN MORRISON, in his official capacity as Coach at Emerald Ridge High School and in his individual capacity,

Defendants - Appellees.

No. 26-5488

D.C. No.
3:26-cv-05616-DGE
Western District of Washington, Tacoma

ORDER

Before: Michael Daly Hawkins, William A. Fletcher, and Salvador Mendoza, Jr., Circuit Judges.

Plaintiffs-Appellants are Stephanie Lynn Brown and her daughter K.M.K., a cisgender high school student who has historically competed on the girls' junior

varsity wrestling team at her school. In the underlying litigation, Brown and K.M.K. advance claims under the Due Process Clause of the Fourteenth Amendment and Title IX challenging state and district policies that permit student athletes to compete on the team that aligns with their gender identity. Plaintiffs sought a preliminary injunction that would require defendants, the Washington Interscholastic Athletic Association ("WIAA") and Puyallup School District (the "District"), among other things, to provide Plaintiffs with notice and an opportunity to opt out any time K.M.K. is scheduled to compete against any transgender athlete without suffering any adverse consequences for not competing. After the district court denied their motion for a preliminary injunction, Plaintiffs filed the emergency motion for an injunction pending appeal that is now before us. Because Plaintiffs have not satisfied the factors for injunctive relief, we deny the application.[1]

I

"The standard for evaluating an injunction pending appeal is similar to that employed by district courts in deciding whether to grant a preliminary injunction." *Feldman v. Ariz. Sec'y of State's Off.*, 843 F.3d 366, 367 (9th Cir. 2016). Plaintiffs seeking a preliminary injunction pending appeal must show that (1) they are likely to succeed on the merits of their appeal, (2) they are likely to suffer irreparable

[1] We deny as moot Plaintiffs' request for oral argument.

harm in the absence of preliminary relief, (3) that the balance of equities tips in their favor, and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Doe v. San Diego Unified Sch. Dist.*, 19 F.4th 1173, 1177 n.4 (9th Cir. 2021). The final two factors merge where, as here, the government is the non-movant. *Nken v. Holder*, 556 U.S. 418, 435 (2009).[2]

An injunction can be prohibitory or mandatory. The former "preserves the status quo pending a determination of the action on the merits" while the latter "orders a responsible party to take action." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878–879 (9th Cir. 2009) (citation modified). "Mandatory injunctions are not granted unless extreme or very serious damage will result and are not issued in doubtful cases." *Id.* at 879 (citation modified).

II

A

First, Plaintiffs fail to demonstrate that there is a genuine emergency necessitating urgent relief. "Granting relief on an emergency basis is the exception, not the rule," and to obtain relief on an emergency basis, a movant must show "that irreparable harm will occur immediately." *Washington v. Trump*, No. 25-807, 2025 WL 553485, at *1 (9th Cir. Feb. 19, 2025) (Forrest, J., concurring).

[2] We have jurisdiction to hear appeals from denials of preliminary injunctions under 28 U.S.C. § 1292(a)(1).

Plaintiffs request relief by September 25, 2026, and explain that they need "urgent relief" because "[w]restling season opens this fall." But the record indicates that wrestling season does not begin until mid-November—well after the date of their requested relief. Plaintiffs have not made any showing of what, if any, harm will befall them beginning on September 25th or why they must receive relief on an emergency basis. That alone would be sufficient to deny the request.[3]

On the merits of their request for an injunction pending appeal, Plaintiffs must show that they are likely to succeed on their contention that the district court erred by denying their motion for a preliminary injunction. Our standard of review in an appeal challenging the denial of a preliminary injunction is "limited and deferential, and we must affirm the district court's order unless the district court abused its discretion." *Feldman*, 843 F.3d at 374 (citation modified). "A district court abuses its discretion if it bases its decision on an erroneous legal standard or on clearly erroneous factual findings." *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023) (citation modified).

[3] Plaintiffs indicate that the season for soccer, which K.M.K. also plays, has already begun. However, Plaintiff has not alleged that there is any transgender soccer student against whom she may compete, so she lacks standing to pursue relief premised on that injury. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (injury must be "actual or imminent, not conjectural or hypothetical" (citation modified)).

Plaintiffs have not made a strong enough showing on the merits to warrant the relief sought. To support their due-process claim, Plaintiffs rely primarily on two recent Supreme Court cases: *Mahmoud v. Taylor*, 606 U.S. 522 (2025), which held that parents had a right to notice and to opt their children out of curriculum involving "LGBTQ+ inclusive" storybooks in response to the parents' Free Exercise claims, and *Mirabelli v. Bonta*, 607 U.S. 492 (2026), which held that groups of parents were likely to succeed on their First Amendment and Fourteenth Amendment claims challenging California policies that prohibited schools from disclosing to parents information regarding their children's gender identity expression. Unlike the parents in *Mahmoud*, however, Brown does not claim that allowing K.M.K. to compete against transgender athletes burdens her religious exercise. 606 U.S. at 568 ("It must be emphasized that what the parents seek here is not the right to micromanage the public school curriculum, but rather to have their children opt out of a particular educational requirement that burdens their well-established right to direct the religious upbringing of their children." (citation modified)). And unlike *Mirabelli*, Brown does not contend that the District is withholding from her any information about *her* child. 607 U.S. at 497 ("The right protected by these precedents includes the right not to be shut out of participation in decisions regarding *their* children's mental health." (emphasis added)). Instead, she asserts a novel right—the right to obtain medical information about *other*

children—not discussed or covered by *Mahmoud* or *Mirabelli*.

As to Plaintiffs' Title IX claim, the Supreme Court's recent decision in *West Virginia v. B. P. J. by Jackson*, 146 S. Ct. 2356 (2026) expressly left open the relevant question in this case—"whether, under Title IX and the Equal Protection Clause, schools may *allow* biological males who identify as female to participate on girls' and women's sports teams." *Id.* at 2367 n.1 (emphasis in original). The district court's conclusion that Plaintiffs had not made a strong preliminary showing on the merits of the Title IX claim rested largely on its evaluation of the evidence and findings of factual disputes. While Plaintiffs characterize certain facts as foregone conclusions, the district court held that the record was not so clear, and its fact-based holding is subject to our highly deferential standard of review on appeal. *See Theis v. InterMountain Educ. Serv. Dist. - Bd. of Dirs.*, 182 F.4th 1091, 1096 (9th Cir. 2026); *see also B.P.J.*, 146 S. Ct. at 2385 (Sotomayor, J., concurring, in part, and dissenting, in part) ("These circumstances demand exercising judicial restraint, not rushing to answer conclusively difficult questions without sufficient evidentiary development.").

B

Plaintiffs have also not shown that the balance of hardships "tips sharply" in their favor such that injunctive relief should issue. *Southeast Alaska Conservation Council v. U.S. Army Corps of Eng'rs*, 472 F.3d 1097, 1100 (9th Cir. 2006). First,

Plaintiffs concede that the District has stated that K.M.K. may forfeit matches against transgender opponents without adverse consequences imposed by the District. K.M.K. has identified two transgender athletes in the District who may compete during the 2026–2027 wrestling season, and she thus is able to forfeit a match against them even absent court-ordered notice.

Second, the district court did not err in finding that Plaintiffs' proposed injunction is overbroad. Plaintiffs' complaint and motion centers on an allegation that a transgender student assaulted K.M.K. during a wrestling match, but the relief Plaintiffs seek goes well beyond what is reasonably necessary to protect K.M.K. from that student: Plaintiffs seek notice of *all* transgender athletes who could potentially compete against K.M.K., in any sport in which she may compete, so that she can opt out. We have held that "injunctive relief must be tailored to remedy the specific harm alleged" and that "the scope of the injunction must be no broader and no narrower than necessary to redress the injury shown by the plaintiff." *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1195 (9th Cir. 2024) (citation modified). A preliminary injunction may be denied where there is a "mismatch" between a plaintiff's claims and "the dangers she hopes to remedy through an injunction." *Garcia v. Google, Inc.*, 786 F.3d 733, 744 (9th Cir. 2015) (en banc). Plaintiffs attempt to extrapolate from harm caused by one student, contending that prospective relief is needed as to an entire class of

students without showing why a narrower remedy would not suffice.

Likewise, as the district court also found, entering Plaintiffs' proposed relief could compromise other students' privacy rights. Plaintiffs rely on *Doe v. Bonta*, 101 F.4th 633, 636–637 (9th Cir. 2024) to argue that there is no privacy concern in revealing to them the sex identification of other students, because sex identification is "innocuous biographical data." But *Doe* concerned information provided by adults who filled out a permit form, not, as here, information identifying a child as transgender. Indeed, in *Doe*, we distinguished information concerning "medical records" or "medical diagnoses" as "intimate" or "highly sensitive." *See id.* And federal law generally prohibits schools from releasing student records. *See* 20 U.S.C. § 1232g.

In the alternative, Plaintiffs suggest that the school district could withhold K.M.K. from matches against transgender athletes without telling her anything about her opponents, but the record indicates that this is not feasible. According to Puyallup's Athletic Director, the District possesses responses to a form question asking for a student's "Legal gender," but no physician's note or exam is required to verify this information—and the District does not have access to information about athletes in other districts.[4] So to ensure that K.M.K. will not face

[4] Washington law allows a parent or guardian of a minor to change a minor's legal sex designation. Wash. Rev. Code § 70.58A.500; Wash. Admin Code § 246-490-075.

competition against *any* transgender student, Defendants would have to collect new, invasive information from an unknown number of students. Nor is it clear from the record how the District could withhold K.M.K. from competition in a weight- and seed-based tournament-bracket system, which is how the league's wrestling matches are structured, without negatively impacting other competitors or identifying those competitors.

The relief Plaintiffs seek pending appeal would amount to a mandatory injunction. And Plaintiffs have not satisfied the "doubly demanding" standard for such relief. *Garcia*, 786 F.3d at 740.

III

Accordingly, the application for an emergency preliminary injunction pending appeal is **DENIED**.