
In the Supreme Court of the United States

K.M.K., by and through her mother and next friend, Stephanie Lynne Brown, and
STEPHANIE LYNNE BROWN,

Applicants,

v.

WASHINGTON INTERSCHOLASTIC ACTIVITIES ASSOCIATION, et al.,

Respondents.

To the Honorable Elena Kagan,
Associate Justice of the United States Supreme Court
and Circuit Justice for the Ninth Circuit

EMERGENCY APPLICATION FOR AN INJUNCTION PENDING APPEAL

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CORPORATE DISCLOSURE STATEMENT

Applicants Stephanie Lynne Brown and her daughter, K.M.K., are natural persons. Sup. Ct. R. 29.6.

PARTIES TO THE PROCEEDING

Applicants (Plaintiffs-Appellants below) are K.M.K. and her mother, Stephanie Lynne Brown. Respondents (Defendants-Appellees below) are 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; and Puyallup School District.

Additional Defendants below, who are not Respondents in this Court, are Gordon Brobbey, in his official capacity as Puyallup School 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; and John Morrison, in his official capacity as Coach at Emerald Ridge High School and in his individual capacity.

LIST OF ALL PROCEEDINGS

U.S. Court of Appeals for the Ninth Circuit, No. 26-5488, *Stephanie Lynne Brown v. Washington Interscholastic Activities Association et al.*, order entered September 25, 2026.

U.S. District Court for the Western District of Washington, No. 3:26-cv-05616-DGE, *Stephanie Lynne Brown v. Washington Interscholastic Activities Association et al.*, orders entered August 23, 2026, and August 31, 2026.

DECISIONS BELOW

The district court's order and opinion denying Applicants' motion for a preliminary injunction is available at 2026 WL 2525463 and is reprinted at Appendix ("App.") 1a–62a. The district court's order denying Applicants' emergency motion for injunction pending appeal is available at 2026 WL 2561596 and is reprinted at App.63a–67a. The Ninth Circuit's order and opinion denying Applicants' application for an emergency preliminary injunction pending appeal will be published at __ F.4th __, is available at 2026 WL 2891827, and is reprinted at App.68a–78a.

JURISDICTION

Stephanie Brown and her daughter, K.M.K., filed their complaint on June 9, 2026, asserting Title IX and parental-rights claims and invoking 42 U.S.C. 1983. *Brown v. Washington Interscholastic Activities Association et al.*, No. 3:26-cv-05616, ECF 1. The district court had jurisdiction under 28 U.S.C. 1331 and 1343(a).

On July 10, 2026, Applicants filed their motion for preliminary injunction. *Brown*, No. 3:26-cv-05616, ECF 36. The district court denied that motion on August 23, 2026 (App.1a–62a), and it denied Applicants' motion for an injunction pending appeal on August 31, 2026 (App.63a–67a).

Applicants filed their notice of appeal on August 25, 2026, *Brown*, No. 3:26-cv-05616, ECF 60. The Ninth Circuit had jurisdiction under 28 U.S.C. 1292(a)(1). Applicants filed their emergency motion for an injunction pending appeal on September 3, 2026. *Brown v. Washington Interscholastic Activities Association et al.*, No. 26-5488, ECF 17.1. The Ninth Circuit denied that motion on September 25, 2026. *Id.*, ECF 53.1 (App.68a–78a).

This Court has jurisdiction under 28 U.S.C. 1254(1) and 1651(a) and Supreme Court Rule 23 given the ongoing irreparable harm to Applicants. Per Supreme Court Rule 23.3, Applicants were parties to the rulings sought to be reviewed, and the relief they request from this Court was first sought in both courts below.

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**To the Honorable Elena Kagan, Associate Justice of the United States
Supreme Court and Circuit Justice for the Ninth Circuit:**

No girl should have to choose between playing the sports she loves and her safety. But the State of Washington forces female athletes to compete on unsafe, uneven playing fields against males. Recognizing the inherent biological differences between the sexes, Washington long had a protected category for girls' sports. Yet in violation of Title IX, it adopted a policy allowing certain males—those who identify as females—to compete on girls' teams. The result? High-school females must face bigger and stronger males, while males get to compete against their physiological counterparts on fair footing.

Plaintiffs-Applicants K.M.K. and her mother, Stephanie Brown, have suffered the consequences of this unlawful policy. K.M.K., a high-school wrestler and soccer player, was assigned to wrestle a male—an opponent who sexually assaulted her during the match, forcefully shoving his fingers inside her vagina. At the outset, she perceived that her opponent was stronger and more powerful than others she had faced. Only after the match did she learn her assailant was male.

Defendants-Respondents Washington Interscholastic Activities Association (WIAA), the Office of the Superintendent of Public Instruction (OSPI) and its superintendent Chris Reykdal, and the Puyallup School District insist that's all fine. They demand that K.M.K. continue competing against males or sit out sports entirely. And they refuse to opt K.M.K. out of matches against males without penalty—or even to give Brown notice of such a match so she may opt K.M.K. out herself. The district court and Ninth Circuit declined to protect K.M.K. or empower her mother to protect her.

The Court should grant Plaintiffs' application for an injunction pending appeal. To begin, the Ninth Circuit erroneously applied a “doubly demanding” standard of review because Applicants purportedly sought a mandatory injunction

(ordering a party to do something) rather than a prohibitory injunction (preserving the status quo). App.72a–73a, 77a–78a. But this Court has never endorsed a higher standard for a mandatory injunction, and the issue is the subject of a 9–2 circuit split. The Court is likely to grant review and resolve this question because the propriety of injunctive relief often turns on the governing standard. It is untenable for circuits to be applying different standards. The Court is also likely to reject the Ninth Circuit’s doubly demanding standard because the concept of the “status quo” is fuzzy and easily manipulable, and courts should focus on preventing irreparable injury when the applicant is likely to succeed, not trying to divine and preserve the status quo.

An injunction is also warranted because Defendants’ gender-identity participation policy discriminates based on sex in violation of Title IX. *West Virginia v. B.P.J.*, 146 S. Ct. 2356, 2371–72 (2026). Under Defendants’ policy, K.M.K. must compete against males who have inherent athletic advantages—posing safety risks and competitive disadvantages—while males get to compete against their physiological counterparts on a level playing field. That treats females worse than males, as K.M.K.’s experience shows. Yet the Ninth Circuit ruled that K.M.K. was not likely to succeed at a preliminary stage because there is a factual dispute over whether males create a safety risk or competitive disadvantage for female athletes. App.75a. That ruling conflicts starkly with *B.P.J.*, which recognized as the “reality of sports” that male athletes pose “safety risks” to and displace or disadvantage female athletes, particularly in “contact sports” like wrestling. 146 S. Ct. at 2372, 2375. That conclusion, too, is a likely candidate for review and reversal.

Finally, the Court should grant the application because Defendants’ policy denies Brown her parental right to direct her daughter’s care and upbringing. Under this Court’s decisions, Brown is entitled to opt her daughter out of competitions against male athletes without giving up sports entirely. *Mirabelli v. Bonta*, 607 U.S.

492, 497 (2026) (per curiam) (citing cases). Indeed, a “straightforward application” of those decisions “dictate[s]” Brown’s likely success. *Id.* at 499 (Barrett, J., concurring).

Absent an injunction, K.M.K. will be forced to miss the girls’ wrestling season that begins in November, losing the equal opportunity that Title IX guarantees. And Brown will continue to be deprived of her parental rights. The public interest favors preserving K.M.K.’s and Brown’s rights, and Defendants can easily return to the sex-based sports system that they long maintained and that state law explicitly allows. Accordingly, the Court should grant an injunction pending appeal while Applicants’ preliminary-injunction appeal proceeds in the Ninth Circuit.

Alternatively, the Court should grant the injunction pending appeal, construe the application as a petition for a writ of certiorari before judgment, grant the petition, and set this case for argument this Term on three questions: (1) whether applicants seeking a mandatory injunction must satisfy a more demanding standard, (2) whether gender-identity participation policies violate Title IX’s prohibition against treating females worse than males in sports, and (3) whether a parent’s fundamental right to direct her child’s care entitles her to notice and opt-out before her daughter is forced to compete against male athletes in contact or competitive-skill sports. See, e.g., *Biden v. Nebraska*, 143 S. Ct. 477 (2022) (granting certiorari before judgment).

From K.M.K. being sexually assaulted in a wrestling match, to two boys winning 15 state titles in the girls’ track-and-field division in Connecticut, to a boy pitching every inning en route to a state championship in girls’ softball in Minnesota, female athletes across the country are wrongly being denied the opportunity to fair and safe competition in sports while male athletes get to compete on boys’ teams *and* girls’ teams. These are not hypothetical injuries; they are actual harms that cannot be undone and that female athletes—like K.M.K.—continue to suffer season after season. This Court should grant an injunction pending appeal or, in the alternative, enter the injunction, grant certiorari, and set argument for this Term.

STATEMENT OF THE CASE

I. Factual background

A. Washington builds girls' wrestling for females—then layers a gender-identity participation policy on top of its sex-based athletic structure.

WIAA sponsored no girls' sports until 1967. 5-ER-835.¹ That year, it adopted its first rules for girls' athletics, and over the decades that followed, it added girls' teams sport by sport. 5-ER-835.

Wrestling came late. The sport had long been male-dominated, and the few females who participated usually had to wrestle males because no girls' events existed. 5-ER-805. Those females and their parents understood they would face males, and they agreed to assume that risk. 5-ER-806. Washington finally made girls' wrestling an official high-school sport in 2007. 5-ER-805.

The reason was no secret. WIAA's assistant executive director said that the goal was to grow girls' wrestling so females could have a space just for them: "We need to have girls wrestling girls and guys wrestling guys." 5-ER-806. The sport took off. About 3,500 athletes now wrestle on the girls' side in Washington, and about 10,000 on the boys' side. 5-ER-806. And wrestling is a no-cut sport in every weight class. 5-ER-806.

WIAA still runs the sport by sex. It sets 14 male weight classes and 14 distinct female weight classes. 4-ER-762. It fixes a minimum wrestling weight at 7% body fat for males and 12% for females. 4-ER-767. Its position statement calls for "separate and equal programs for boys and girls" and directs that, where both teams exist, males play on the boys' team and females on the girls' team. 4-ER-764. And any team made up of males and females counts as a boys' team that may compete only against other boys' teams. 4-ER-764.

¹ All "ER" cites refer to the Excerpts of Record filed in connection with Applicants' opening merits brief, ECF 43.1, in the Ninth Circuit proceedings below.

Onto that structure, WIAA layered Rule 18.16.0, which allows students to compete consistent with their self-professed gender identity. 5-ER-834. That rule provides that athletes “will participate in programs consistent with their gender identity or the gender most consistently expressed.” 4-ER-715. No cross-sex hormone, puberty blocker, or physical element is required to invoke this policy; instead, WIAA defines gender identity as a person’s “innate sense of their own gender.” 4-ER-765. Once a student declares his or her identity and a school grants eligibility, that status continues for the rest of the student’s participation. 4-ER-715.

Schools may not contest that claim. WIAA instructs them not to ask a student for “proof of gender.” 5-ER-835. OSPI requires WIAA and each school district to follow the same course, and the District adopted the policies OSPI demands. 5-ER-831–32. And no one tells the other side. WIAA’s rules provide no notice to other students, their parents, or opposing teams when a student of the opposite sex competes under the rule, and none is given. 5-ER-835. The District interprets its policies to forbid staff from telling parents when their daughters will compete against males. 5-ER-831.

The District acknowledges wrestling is dangerous. Policy 2151 lists wrestling among the “contact sports”—those “in which the major activity involves bodily contact.” 4-ER-779. That policy requires each participant and parent to sign a statement acknowledging the risk of injury. 4-ER-778. The District’s athletic handbook makes that signature the price of admission: no student may turn out for any sport until an athletic registration is on file bearing a “[p]arent permission and acknowledgment of risk signature.” 4-ER-791.

The District warns parents about concussions, requires concussion screening for wrestlers, and warns about sudden cardiac arrest. 4-ER-794, 796. None of those forms asks a parent to accept that their daughter must wrestle a male. 4-ER-778, 791. Brown has never consented to that. 5-ER-862.

B. K.M.K.'s male opponent sexually assaults her at the Lady Jag Kickoff.

K.M.K. started wrestling at age four, after watching her three older brothers compete. 5-ER-807. She plays soccer too, but wrestling is her favorite sport—and she is good at it. 5-ER-807. By her sophomore year at Rogers High School, she ranked first in the 190-pound class on the junior-varsity girls' team—one spot from varsity, the same rank she had held as a freshman. 5-ER-808. She returned that fall eager to sharpen her skills and to spend the season with her teammates. 5-ER-808.

Her season opened on a Saturday in December 2025 at the Lady Jag Kickoff, a tournament sanctioned by WIAA and advertised for girls' wrestling at local rival high school Emerald Ridge. 5-ER-808–09. K.M.K. wrestled her way to a fifth and final match for third place. 5-ER-809.

Her opponent came from Emerald Ridge. K.M.K. and her mother did not know that opponent, and they understood that wrestler to be female. 5-ER-809. K.M.K.'s coach and a WIAA tournament official confirmed the pairing and sent her to the mat. 5-ER-809. The Emerald Ridge coach sent his wrestler. 5-ER-809. No one told K.M.K. or Brown that her opponent was male. 5-ER-809. K.M.K. thought her technique was the better of the two. But she noticed at once that her opponent was “stronger and more powerful.” 5-ER-809.

Early in the second period, the male reached between her legs and pushed his fingers hard through her singlet, her spandex shorts, and her underwear, penetrating her vagina for several seconds and causing great pain. 5-ER-809–10. She tried to push the male off. She could not. 5-ER-810. Her mother, just across the mat, could not see what was happening but knew immediately something was wrong. 5-ER-810.

No legal move in wrestling puts a hand into a girl's vagina. 2-ER-177–78; 5-ER-811. The male's act of digital vaginal penetration was a flagrant foul and criminal conduct. So K.M.K. stopped trying to win. About a minute later, with K.M.K.

attempting to concede, the male wrestler groped her a second time. Seconds later, she let herself be pinned to end the match. 5-ER-810.

The pin gave the male the win, third place, the podium spot, the medal, and help toward qualifying for league and state tournaments. K.M.K. took fourth and nothing else. 5-ER-810–11. Her coaches walked away. 5-ER-811. She ran to her mother sobbing. 5-ER-811. A coach from another team then told her that her opponent was male. 5-ER-812.

Months later, the District's Title IX investigator reviewed two videos of the match and concluded that the opponent "likely touched" K.M.K.'s vagina "with force in the first instance, such that it caused her discomfort." App.8a; 2-ER-168.

C. K.M.K. is driven from her favorite sport.

Brown emailed K.M.K.'s coaches the next school day. She wrote that K.M.K. had been "Oil Checked" (a slang term that refers to a wrestler inserting his fingers inside his opponent), that the conduct was "100% not ok," that a male doing it was "an even bigger issue," and that K.M.K. "will absolutely not compete against this student again." App.6a–7a; 5-ER-874. Coach Scott answered that she had not known the opponent was male and would not have put K.M.K. on the mat had she known. 5-ER-813. Scott asked for a video of the match, and Brown sent it. 5-ER-813.

Rogers's principal learned of the report the same day. He understood Brown's complaint to be that a male wrestler "placed fingers in her daughter's private parts." 2-ER-172. Asked whether he took that to mean penetration, he answered: "I did. But that's wrestling." 2-ER-172.

Weeks passed with no word. In early January, K.M.K. and her mother decided that—to ensure K.M.K.'s safety—she would not return to the team that season. App.9a; 5-ER-814. She has not competed in any WIAA or District sport since. 5-ER-827.

State law requires school officials and employees to report suspected abuse or assault within 48 hours. But the District didn't report anything to law enforcement for nearly two months—and only after the media picked up the story. App.10a; 5-ER-819. The District opened a Title IX investigation in late February, and that investigation remains unfinished. App.12a; 5-ER-827.

D. Brown tries to opt her daughter out of matches against males but is refused.

In late March, Brown asked the District for supportive measures. Two matter here. She asked for an assurance that K.M.K. “will not have to compete against any biological males ... without penalty.” 4-ER-784. And Brown asked for notice to her and to K.M.K. before any male competes on K.M.K.'s team or an opposing team in her weight class so Brown could opt K.M.K. out of the match. 4-ER-784.

The District's Title IX Coordinator answered a week later. On competing against males, he wrote that WIAA rules, state regulations, OSPI rules, and district policy let students compete by gender identity, and that “the only remedy the district can offer is that [K.M.K.] would be able to forfeit any such matches without any adverse consequences imposed by the district.” 4-ER-781. On notice, he wrote that FERPA, WIAA rules, and district policies require the District to keep a student's gender-identity information confidential. 4-ER-782.

So the District told Brown that K.M.K. may sit out matches against males if she happens to know her opponent is male in advance or figures it out on the mat. But the District said it would not schedule around such a match, tell Brown one was coming, or withdraw K.M.K. itself. 4-ER-781–82.

Nor would that prevent WIAA from imposing penalties on K.M.K. WIAA's rules excuse withdrawals for “injury, illness, religious observance or unforeseen events,” but treat other withdrawals as violations. 4-ER-735. WIAA hasn't offered to excuse K.M.K. if she withdraws because she's matched against a male. In fact, a

District official said “[t]here is no way to permit K.M.K. to forfeit matches without penalty.” CA9 Dkt. 38.2 at 5.

The risk to K.M.K. has not passed. The same male opponent who sexually assaulted her remains enrolled in the District and eligible to compete in girls’ wrestling this season. App.22a. There is every reason to believe that athlete will compete. A second male wrestler at Emerald Ridge also competes on the girls’ team at 235 pounds, the class just above K.M.K.’s, and K.M.K. sometimes weighs above her class. 5-ER-821. Teams within the same District wrestle each other several times a season. App.21a. K.M.K. transferred to another high school in the District and will compete again in her junior and senior seasons—but only if this Court grants relief.

E. Defendants know what their policy is doing to females.

K.M.K.’s report did not provide the first warning to Defendants of the harm that their policy is inflicting.

A male athlete won WIAA girls’ track-and-field state titles in 2024 and 2025. Females from Tumwater High School protested. WIAA acknowledged the protest and changed nothing. 5-ER-851.

A Shelton High School girls’ basketball team fielded a male in 2025. Two Tumwater players refused to take the floor out of concern for their safety, and a female on an opposing team was hurt when the male player tackled her. The U.S. Department of Education opened a Title IX investigation. WIAA changed nothing. 5-ER-852–53.

School boards and other athletes have also filed complaints. Kennewick’s board filed a Title IX complaint against Reykdal, OSPI, and WIAA, while Central Valley, Eastmont, and Warden filed their own. 5-ER-843. Two runners forced to race a male filed against OSPI, and a parents’ network filed for an eighth-grade girl in the same position. 5-ER-843. Two females met with Reykdal in person to tell him what the

policy had cost them. 5-ER-844. Reykdal ignored them, noting he is “absolutely committed” to the gender-identity participation policy. 5-ER-845.

Efforts at institutional reform have been rebuffed. At least 13 member school boards asked WIAA to reserve girls’ teams for females. 5-ER-852. OSPI pressed WIAA not to change the policy, and WIAA twice declared the membership’s votes on the proposal merely “advisory.” 5-ER-852. Its executive director said he hoped critics of the policy would “spend that time and energy where they can make a real impact.” 5-ER-853.

OSPI did more than hold the line. It audited every district in the state for compliance with its gender-identity participation policy and sent corrective-action letters to those that balked. 5-ER-846. When Tumwater, Mead, Kennewick, and Moses Lake districts declined to adopt the model policy or asked WIAA to protect girls’ teams, OSPI told them they were breaking state law and raised the prospect of enforcement—including the loss of state money—under RCW 28A.642.050. 5-ER-846–48. Most of the holdouts gave in. 5-ER-848. A few did not. 5-ER-848.

Two experts below explained the physical stakes. In testimony more detailed than that in the *B.P.J.* record, Dr. Gregory Brown identified the traits most strongly tied to success in wrestling—isometric and dynamic strength, anaerobic power, muscular endurance, aerobic endurance, and body composition—and males’ inherent advantage versus females as to each of them. 3-ER-384–97. Similarly, Dr. Chad Carlson concluded that no matter how males identify or what drugs they take, letting them compete against females “must be expected to create predictable, identifiable, increased, and unequal risks of injuries to the participating women.” 4-ER-648. And as noted, Defendants do not require male athletes to take puberty blockers, cross-sex hormones, or testosterone suppressors to compete against female athletes; male athletes need only profess a female identity.

II. Procedural History

A. Brown and K.M.K. sue and are denied a preliminary injunction restoring their federal rights.

Brown and K.M.K. sued in June. 5-ER-799. K.M.K. claims that WIAA, OSPI, and the District are violating Title IX by allowing males to compete on girls' teams. 5-ER-857–59. And Brown claims that WIAA, Reykdal, and the District are violating her right to direct her daughter's care and upbringing by refusing either to keep K.M.K. out of matches against males or to tell Brown when one is set. 5-ER-860–63. They moved for a preliminary injunction. App.16a.

The district court held that both Plaintiffs have standing but denied their motion. On Title IX, the court held that K.M.K. alleged only disparate impact, App.33a–34a; that there was a factual question whether male participation creates a safety risk or competitive disadvantage for females, App.3a, 41a; and the Spending Clause bars liability for want of clear notice, App.50a–55a.

On parental rights, the court recast Brown's claim as one "to direct the administration of extracurricular student sports activities" and "to obtain private, sensitive information about other students," found no authority for such a right, and said Brown was using her parental right "as a sword (dictating the conduct of the school) rather than as a shield (choosing to remove her child from certain scenarios she deems inappropriate)." App.3a, 28a. It never analyzed whether the District's refusal survives strict scrutiny.

Brown and K.M.K. appealed. 5-ER-875. The district court denied an injunction pending appeal. App.63a–67a.

B. The Ninth Circuit denies an injunction pending appeal.

The Ninth Circuit also denied Plaintiffs' motion for an emergency injunction pending appeal. It gave short shrift to K.M.K.'s desire to compete in girls' wrestling this fall without subjecting herself to matches against males, including her assailant.

The court began by characterizing Plaintiffs’ request as seeking a mandatory injunction, which, in the Ninth Circuit, requires a movant to show that the merits clearly (not likely) favor her *and* that “‘extreme or very serious damage will result’” from denial of relief, *i.e.*, a “‘doubly demanding’ standard.” App.72a–73a, 77a–78a (quoting *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009), and *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (*en banc*)). The court also suggested there was no emergency warranting a ruling by Plaintiff’s requested date, September 25, since the “wrestling season does not begin until mid-November.” App.73a. That ignored the time necessary to seek relief from this Court if there was an adverse ruling, precisely the situation that materialized.

On K.M.K.’s Title IX claim, the court concluded that she had not made a strong enough showing on the merits because there were disputed questions of fact as to whether males create a safety risk or competitive disadvantage for female athletes. As the court put it, “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.” App.75a (citing Justice Sotomayor’s partial dissent in *B.P.J.*, 146 S. Ct. at 2385).

As for Brown’s parental-rights claim, the court distinguished *Mirabelli* because Brown is purportedly seeking “the right to obtain medical information about *other* children.” App.74a–75a. But she wants to know only whether K.M.K. is set to wrestle a male. In most instances, Defendants will not need to provide information about anyone; they can simply not schedule K.M.K. against a male.

Finally, balancing the equities, the court was unmoved that K.M.K. is already missing the girls’ soccer season, 4-ER-755, and will soon miss wrestling, too. 4-ER-762. And the equities analysis barely acknowledged the sexual assault that K.M.K. experienced; the court was far more concerned that disclosing to Brown when one of K.M.K.’s competitors in the girls’ wrestling division is male “could comprise *other* students’ privacy rights.” App.75a–78a (*emphasis added*).

ARGUMENT

This Court should grant Plaintiffs’ application for an injunction pending appellate review. The Court has issued such injunctions when applicants show that (1) they are likely to prevail on the merits, (2) denying relief would lead to irreparable injury, and (3) granting relief is in the public interest. *E.g.*, *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 16 (2020) (per curiam); see *Tandon v. Newsom*, 593 U.S. 61, 64 (2021) (per curiam); cf. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Here, these factors all weigh in favor of an injunction.

And this case warrants the Court’s review. At the outset, the Ninth Circuit held Plaintiffs to a “doubly demanding” standard because it deemed their requested injunction mandatory rather than prohibitory. App.72a–73a, 77a–78a. That ruling implicates a deep, mature circuit split on the question whether applicants must meet a heightened standard if courts deem an injunction mandatory.² This Court should resolve that important, recurring issue.

On the merits of K.M.K.’s Title IX claim, the Ninth Circuit disregarded common sense, the factual record, and *B.P.J.*’s conclusion that males have inherent athletic advantages that necessarily create safety risks and competitive disadvantages for females. 146 S. Ct. at 2372. That created a second circuit split by refusing to credit legislative facts that *B.P.J.* found. Contra *Frank v. Walker*, 768 F.3d 744, 750 (7th Cir. 2014) (Easterbrook, J.) (“lower courts must accept findings [of legislative fact] by the Supreme Court”).

² Compare *Braintree Lab’ys, Inc. v. Citigroup Global Markets Inc.*, 622 F.3d 36, 41 (1st Cir. 2010); *North Am. Soccer League, LLC v. United States Soccer Fed’n, Inc.*, 883 F.3d 32, 37 (2d Cir. 2018); *Hope v. Warden York Cnty. Prison*, 972 F.3d 310, 320 (3d Cir. 2020); *PSEG Renewable Transmission LLC v. Arentz Fam., LP*, 185 F.4th 497, 508 (4th Cir. 2026); *TitleMax of Tex., Inc. v. City of Dallas*, 142 F.4th 322, 328 (5th Cir. 2025); *Mays v. Dart*, 974 F.3d 810, 818 (7th Cir. 2020); *Sanborn Mfg. Co. v. Campbell Hausfeld/Scott Fetzer Co.*, 997 F.2d 484, 490 (8th Cir. 1993); *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (en banc); *M.G. through Garcia v. Armijo*, 117 F.4th 1230, 1238 & n.7 (10th Cir. 2024) (requiring heightened standard), with *United Food & Com. Workers Union, Loc. 1099 v. Southwest Ohio Reg’l Transit Auth.*, 163 F.3d 341, 348 (6th Cir. 1998); *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 7 (D.C. Cir. 2016) (refusing to require heightened standard).

And in rejecting Brown’s parental-rights claim, the Ninth Circuit’s analysis runs headlong into *Mirabelli* because it refused Brown the right to decide a question regarding her daughter’s physical health: whether K.M.K. wrestles males. 607 U.S. at 497. To be clear, Brown is not seeking personal information about anyone else. Contra App.74a–75a. She is only seeking an opportunity to prevent her daughter from being harmed. Accordingly, Applicants are entitled to the modest temporary relief they request—the opportunity to opt K.M.K. out of wrestling males, with notice when necessary.

I. The Ninth Circuit applied the wrong standard in denying the injunction.

The Ninth Circuit stacked the deck against K.M.K. from the get-go. That’s because it declared that K.M.K. and her mother are seeking a mandatory injunction rather than a prohibitory injunction—even though K.M.K. merely sought to *prevent* state officials from enforcing the gender-identity participation policy—triggering a “doubly demanding’ standard” to obtain relief. App.72a–73a, 77a–78a (citation omitted). That heightened standard implicates a deep circuit split and is wrong.

In the Ninth Circuit, the doubly demanding standard has two implications. First, a movant requesting injunctive relief that the court deems mandatory “must establish that the law and facts *clearly favor* her position, not simply that she is likely to succeed.” *Garcia*, 786 F.3d at 740 (cited at App.78a). Second, a movant must show that “extreme or very serious damage will result,” not simply irreparable harm. *Marlyn*, 571 F.3d at 879 (cited at App.72a–73a). That standard was particularly difficult to satisfy here, where the court of appeals erroneously weighed the harm to “one student”—K.M.K.—against the potential harm of “collect[ing] new, invasive information from an unknown number of students.” App.76a–78a.

The Second, Third, Fourth, Fifth, Seventh, Eighth, and Tenth Circuits also require a higher bar for mandatory injunctions, though with slightly different

formulations. *E.g.*, *North Am. Soccer League, LLC v. United States Soccer Fed’n, Inc.*, 883 F.3d 32, 37 (2d Cir. 2018) (“Because mandatory injunctions disrupt the status quo, a party seeking one must meet a heightened legal standard by showing ‘a clear or substantial likelihood of success on the merits.’”) (citation omitted); *Hope v. Warden York Cnty. Prison*, 972 F.3d 310, 320 (3d Cir. 2020) (movant bears a “particularly heavy burden, requiring them to show a substantial likelihood of success on the merits and that their right to relief is indisputably clear”) (citation modified); *PSEG Renewable Transmission LLC v. Arentz Fam., LP*, 185 F.4th 497, 508 (4th Cir. 2026) (for a mandatory injunction, “our review must be more searching,” and the grant of injunction will be affirmed “only in those circumstances when the exigencies of the situation demand such relief”) (citation modified); *TitleMax of Tex., Inc. v. City of Dallas*, 142 F.4th 322, 328 (5th Cir. 2025) (“[W]hen a plaintiff applies for a mandatory preliminary injunction, such relief should not be granted except in rare instances in which the facts and law are clearly in favor of the moving party.”) (citation modified); *Mays v. Dart*, 974 F.3d 810, 818 (7th Cir. 2020) (review “is even more searching when the injunction is mandatory rather than prohibitory”) (citation modified); *Sanborn Mfg. Co. v. Campbell Hausfeld/Scott Fetzer Co.*, 997 F.2d 484, 490 (8th Cir. 1993) (an injunction requiring a non-movant “to take affirmative action” before an “issue has been decided on the merits goes beyond the purpose of a preliminary injunction”); *M.G. through Garcia v. Armijo*, 117 F.4th 1230, 1238 & n.7 (10th Cir. 2024) (a mandatory injunction “should be even more closely scrutinized to assure that the exigencies of the case support the granting of a remedy that is certainly extraordinary”) (citation modified). The First Circuit appears to have adopted that heightened standard as well, following the Fourth Circuit’s “exigencies” test. See *Braintree Lab’ys, Inc. v. Citigroup Global Markets Inc.*, 622 F.3d 36, 41 (1st Cir. 2010) (a mandatory injunction should only be granted “in those circumstances when the exigencies of the situation demand such relief”) (citation omitted).

Two circuits take the opposite view. The Sixth Circuit has roundly criticized a higher bar for mandatory injunctions, holding “that the difference between mandatory and prohibitory injunctive relief does not warrant application of differing legal standards.” *United Food & Com. Workers Union, Loc. 1099 v. Southwest Ohio Reg’l Transit Auth.*, 163 F.3d 341, 348 (6th Cir. 1998). As that court has explained, there is “little consequential importance to the concept of the status quo,” and “the distinction between mandatory and prohibitory injunctive relief is not meaningful.” *Ibid.* Accord, e.g., 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *FEDERAL PRACTICE AND PROCEDURE* § 2948 (1995) (“[I]t is regrettable if [judicial hesitancy to disturb the status quo] leads to the denial of an injunction when the important conditions for its issuance have been satisfied.”). The D.C. Circuit sides with the Sixth, “reject[ing] any distinction between a mandatory and prohibitory injunction,” because “the ‘mandatory’ injunction has not yet been devised that could not be stated in ‘prohibitory’ terms.” *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 7 (D.C. Cir. 2016) (citation modified).

Notably, the circuit conflict is even more muddled than this 9–2 split suggests. For example, notwithstanding *Mays*, the Seventh Circuit has never overruled *Chicago United Industries, Ltd. v. City of Chicago*, 445 F.3d 940 (7th Cir. 2006), in which Judge Posner, writing for a unanimous panel, held that whether preliminary injunctive relief “would change or preserve some previous state of affairs is neither here nor there,” and that to “worry these questions is merely to fuzz up the legal standard.” *Id.* at 944. Similarly, despite *Sanborn*, the Eighth Circuit has never abandoned *Ferry-Morse Seed Co. v. Food Corn, Inc.*, 729 F.2d 589 (8th Cir. 1984), which district courts in the circuit interpret to this day as “specifically *reject[ing]* a heightened standard for mandatory injunctions,” *Advocates for Hum. Rts. v. United States Dep’t of Homeland Sec.*, 825 F. Supp. 3d 858, 886 (D. Minn. 2026) (citing *Ferry-Morse Seed*) (emphasis added) (citation modified).

Meanwhile, judges in the Second, Ninth, and Tenth Circuits have criticized the heightened standard for mandatory injunctions too, “recognizing the complexities of the problem, the lack of clear authority as to how the distinction is implemented, and the inherent contradictions underlying the somewhat artificial legal construct that cause so many to question the inquiry.” *Hernandez v. Sessions*, 872 F.3d 976, 997–98 (9th Cir. 2017) (citing cases).

This split alone warrants review. It should not be that the standard for obtaining a preliminary injunction varies depending on where the movant files suit. And it makes no sense that identically situated plaintiffs can receive disparate preliminary-injunction rulings because they happen to be in the right—or wrong—circuit. That conflict promotes nationwide forum shopping.

A majority of this Court is likely to conclude that the Ninth Circuit’s view is wrong. In analyzing a wide range of requests for injunctions, this Court has never suggested that a different standard applies to those injunctions deemed mandatory. And, as many judges have explained and as the Ninth Circuit’s questionable conclusion in this case shows, any principled effort to suss out the difference between what is mandatory and what is prohibitory—or what is the relevant status quo—is doomed to fail. While it “[s]ounds attractive in theory,” “in practice, difficulties emerge.” *Labrador v. Poe*, 144 S. Ct. 921, 930 (2024) (Kavanaugh, J., concurring). One quickly realizes that “[t]here is no good blanket answer to the question of what the status quo is. Each conception of [it] is defensible.” *Ibid.* The better course is to focus, in every case, on the tried-and-true injunction test this Court has long applied.

The Ninth Circuit committed legal error by requiring more. Given the slender reeds upon which its rulings below rest, the Ninth Circuit’s unreasonably demanding standard made a difference here. This Court should grant the application and enter an injunction ensuring K.M.K. won’t be forced to wrestle males so that she can participate in the girls’ wrestling season that begins just over a month from now.

II. Applying the proper standard, this Court should grant an injunction pending appeal.

A. This Court is likely to grant review, and Plaintiffs are likely to succeed on the merits.

1. K.M.K. is likely to succeed on her Title IX claim.

Title IX unambiguously forbids treating females worse than males. The statute bars “discrimination” or “den[ial]” of “benefits” by federal-education funding recipients “on the basis of sex.” 20 U.S.C. 1681(a). Title IX and its implementing regulations use “sex” to mean “biological sex.” *B.P.J.*, 146 S. Ct. at 2371. Indeed, the term “cannot plausibly be interpreted to refer to anything” else. *Ibid.*

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

Title IX’s athletics regulations confirm the same thing. Although the original statute did not explicitly single out sports from other school programs or activities, the Javits Amendment did, confirming Congress’s intent that Title IX governs sports and authorizing “reasonable provisions considering the nature of particular sports.” *B.P.J.*, 146 S. Ct. at 2370 (quoting Educ. Amends. of 1974, Pub. L. No. 93-380, § 844, 88 Stat. 484, 612 (1974)).

And what is reasonable “must and does” account for the “reality” that allowing males to compete 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). Through it all, the overarching principle remains “equal athletic oppor-

tunity,” including effective accommodation, “for members of both sexes,” *id.* 106.41(c)—“[n]o person” may be “treated differently” based on “sex,” *id.* 106.41(a).

Sex-separated sports teams do not violate that prohibition—indeed, they are the typical mechanism for *providing* equal athletic opportunity. Title IX “authorizes separate men’s and women’s sports teams” “because of the biological differences between the sexes.” *B.P.J.*, 146 S. Ct. at 2371, 2373. 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. In fact, schools could “not merely maintain, for example, one soccer team, one basketball team, one ice hockey team, and one lacrosse team that are equally open to female and male athletes.” *Id.* at 2367. That “approach would deny equal opportunity to female athletes” because of males’ “inherent” physical advantages. *Ibid.*; *id.* at 2371 (“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.” (quoting *O’Connor v. Board of Educ. of Sch. Dist. 23*, 449 U.S. 1301, 1307 (1980) (Stevens, J., in chambers))). But other “different[ial]” “treat[ment]” of males and females—like distinctions that fail to provide “equal athletic opportunity”—violates the statute. 34 C.F.R. 106.41(a), (c).

The upshot: Title IX allows separation of males and females based on basic biological distinctions and forbids treating males better than females.

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

Defendants violated that prohibition. They long maintained sex-separated teams to ensure equal opportunity for females under Title IX. 5-ER-836. The current policy nominally maintains sex-separated sports but authorizes some males—those who identify as females—to play on girls’ teams, undermining the sex-separated system and denying girls the benefits of a female-only team. 4-ER-715, 764–65.

The policy treats females (and girls' sports) worse than males (and boys' sports). Males have “inherent physical advantages” over females in sports, including “height, weight, strength, speed, endurance, jumping ability, and the like.” *B.P.J.*, 146 S. Ct. at 2374; 3-ER-336–37, 346–47, 352–72, 374–84; 4-ER-603–13. So the policy means males can make—and dominate—girls’ teams, like wrestling (as happened here). *B.P.J.*, 146 S. Ct. at 2372; 3-ER-384–97; 2-ER-239. Meanwhile, males continue to enjoy the same fair, effectively single-sex teams as before because females have little chance to make a boys’ team and no inherent advantage if they do. Females, on the other hand, are denied the benefit of a forum of their own.

That makes girls’ high-school sports in Washington unfair and unsafe. Letting males play on girls’ teams puts “female athletes at a serious disadvantage.” *B.P.J.*, 146 S. Ct. at 2372; 3-ER-525–26; 2-ER-276–79. “[B]ecause sports are generally zero sum”—that is certainly true of K.M.K.’s wrestling—allowing a boy to join a girls’ team “*necessarily* displaces or disadvantages a female athlete—replacing her on the roster, knocking her out of the starting lineup, reducing her playing time, depriving her of a medal, and the like.” *B.P.J.*, 146 S. Ct. at 2372; 3-ER-336–37, 384–97, 523. It also poses “particularly severe” “safety risks” for girls in “contact sports” like wrestling. *B.P.J.*, 146 S. Ct. at 2372, 2375; 3-ER-373–74; 4-ER-577–81, 585–86, 623, 627, 647–50. “Even if only one or a few males were to play on a ... girls’ team,” that would still harm “specific individual female athletes” and might deter others from playing in the first place. *B.P.J.*, 146 S. Ct. at 2375; 2-ER-193.

Defendants’ policy has tilted the playing field only for girls’ sports. Males have effectively single-sex teams, which offer them a level field on which to compete with others who have no inherent advantages. And now some males can also play on girls’ teams based on gender identity. Females, meanwhile, are denied the benefit of single-sex teams; they must compete against males with inherent biological advantages—no cross-sex hormones or testosterone suppression required.

In the words of the statute, that discriminates on the basis of sex. See *Arana v. Board 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 plain language of the regulations. To account for the inherent biological differences between males and females, Defendants generally provide “athletics separately” based on sex. Contra 34 C.F.R. 106.41(a). But after the policy change, Defendants do *not* provide “separate teams for ... each sex.” *Id.* 106.41(b). Instead, the policy rests in an unlawful middle ground: It maintains effectively male-only teams *and* authorizes males to compete on girls’ teams when doing so accords with gender identity. 4-ER-715, 764–65. That exception defeats the only valid basis for sex-separated teams—the inherent advantages of males over females. 34 C.F.R. 106.41(b).

And as explained, the policy denies females the benefit of fair opportunities of their own and does not provide “equal athletic opportunity.” *Id.* 106.41(c). It “treat[s]” girls “differently”—and less favorably—than boys. *Id.* 106.41(a); see *A Policy Interpretation: Title IX and Intercollegiate Athletics*, 44 Fed. Reg. 71,413, 71,418 (Dec. 11, 1979) (“selection of sports” provision requires separate girls’ team for contact sports where (1) females’ opportunities were historically limited and (2) females have sufficient interest and ability). That, too, is a Title IX violation.

K.M.K., an experienced and gifted wrestler, endured this unequal treatment firsthand when she was forced to compete against a male. 5-ER-807. Wrestling is physically demanding. When you add the strength and power difference of a male opponent, the risks to a girl aren’t just unfair—they’re dangerous. 2-ER-190; 3-ER-384–97. A “stronger and more powerful” male opponent sexually assaulted K.M.K., pushing through three layers of clothing to penetrate her vagina for several seconds. 5-ER-809–10. 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 higher qualifying status. 5-ER-810–11.

The trauma from the sexual assault, fear for her safety, and school officials’ failure to address the issue led K.M.K. to withdraw from the team for the rest of the year—and to stop wrestling under the current policy because continuing to wrestle could lead to similar unfair and unsafe matchups against males. 5-ER-812–14.

The Ninth Circuit (and the district court) wrongly concluded otherwise. The Ninth Circuit said K.M.K. is not likely to succeed on the merits only because the district court’s decision was based on “findings of factual disputes” subject to a “highly deferential standard of review on appeal.” App.75a. But the so-called factual disputes that the district court purportedly found—and to which the Ninth Circuit blindly deferred—are issues this Court squarely resolved in *B.P.J.*: whether males participating in girls’ sports “increases the risk of physical injury [or] competitive disadvantage to girls.” App.40a.

B.P.J. could not have been clearer: the “safety 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, 2375. And when it comes to competitive fairness, letting a male play “*necessarily* displaces or disadvantages a female athlete.” *Id.* at 2372. This Court acknowledged that is the “reality of sports.” *Ibid.*

The district court discounted this Court’s unambiguous statements because the *B.P.J.* opinion “does not identify what evidence supported [them].” App.38a n.10. But these are legislative facts that *B.P.J.* found as “self-evidently true”—facts “about the state of the world” that transcend any factual record. *Frank*, 768 F.3d at 750. Accordingly, “judges of the lower courts must accept” those “findings,” “even if 20 [experts] disagree with [this] Court.” *Ibid.* In refusing to credit those findings, the Ninth Circuit put itself in conflict with this Court’s ruling in *B.P.J.*, committed legal error, and split from the Seventh Circuit decision in *Frank*.

The legislative facts *B.P.J.* found are binding for another reason too. They were essential to the Court’s conclusion that the athletics regulation’s allowance for “[s]eparate sports teams for biological males and biological females are reasonable” and therefore lawful under the Javits Amendment. 146 S. Ct. at 2372. The lower courts are not free to reject that reasoning. *Trump v. Barbara*, 146 S. Ct. 2438, 2457 (2026) (the “reasoning underlying the holding” of Supreme Court decisions binds lower courts) (citation modified); see *Trump v. Cook*, 146 S. Ct. 2234, 2253 (2026). The Ninth Circuit said that *B.P.J.* reserved the question whether Defendants must separate sports like wrestling based on sex. App.75a. True. But that doesn’t mean the court of appeals could ignore *B.P.J.*’s legislative facts or its reasoning. Yet it did.

As support for its blind deference to the district court, the Ninth Circuit cited Justice Sotomayor’s dissent in *B.P.J.* for the proposition that courts ought to exercise restraint when addressing “difficult questions without sufficient evidentiary development.” App.75a (quoting 146 S. Ct. at 2385). But that was a dissent. And it was addressing an equal-protection claim not at issue here. The judicially restrained course for the Ninth Circuit would have been to follow what this Court said. *Cook*, 146 S. Ct. at 2253 (“the lower courts have no choice but to follow our lead”). Instead, the Ninth Circuit thumbed its nose at this Court.

Moreover, as a factual matter, the record in this case is stronger than the record in *B.P.J.* because the experts—who were the same in both cases—surveyed more detailed and intervening evidence here. *E.g.*, 3-ER-338–39; 4-ER-578–81.

The district court’s discounting of the evidence (to which the Ninth Circuit deferred) was wrong under any standard of review. For example, the district court discussed the effects of puberty blockers. App.40a–41a. 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 district court also noted that females have a higher rate of injury than males even when males aren't competing on women's teams, App.40a, 56a–57a, as if (contrary to the expert's clear conclusion) competing against males wouldn't significantly increase that rate, 4-ER-585. And the court discounted one study on which K.M.K.'s experts relied because it was about rugby rather than wrestling, App.40a–41a—as though wrestling was not a high-contact sport—and ignored other studies about contact sports more generally, 4-ER-579–80, 649–50.

Most surprising, the district court said K.M.K.'s experts did not conclude that allowing males to compete in girls' sports would “*necessarily* put [K.M.K.] at an increased risk of harm.” App.41a, 56a–57a; contra *B.P.J.*, 146 S. Ct. at 2372 (it “*necessarily* displaces or disadvantages a female athlete”). That's incorrect. Dr. Brown concluded that “males possess substantial advantages in each” of “the physiological characteristics that contribute most directly to wrestling success.” 3-ER-396–97; see 3-ER-336. And Dr. Carlson said males' participation in girls' sports “must be expected to create predictable, identifiable, *increased*, and unequal *risks of injuries to the participating women*.” 4-ER-648 (emphasis added); see 4-ER-585, 623, 627. The district court's invocation of debated policy questions and deference to states, App.39a, disregards Congress's contrary judgment in Title IX's text and what this Court called the “reality of sports” in *B.P.J.*, 146 S. Ct. at 2372.

At bottom, the district court concluded that K.M.K.'s rights were not violated because she was on the team and because the District “provided separate wrestling teams for boys and girls—albeit subject to the [gender-identity participation] policy.” App.36a–37a. But a team with males *and* females is not what Title IX or its implementing regulations mean by sex-separated teams. See *B.P.J.*, 146 S. Ct. at 2371 (“sex” means “biological sex and not gender identity”); contra *United States v. California Interscholastic Fed'n*, No. 8:25-cv-01485, 2026 WL 2575930, at *7 (C.D. Cal. Aug. 31, 2026) (the regulation does not “state that a transgender girl's

participation necessarily converts a girls' team into a coeducational team"). And K.M.K's ability to *join* the team is not enough. She wants what Title IX guarantees—a fair shot to compete and “win.” *B.P.J.*, 146 S. Ct. at 2381. Not any “particular results,” App.42a, but “equal opportunities” to reach those results, 34 C.F.R. 106.41(c); *B.P.J.*, 146 S. Ct. at 2367. Defendants' policy denies her that fair shot and jeopardizes her safety.

b. Defendants intended to treat females worse than males.

Title IX's private right of action extends to claims of “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.*, the defendant “intended to treat women differently.” *Female Athletes United v. Ellison*, 172 F.4th 1019, 1028 (8th Cir. 2026) (“FAU”) (citation modified); see *Ricci v. DeStefano*, 557 U.S. 557, 577 (2009). A defendant “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 of the policy permit an inference of intent based on all the circumstances. *United States v. Skrmetti*, 605 U.S. 495, 516 (2025) (citing *Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977)). K.M.K. satisfies both routes.

1. Defendants' policy is not neutral because it denies females 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. United States R.R. Ret. Bd.*, 761 F.2d 1428, 1431 (9th Cir. 1985). Both before and after WIAA adopted the policy, it has maintained sex-separated teams to provide equal opportunity for females given males' “inherent physical advantages in sports.”

B.P.J., 146 S. Ct. at 2374 (citing *United States v. Virginia*, 518 U.S. 515, 533 (1996)). Before the policy, recognizing that females have no advantage over males and were historically excluded from many sports, *all* females were already allowed to compete on a boys' team if there was no girls' team. 4-ER-764. And WIAA deems any team with males and females a boys' team that can only compete against other boys' teams. 4-ER-764. Males, on the other hand, have not needed (or been given) the same reciprocity. 4-ER-764.

But now—because of the policy—girls' sports are open to females *and* some males: those who identify as female, regardless of whether they take puberty blockers or testosterone suppressors. And because of those males' inherent athletic advantages, males now undeniably have *greater* athletic opportunities than females. Disfavoring females like this in the sports context—where well-known physical differences necessarily matter—is intentional sex discrimination. In fact, the policy places *only* females at a disadvantage—which distinguishes this case from *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256, 275 (1979), where the veterans preference harmed “significant numbers” of men and women who were not veterans. There is no way to view the policy other than that it gives males an advantage over females in sports. Full stop.

2. The record also shows that discriminatory intent was a motivating factor behind the policy's adoption and implementation. 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; the sequence of events leading up to the challenged decision; and the administrative history. *Id.* at 266–68.

Disparate impact. The policy undisputedly has an adverse effect only on females. That is because, as all Defendants know, males have inherent biological advantages over females in sports—which led to the passage of Title IX and adoption

of sex-separated sports in the first place. 5-ER-836–40. That clear, known disparate impact favors an inference of intentional discrimination. See *Arlington Heights*, 429 U.S. at 266. Indeed, “when the adverse consequences of a law upon an identifiable group are as inevitable as the gender-based consequences” of the policy, “a strong inference that the adverse effects were desired can reasonably be drawn.” *Feeney*, 442 U.S. at 279 n.25. There are few consequences more foreseeable than males’ dominance in girls’ sports. *B.P.J.*, 146 S. Ct. at 2367, 2372.

Historical background. Washington has recognized the “deleterious effect” caused by the “[i]nequality in the educational opportunities afforded women and girls” in its “public schools.” RCW 28A.640.010. Until 1967, WIAA sponsored no girls’ sports. 5-ER-835. Gradually, WIAA added girls’ teams, creating a consciously sex-separated system. In 2007, WIAA finally established girls’ wrestling. 5-ER-836.

WIAA still purports to maintain separate teams—with separate championships—for boys and girls. 4-ER-745–65. And it has adopted different standards for girls’ and boys’ sports, including in wrestling. 4-ER-767; 5-ER-850–51. All of that is driven by a recognition of the physical differences between males and females and the history of females’ exclusion from sports—to “provide students of both sexes an equal opportunity.” 4-ER-764.

Yet Defendants gave that up with the policy, choosing to revert to a system without a female-only category and leave Title IX’s regulatory safe harbor. That “history of discrimination against girls’ high school sports” leads to a “reasonabl[e] perce[ption]” that Defendants, in adopting and implementing the policy, “regarded girls’ sports as less worthy of consideration and support than boys’ sports.” *Soule v. Connecticut Ass’n of Schs.*, 755 F. Supp. 3d 172, 199 (D. Conn. 2024). Defendants have not adopted—and would not adopt—a policy that similarly upends boys’ sports.

Sequence of events. The sequence of events leading to the policy change also shows intentional discrimination. As explained, Defendants knew and understood the

inherent differences between males and females and established designated girls' teams to account for that difference. But in 2007, WIAA's executive director worked "quickly" with staff to adopt the initial gender-identity participation policy. Jayda Evans, *Ten years on, WIAA's transgender policy keeps conversation going*, Seattle Times (Apr. 4, 2017), perma.cc/C6GZ-R689. That version of the policy included *some* safeguards intended to reduce fairness and safety concerns for females—requiring surgeries, hormone therapy, and a waiting period before males could participate. *Ibid.* But officials quickly revised the policy, establishing a process where a liaison would present individual cases to a WIAA panel for approval. *Ibid.* By 2016, WIAA eliminated that requirement too. *Ibid.* The current policy has *no* safeguards to protect females or girls' sports—males can compete on girls' teams consistent with their "innate sense of their own gender" or "the gender most consistently expressed." 4-ER-715, 765. Eliminating protections reflects a deliberate disregard for females and girls' sports.

Administrative history. The way Defendants implemented the policy—disregarding evidence of harm and undermining proposed amendments—also shows that Defendants intended to treat females differently.

Since Defendants made the policy change, they have ignored mountains of evidence—complaints from parents, female athletes, and schools; media reports; U.S. Department of Education investigations—confirming what Defendants knew to be "reality": males will injure or disadvantage females if allowed to play in girls' sports. *B.P.J.*, 146 S. Ct. at 2372; 5-ER-843–55.

For example, four school districts filed Title IX complaints against OSPI, Superintendent Reykdal, and/or WIAA raising harms to girls from the policy. 5-ER-843. Two individual female athletes and one parents' network also filed complaints. 5-ER-843–44. In addition, media extensively covered 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 reasonably fearing for their safety and who evidently injured one female. 5-ER-843–44.

Yet Defendants still insist on the policy—and punish schools that protect females. School boards and others have put forward proposed amendments to WIAA’s policy to protect girls and girls’ sports. 5-ER-852. Defendants have rebuffed them. Superintendent Reykdal is “absolutely committed” to the policy, and WIAA’s Executive Director told those trying to undo the policy to “spend that time and energy where they can make a real impact.” 5-ER-845, 853; see 5-ER-842–50, 852–54. Defendants’ alleged “rebuff[ing]” of complaints and “attempt[s] to stifle further complaints” suggests Defendants do not care about girls’ sports as much as boys’ sports. *Soule*, 755 F. Supp. 3d at 199. That “attitude” is “antithetical to ... Title IX’s nondiscrimination mandate.” *Ibid.* Defendants have also argued that state law requires the policy. 5-ER-843–44. That’s a ruse; Washington law is unambiguous: “[s]chools may provide separate teams for each sex.” RCW 28A.640.020(1)(c); WAC 392-190-025(2).

Viewed together, K.M.K.’s evidence shows that Defendants acted at least in part because they did not care about girls’ sports as much as boys’ sports. *Ibid.*; see *Feeney*, 442 U.S. at 279.

The Ninth Circuit did not reach this issue because of its blind deference to the purported factual disputes discussed above. The district court, for its part, concluded that K.M.K.’s Title IX claim sounds only in disparate impact. But that court did not engage the evidence K.M.K. put forward, instead saying that “Plaintiffs point to no record evidence that shows Defendants acted with the *intent* to treat girls differently.” App.33a. As just catalogued, that’s wrong. And K.M.K. need not “square” this argument with the fact that the policy divides based on gender identity, App.33a—because even a policy that is purportedly sex-neutral on its face can qualify as intentional sex discrimination. *Skrmetti*, 605 U.S. at 516; *Arlington Heights*, 429 U.S. at 266. This one does.

c. Defendants were deliberately indifferent.

The evidence also shows that Defendants were deliberately indifferent to the sex discrimination the policy has caused and continues to cause. A plaintiff can state a claim of intentional discrimination under Title IX by alleging that a defendant acted with deliberate indifference—*i.e.*, the defendant disregarded reports of sex discrimination, thereby creating a “heightened risk” of discrimination that is “known or obvious” and causing the plaintiff to suffer discrimination. *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) (similar). A defendant is liable even if it did not have prior knowledge of—or respond with indifference to—the specific discrimination the plaintiff suffered. *Karasek*, 956 F.3d at 1112.

Defendants were deliberately indifferent. Again, 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; see 5-ER-834, 836, 838–40, 850–51. Beyond that, Defendants also disregarded abundant reports of sex discrimination the policy caused to female athletes in Washington—establishing a distinct policy of deliberate indifference to those reports.

OSPI and Reykdal. Two school boards and two school districts filed Title IX complaints against OSPI and Reykdal, arguing that the policy harms females. 5-ER-843. Two female athletes and a parents’ network filed similar complaints, again highlighting the harms to girls from the policy. 5-ER-843–44. Two other female athletes met with Reykdal to explain the harms they suffered from a male participating in the girls’ basketball league. 5-ER-844. The media extensively covered instances of males displacing females in Washington sports. A male named V.G. won the state championship in girls’ track and field events in 2024 and 2025. 5-ER-051. Two females refused to play a basketball team that included a male, and one female on an opposing team was injured when the male player tackled her. 5-ER-852.

Yet OSPI and Reykdal refused to do anything about the discrimination. Worse than just ignoring the complaints, they bullied school districts that deviated from the policy to protect females, leading to a U.S. Department of Education investigation. 5-ER-846–48. And OSPI and Reykdal pressured WIAA not to change the policy after individual member schools proposed amendments. 5-ER-852. Superintendent Reykdal has acknowledged the policy is “a big issue” but remains “absolutely committed” to it. 5-ER-845.

WIAA. WIAA was named in at least some of the Title IX complaints filed by schools and athletes raising the harms to females from the policy. 5-ER-843–44. WIAA knew about males displacing females in athletic competitions and championships, one of which led to a federal investigation. 5-ER-851–52. WIAA was also engaged in discussions with member schools trying to change the policy to protect females and girls’ sports. 5-ER-852–54. At every turn, WIAA pushed back against female athletes—disregarding the complaints, insisting that the proposed policy amendments to protect girls be treated as advisory, and even chastising those in favor of the amendments that they should spend their time doing something that would “make a real impact.” 5-ER-850–55.

The District. The District would have known of the Title IX complaints and media coverage of males displacing females. 5-ER-843–44, 851–52, 855. But it, too, embraced the policy and allowed K.M.K.’s male opponent to compete.

Defendants’ policies led to the discrimination against K.M.K. here. She had to wrestle against a stronger, more powerful male opponent at the Lady Jag tournament, and that opponent sexually assaulted and then defeated her. That violates Title IX. See *Karasek*, 956 F.3d at 1112–14; *Simpson v. University of Colo. Boulder*, 500 F.3d 1170, 1173–84 (10th Cir. 2007). And absent a preliminary injunction, K.M.K. will be forced yet again to wrestle against males.

The district court said there was “no evidence Defendants had received reports about K.M.K.’s opponent that would have put Defendants on notice that K.M.K. could encounter a heightened risk of injury.” App.41a. 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 contrary to the district court’s conclusory statement that “there is no evidence in the record Defendants were aware of [a heightened risk of injury or a competitive disadvantage],” App.44a, the record is replete with reports of females *in Washington* suffering those harms because males were allowed to play in girls’ sports. Defendants’ decisions to double down on the policy despite that known discrimination—leading to K.M.K.’s harms—constitute deliberate indifference in violation of Title IX.

d. The Spending Clause poses no barrier to relief.

The district court (but not the Ninth Circuit) also concluded that Defendants lacked sufficient notice that the policy violates Title IX and therefore cannot be liable. App.50a–55a. That’s also wrong.

Defendants had clear notice. Because spending legislation is contractual, Congress must provide notice of the conditions to which those accepting federal money agree. *Medina v. Planned Parenthood S. Atl.*, 606 U.S. 357, 371–74 (2025). The inquiry focuses on “clear statutory language.” *Id.* at 383 n.8. Just as Title IX “proscribes” harassment and retaliation “with sufficient clarity to satisfy *Pennhurst*’s notice requirement,” *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 650 (1999); *Jackson*, 544 U.S. at 174–75, 182–83, it also clearly prohibits treating females worse than males, *B.P.J.*, 146 S. Ct. at 2371 (Title IX’s reference to sex “cannot plausibly” refer to anything but “biological sex”); see *Arana*, 182 F.4th at 687 (Brennan, J., concurring). The regulations confirm as much, barring funding recipients from

“treat[ing]” any “person” “differently” based on sex and guaranteeing “equal athletic opportunity.” 34 C.F.R. 106.41(a), (c).

The district court said that this Court’s *B.P.J.* opinion was no help because it was decided “[o]nly recently” and the question was “open” before that decision. App.54a. But when this Court construes a statute, it says what the provision has “*always* meant.” *Rivers v. Roadway Express, Inc.*, 511 U.S. 298, 313 n.12 (1994). So Title IX—“continuously since the date when it became law,” *ibid.*—has unambiguously barred treating females worse than males, *B.P.J.*, 146 S. Ct. at 2371.³

The district court also said that *B.P.J.* did not address whether a state “may *allow* biological males who identify as female to participate on girls’ and women’s sports teams.” 146 S. Ct. at 2367 n.1; see App.54a–55a. But no matter the answer to that broad question in the abstract, Title IX is clear that Defendants cannot treat females worse than males in contact sports like wrestling. Yet that’s what they’re doing here—forcing K.M.K. to wrestle against stronger, more powerful males and taking away an opportunity to compete on a fair playing field like all males can.

A district court in the Ninth Circuit recently dismissed on clear-notice grounds the federal government’s complaint challenging California’s gender-identity sports-participation policy. *California Interscholastic*, 2026 WL 2575930, at *1. But unlike here, the United States’ theory in that case called for a “per se,” “categorical” rule requiring biological sex separation, *id.* at *6–7, consistent with this Court’s clear direction that allowing boys to participate in girls’ sports “*necessarily*” disadvantages girls. *B.P.J.*, 146 S. Ct. at 2372; *id.* at 2367 (maintaining one team for each sport “equally open to female and male athletes ... would deny equal opportunity to female athletes”). This Court need not go that far to rule for K.M.K. here—she seeks no categorical rule, just protection for herself in a girls’ contact sport. And *California*

³ The notice standard is thus distinct from the “clearly established” standard that governs “qualified immunity.” *Soule v. Connecticut Ass’n of Schs., Inc.*, 90 F.4th 34, 61 (2d Cir. 2023) (en banc) (Menashi, J., concurring); *Arana*, 182 F.4th at 687 (Brennan, J., concurring).

Interscholastic held that “Title IX, the Javits Amendment, [and the athletics regulations]” clearly “require equal treatment,” 2026 WL 2575930, at *8—just what K.M.K. was denied.⁴

* * *

In short, K.M.K. is likely to succeed on the merits. Defendants have adopted, implemented, and stood by the policy that led K.M.K. to be matched against a male wrestling opponent without her knowledge. That more-powerful male sexually assaulted her and then pinned her. While K.M.K. had no chance to compete on a level playing field, males in Washington get that—plus the opportunity to beat females in the girls’ division. That violates Title IX.

2. Brown is likely to succeed on her parental-rights claim.

In contact sports like wrestling, parents have the right to decide whether their daughters will compete against males. That’s why Brown asks the District to withdraw K.M.K. from matches against males. But the District has refused. It will not even agree to tell her when such a match is scheduled so that she may withdraw K.M.K. herself. The Constitution guarantees her that choice.

The Fourteenth Amendment precludes states from abridging fundamental rights that are “deeply rooted in this Nation’s history and tradition.” *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997) (citation modified). The right of fit parents to direct their children’s “upbringing”—a right “established beyond debate as an enduring American tradition,” *Wisconsin v. Yoder*, 406 U.S. 205, 231–32 (1972)—“is perhaps the oldest of the fundamental liberty interests recognized by” this Court, *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality). Parents have the right “to direct the upbringing and education of [their] children” because the “child” belongs to them,

⁴ That some courts wrongly interpreted Title IX to require gender-identity participation policies does not—contrary to the district court’s reasoning in *California Interscholastic*, 2026 WL 2575930, at *8–9—suggest a lack of clear notice. As explained, clear notice turns on statutory language. And Title IX’s text, since its enactment, has clearly prohibited treating females worse than males.

not “the [S]tate.” *Pierce v. Society of Sisters*, 268 U.S. 510, 534–35 (1925); accord *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (“[T]he custody, care and nurture of the child reside first in the parents.”).

This Court’s precedent recognizes that parents’ rights “to make decisions concerning the care, custody, and control of their children,” *Troxel*, 530 U.S. at 66—to “mak[e] life’s difficult decisions,” *Parham v. J.R.*, 442 U.S. 584, 602 (1979)—reach a wide range of issues. These include decisions about a child’s education, *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923) (learning a foreign language); *Pierce*, 268 U.S. at 534–35 (attending a private school), religious upbringing, *Yoder*, 406 U.S. at 218 (attending high school); *Mahmoud v. Taylor*, 606 U.S. 522, 550 (2025) (opt out from LGBTQ curriculum), visitors and caregivers, *Troxel*, 530 U.S. at 65–66, 70 (grandparent visitation rights), and mental health and safety, *Parham*, 442 U.S. at 602 (institutionalization for mental-health care); *Mirabelli*, 607 U.S. at 497 (secret-social-transition policies at school). Just recently, this Court applied that right to two new public-school settings in *Mahmoud* and *Mirabelli*, refusing to “confine[]” parental rights to the facts of prior cases. *Mahmoud*, 606 U.S. at 558.

Brown’s parental-rights claim fits comfortably within the right the Court has recognized. Children, “even in adolescence, ... are not able to make sound judgments concerning many decisions, including” how to avoid harm, so “[p]arents can and must make those judgments,” *Parham*, 442 U.S. at 603. Parental rights apply at public school, ensuring that parents get to make decisions affecting their child’s health and safety risks “during school hours.” *Mirabelli*, 607 U.S. at 497. Just as the decision whether a child should undergo a social gender transition at public school falls into that category, *ibid.*, so too does whether a 15-year-old female wrestles a male as part of her public-school athletics program.⁵

⁵ The district court said *Mirabelli*’s assessment was “preliminary.” App.26a. But *Mirabelli* was “dictated by existing law,” 607 U.S. at 499 (Barrett, J., concurring), and no Justice doubted that parental rights exist, *id.* at 507 (Kagan, J., dissenting).

The Ninth Circuit cast aside both *Mahmoud* and *Mirabelli*. App.74a–75a. The court first said *Mahmoud* is distinguishable because the parents there asserted burdens on their “religious exercise,” App.74a, but *Mirabelli* is clear that parents asserting non-religious objections to protect their child’s health and safety have the “same” rights, 607 U.S. at 497. The Ninth Circuit then said that *Mirabelli* does not apply because Brown is not seeking “any information about *her* child.” App.74a. But whether K.M.K. is set to wrestle a male opponent is information *about K.M.K.* just as much as the school’s plan to teach Mr. Mahmoud’s son LGBTQ stories was information about his child. *Mahmoud*, 606 U.S. at 550–55. And whether Brown’s daughter wrestles a male implicates K.M.K.’s health just like the Poes’ and Does’ daughters’ gender transitions did. *Mirabelli*, 607 U.S. at 493–94, 497.

The Ninth Circuit insisted that Brown seeks “medical information about *other* children.” App.74a–75a. But Brown has no interest in learning the identity of any other student; she asks that Defendants opt her daughter out of matches against male athletes—or at least notify her if they intend to put her in such a match. Defendants could opt K.M.K. out of such a match themselves based on Brown’s stated objection without revealing anyone’s identity. That narrow request falls squarely within the right this Court has recognized.

In weighing the equities, the Ninth Circuit said it’s not feasible for the District to opt K.M.K. out of a match against a male because the District does not know an athlete’s sex. App.77a. But that’s an accommodation question that has nothing to do with whether Brown has a parental right to direct this aspect of K.M.K.’s upbringing. The problem with the Ninth Circuit’s ruling is that it denied Brown had a right at all. App.74a–75a. Questions about the appropriate remedy belong at a different analytical stage. But the District denied Brown an opt-out altogether.

The result is that Brown must sacrifice either her right to make important decisions regarding K.M.K.’s health and safety *or* K.M.K.’s right to participate in

sports. That ultimatum impermissibly burdens Brown’s rights and triggers strict scrutiny. *Mahmoud*, 606 U.S. at 550, 564.

Defendants cannot meet that high standard. They say their refusal ensures privacy, safety, and nondiscrimination. But those “broadly formulated interests” do not suffice. *Fulton v. City of Philadelphia*, 593 U.S. 522, 541 (2021) (quoting *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418, 431 (2006)). “The question ... is not whether” Defendants have “a compelling interest in enforcing” those interests “generally, but whether” they have a compelling interest in denying Brown her right to direct her daughter’s care and upbringing by refusing the penalty-free opt-out that Brown requests. *Ibid.* They do not.

While the Ninth Circuit noted privacy and administrative concerns in balancing the interests, see App.75a–78a, it never suggested that Defendants’ policies could survive strict scrutiny for those reasons. That makes sense. The policies “cut out the primary protectors of children’s best interests: their parents,” *Mirabelli*, 607 U.S. at 496–97, and there are tailored ways to provide Brown an opt out even if Defendants’ interests are deemed compelling. Brown is likely to succeed on the merits.

B. The remaining factors favor an injunction pending appeal.

1. Absent an injunction, Plaintiffs face irreparable harm.

Absent this Court’s swift intervention, Plaintiffs will suffer irreparable harm. High-school athletics are once-in-a-lifetime opportunities. K.M.K. is now in her junior year; she’s already missing soccer, and she will soon miss her girls’ wrestling season because of Defendants’ discriminatory policy. As multiple circuit courts have held, “[t]hose lost opportunities constitute irreparable harm.” *Mid Vt. Christian Sch. v. Saunders*, 151 F.4th 86, 96 (2d Cir. 2025) (similar policy deprived girls’ basketball team “opportunities to participate in [Vermont] sports and to pursue athletic scholarships”); see, e.g., *McCormick ex rel. McCormick v. School Dist. of Mamaroneck*,

370 F.3d 275, 302 n.25 (2d Cir. 2004) (girls' soccer team could not "play in the fall season, which deprives them the chance for Regional and State Championship competition"); *Roberts v. Colorado State Bd. of Agric.*, 998 F.2d 824, 833 (10th Cir. 1993) (athletes lost "the opportunity to play softball"). These lost seasons can't be replayed. And K.M.K.'s junior and senior wrestling seasons could easily pass by before her appeal to the Ninth Circuit and this Court's certiorari review conclude.

Brown will also continue to be deprived of her constitutional parental rights. As with other constitutional rights, the denial of parental rights "constitutes irreparable harm." *Mirabelli*, 607 U.S. at 497.

The Ninth Circuit disagreed, opining that, because wrestling season doesn't open until mid-November, there is no "genuine emergency necessitating urgent relief." App.73a. That's wrong—Plaintiffs anticipated that the Ninth Circuit might not be the end of the road for their request, so they requested relief by late September to build in time for this Court's review if necessary. The court of appeals' criticism is also ironic—Plaintiffs should not be faulted for acting *too soon* when irreparable harm is looming.

Notably, the Ninth Circuit offered no other equitable basis for denying K.M.K. an injunction under Title IX. The district court's contrary conclusion rested on its view that K.M.K. has not shown she would "suffer a competitive disadvantage" or "a greater risk of harm" from being forced to compete against boys. App.56a. But as explained, that conflicts with *B.P.J.* and was wrong as a matter of law and fact.

On parental rights, the Ninth Circuit said the District had already agreed to allow K.M.K. to forfeit matches against males, and that Brown was already aware of two male athletes on the Emerald Ridge girls' wrestling team. App.75a–76a. But the District's proposed forfeits would not have been without penalty to K.M.K.—her record would reflect a loss. Indeed, a declaration from a District official concedes that "[t]here is no way to permit K.M.K. to forfeit matches without penalty." CA9 Dkt. 38.2

at 5. And in any event, the District and WIAA withhold the information Brown needs to exercise her right—while she is now aware of two male athletes on the Emerald Ridge team, she has no way to know if there are other males participating on that or any other team and cannot risk being blindsided again. But if Defendants are required to opt K.M.K. out, that risk evaporates.

Next, the Ninth Circuit suggested that Brown’s requested injunction sweeps too far. App.76a. But its reasoning reflects a fundamental misunderstanding of Brown’s claim. The Ninth Circuit said Brown specifically complains that K.M.K.’s male opponent sexually assaulted her but broadly “seek[s] notice of *all* transgender athletes who could potentially compete against K.M.K.” App.76a. While Brown certainly wants to keep K.M.K. from wrestling males to ensure she does not suffer another unspeakable sexual assault by a stronger male opponent, her concerns are broader: She understands that “biological males generally possess inherent physical advantages in sports” and that K.M.K. wrestling *any* male puts her at “particularly severe” injury and “safety risks.” *B.P.J.*, 146 S. Ct. at 2372, 2374. This justifies her request for an opt out whenever K.M.K. is assigned to wrestle a male. The requested injunction is thus tailored to allow Brown to protect K.M.K. from those risks.

2. The equities weigh in favor of granting an injunction.

The public interest also favors Plaintiffs. In taking Title IX funds, Defendants agreed to abide by the law’s nondiscrimination requirement. *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 286 (1998). The public’s true interest “favors applying federal law correctly.” *Small v. Avanti Health Sys., LLC*, 661 F.3d 1180, 1197 (9th Cir. 2011); *Kentucky v. Biden*, 23 F.4th 585, 612 (6th Cir. 2022); *In re Revel AC, Inc.*, 802 F.3d 558, 573 (3d Cir. 2015); see *Town of Newton v. Rumery*, 480 U.S. 386, 400 (1987) (O’Connor, J., concurring in part and concurring in judgment) (“The public has an interest in seeing its laws faithfully executed.”).

There is 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. If K.M.K. wants to participate in high-school athletics, she must play against biological males. She has already suffered an unconscionable sexual assault and a heartbreaking defeat that cost her a third-place finish; she should not be required to subject herself to further discrimination as the cost of competing. Defendants, by contrast, provided sex-separated sports for decades and can easily resume doing so. And with an injunction, all males could continue to compete on male-designated teams.

As to parental rights, there is no question that “children’s safety is the overriding equity.” *Mirabelli*, 607 U.S. at 497. As in *Mirabelli*, ensuring that fit parents like Brown can make “some of the most consequential decisions in their children’s lives” “*promotes* child safety.” *Ibid.* (emphasis added). And notice only needs to communicate that a scheduled match falls outside Brown’s permission: no name, status, or reason need be given. If Defendants still think that says too much, they can withhold K.M.K. on their own without saying a word. And any potential privacy interest—whether rooted in state law or federal statute—does not outweigh Brown’s constitutional rights. U.S. Const. art. VI, cl. 2.

The Ninth Circuit suggested that there might be administrative difficulties with implementing notice and opt out here. App.77a. But Defendants knew K.M.K.’s previous opponent was male, and physicians document student-athletes’ “Sex assigned at birth” on WIAA’s preparticipation-evaluation history form, 2-ER-270–71 & n.17 (citing and discussing American Academy of Pediatrics, *Preparticipation evaluation: History Form*, perma.cc/Q9CG-867D); see WIAA, *Official WIAA Forms*, wiaa.com/forms. Anyway, Defendants cannot avoid a constitutional accommodation they have designed themselves out of delivering. *Mahmoud*, 606 U.S. at 567.

III. Alternatively, the Court should grant certiorari before judgment.

For all the reasons explained, this Court should grant an injunction pending appeal so that K.M.K. can participate in the impending girls' wrestling season without risk of unfair competition or further harm. In addition, or in the alternative, the Court could construe this application as a petition for a writ of certiorari before judgment, grant the petition, and set this case for expedited briefing and argument this Term on the important questions presented. See *Trump v. Slaughter*, 146 S. Ct. 18 (2025) (granting stay, treating application as petition for certiorari before judgment, and granting petition); *Biden v. Nebraska*, 143 S. Ct. 477 (2022) (deferring application to vacate injunction and granting certiorari before judgment); *United States v. Texas*, 143 S. Ct. 51 (2022) (denying stay, construing application as petition for certiorari before judgment, and granting petition).

Under 28 U.S.C. 2101(e), a writ of certiorari may be filed before a judgment has been rendered in the court of appeals. And the unique circumstances of this proceeding present the type of “imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court.” Sup. Ct. R. 11.

First, the circuit split over the proper standard for granting an injunction is deep and has outcome-determinative consequences. In the nine circuits that apply a heightened standard for mandatory injunctions, movants are wrongly being forced to prove extreme harm and/or a certainty of success rather than irreparable harm and a mere likelihood of success. That standard can be outcome-determinative in cases involving requests for affirmative government action, reinstatement of employment, restoration of benefits, or compelled performance of contractual obligations. And the characterization of an injunction as mandatory versus prohibitory is often contested, since the same relief can be framed in either mandatory or prohibitory terms. Here, for example, K.M.K. seeks to prohibit Defendants from applying an unlawful policy,

yet the Ninth Circuit described it as a request for a mandatory injunction. And all these problems are exacerbated in the Ninth Circuit, as its “doubly demanding” standard appears to be the highest of all.

Second, K.M.K. is not the only victim of gender-identity participation policies that violate Title IX. As noted, other female athletes have also lost or forfeited games to male athletes in Washington State. And 22 other states have the same or similar policies. Absent this Court’s review, the lower courts’ analysis in this case and others like it is a taste of the obstinance to be expected in applying *B.P.J.* *E.g.*, *California Interscholastic*, 2026 WL 2575930, at *7 (discounting the current federal regulation because it does not “state that a transgender girl’s participation necessarily converts a girls’ team into a coeducational team”).

In the meantime, as described in detail in the *B.P.J.* opening merits brief and the supporting amici briefs, women and girls are being physically injured and routinely displaced from teams, competitions, and winners’ podia because of policies like Washington’s. *E.g.*, Br. for Pet’rs 6–8, *West Virginia v. B.P.J.*, No. 24-43 (U.S. Sep. 12, 2025); Br. for Pet’rs 4–6, *Little v. Hecox*, No. 24-38 (U.S. Sep. 12, 2025). To take just one example, the male-athlete plaintiff in *B.P.J.* won the state championship in women’s shot put as a sophomore this past spring—an achievement that displaced many female athletes in West Virginia. WVSSAC State Track & Field Championships (Women’s AAA Shot Put), ATHLETICNET, perma.cc/Z7RZ-P6K2.

Third, the Ninth Circuit’s parental-rights holding unnecessarily cabins *Mirabelli*, just like that court unnecessarily cabined this Court’s *Mahmoud* decision before that. The Court should grant review and send a message that parental rights must be respected, particularly when that lack of respect endangers girls.

For all these reasons, certiorari before judgment is warranted.

CONCLUSION

The Court should grant Plaintiffs an injunction pending appeal that protects K.M.K. from male competitors in girls' wrestling. In the alternative, the Court should both issue an injunction and grant certiorari before judgment.

Respectfully submitted,

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OCTOBER 2, 2026

APPENDIX

APPENDIX

District court order denying preliminary injunction (W.D. Wash. Aug. 23, 2026)	1a
District court order denying injunction pending appeal (W.D. Wash. Aug. 31, 2026)	63a
Court of appeals order denying injunction pending appeal (9th Cir. Sept. 25, 2026)	68a

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.)
20 He stated his program “teach[es] athletes to grab at the knee” but in a match, “athletes do not
21 always execute the technique properly.” (*Id.*) Nate L. Schmutz, the assigned Title IX
22 investigator, concluded the following based on two videos of the incident:

23 “The videos of the match show, by both the angle and observed force applied, that
24 Respondent likely touched Complainant’s vagina with force in the first instance, such
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.”

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

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
24

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.*)
24

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
23

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.)
23
24

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
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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
24

1 met. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131–1135 (9th Cir. 2011). Under this
2 “sliding scale” method, the movant need only raise “serious questions going to the merits,” but
3 the balance of hardships must tip “sharply” in the movant’s favor. *Id.* at 1131–1132; *see also*
4 *Farris v. Seabrook*, 677 F.3d 858, 864 (9th Cir. 2012).

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

11 III DISCUSSION

12 A. Article III Standing

13 As a threshold matter, OSPI argues Plaintiffs have not alleged an Article III injury
14 sufficient to confer standing. (Dkt. No. 43 at 13–15.) It argues Plaintiffs’ allegations of harm
15 “rest on assumptions that physical injury, ‘competitive’ injury, and sexual assault are ‘obvious’
16 risks when transgender girls compete in girls’ sports.” (*Id.* at 13) (citing Dkt. No. 36 at 11, 26).
17 In reply, Plaintiffs argue there is a strong likelihood K.M.K. will have to wrestle a male student
18 again in the future, because Rogers High School and Emerald Ridge High School compete
19 against each other frequently, and the past has “significant ‘predictive value.’” (Dkt. No. 53 at
20 13) (quoting *Murthy v. Missouri*, 603 U.S. 43, 59 (2024)). Plaintiffs further argue the risk of
21 harm is not unclear because there is no dispute that allowing transgender girls to play on girls’
22 sports teams puts girls at risk of harm, and that K.M.K.’s exclusion is not self-imposed because
23 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
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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
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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.”).)

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

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

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

- 9 • I have reviewed physiological differences that result in the male body
10 bringing greater weight, speed, and force to the athletic field, ring, mat, or
11 court, and how these differences can result in a greater risk of injury to
12 females when males compete against them, through the transmission of
13 greater impact forces. That said, it is also true that the female body appears
14 more vulnerable than the male body to certain types of injury even when
15 subject to comparable forces. In general, when sex specific sports are
16 analyzed, adolescent females are injured at a higher rate than males. (Ritzer
17 2021)
- 18 • In analyz[ing] both-sex sports (i.e., sex-separated sports that both girls and
19 boys play, like soccer), girls sustained higher injury rates, and greater rates of
20 time-loss injury. (Beachy 2014)
- 21 • Another study of over 2,000 middle school students at nine schools showed
22 that the injury rate was higher for girls’ basketball than for football (39.4 vs.
23 30.7/1000 AEs), and injury rates for girls’ soccer were nearly double that of
24 boys’ soccer (26.3 vs. 14.7/1000 AEs). (Caswell 2017)

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

1 Moreover, the case law Plaintiffs cite does not support their theory that Defendants’
2 transgender-inclusive policies constitute a deliberate indifference towards the safety of girls. In
3 *Karasek*, the court discussed the case *Simpson v. Univ. of Colo. Boulder*, 500 F.3d 1170 (10th
4 Cir. 2007), where the football program had a policy of hosting football recruits on campus in the
5 fall and pairing them with female “ambassadors”; some of the recruits were promised the
6 opportunity to have sex and “there was evidence that the coaching staff not only knew of this
7 conduct, but encouraged it.” 956 F.3d at 1112 (citing *Simpson*, 500 F.3d at 1173–1174). The
8 university was apparently “aware of prior complaints of sexual misconduct” and had been
9 “warned by the district attorney that the university needed to supervise the recruits and
10 implement sexual assault prevention training.” *Id.* at 1112–1113 (citing *Simpson*, 500 F.3d at
11 1173–1174, 1179–1184). The *Karasek* court explained that because the risk of sexual assault in
12 *Simpson* was ““obvious,”” the university’s “failure to remedy that risk constituted an official
13 policy of deliberate indifference that violated Title IX.” 956 F.3d at 1113 (citation omitted).

14 In *Karasek*, the plaintiffs overcame a motion to dismiss by alleging (1) the California
15 State Auditor concluded that in a five-year period, the university resolved 76 percent of Title IX
16 complaints in an early-resolution process in a “generally inadequate manner”; (2) the university’s
17 Title IX coordinator stated in an interview that using an early-resolution process for sexual
18 assault claims was not an appropriate mechanism; and (3) the university took the position that
19 resolving Title IX claims informally did not require it to report those claims as required by
20 statute. *Id.* at 1113–1114. The court commented that if it was true that “early resolution is not
21 an appropriate mechanism for resolving sexual-assault claims[,]” the university’s conduct during
22 the relevant timeframe “appears inexplicable.” *Id.* at 1114. Taken together, these allegations
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1 were therefore sufficient to show the university had a policy of deliberate indifference that
2 “heightened the risk of sexual harassment on campus[.]” *Id.*

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

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

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

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

22 (1) that the educational institution had ‘substantial control over both the harasser
23 and the context in which the known harassment occurs’; (2) that the harassment
24 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

1 corrective measures . . . has actual knowledge of [the] discrimination’; (4) that the
2 school acted with ‘deliberate indifference’ to the harassment; and (5) that the
3 school’s ‘[d]eliberate indifference must, at a minimum, cause students to undergo
4 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).

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

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

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

20 The first element of Plaintiffs’ deliberate indifference claim is not disputed. (Dkt. No. 40
21 at 19.) The District does, however, dispute the remaining four elements. Plaintiffs first argue the
22 harassment was severe and pervasive enough to deny K.M.K. equal education opportunities,
23 suggesting the second element can be established because she allowed herself to be pinned to
24 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
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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
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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
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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
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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
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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

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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

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11 STEPHANIE LYNNE BROWN ,

12 Plaintiff,

13 v.

14 WASHINGTON INTERSCHOLASTIC
ACTIVITIES ASSOCIATION et al.,

15 Defendants.

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

ORDER ON EMERGENCY
MOTION FOR INJUNCTION
PENDING APPEAL (DKT. NO. 63)

16 Before the Court is Plaintiffs' emergency motion for an injunction pending appeal. (Dkt.
17 No. 63.) For the reasons that follow, Plaintiffs' motion is DENIED.

18 On August 24, 2026, the Court denied Plaintiffs' motion for preliminary injunction.
19 (Dkt. No. 58.) Plaintiffs appealed that order to the Ninth Circuit on August 25, 2026. (Dkt. No.
20 60.) On August 26, Plaintiffs filed the instant motion. (Dkt. No. 63.) That same day, the Court
21 ordered Defendants to respond (Dkt. No. 64); Defendants filed their response briefs on August
22 28. (Dkt. Nos. 65, 66, 68.)

1 The Court refers to Dkt. No. 58 for a full recitation of the facts underlying Plaintiffs'
2 motion.

3 ““While an appeal is pending from an interlocutory order or final judgment that grants,
4 continues, modifies, refuses, dissolves, or refuses to dissolve or modify an injunction,’ . . . the
5 district court may ‘suspend, modify, restore, or grant an injunction’ during the pendency of the
6 appeal.” *Tobin v. Rollins*, Case No. 2:25-cv-02259-CSK, 2026 WL 1965921, at *2 (E.D. Cal.
7 July 7, 2026) (quoting Fed. R. Civ. P. 62(d)). Rule 62(d) “grants the district court no broader
8 power than it has always inherently possessed to preserve the status quo during the pendency of
9 an appeal; it does not restore jurisdiction to the district court to adjudicate anew the merits of the
10 case.” *Nat. Res. Def. Council, Inc. v. Sw. Marine, Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001)
11 (quotations omitted). Federal Rule of Appellate Procedure 8 requires that a party must first
12 move for an injunction pending appeal in the district court before moving the appellate court.
13 Fed. R. App. P. 8(a)(1)(C).

14 “The standard for evaluating an injunction pending appeal is similar to that employed by
15 district courts in deciding whether to grant a preliminary injunction.” *Feldman v. Ariz. Sec’y of*
16 *State’s Off.*, 843 F.3d 366, 367 (9th Cir. 2016) (en banc). Accordingly, Plaintiffs must show: (1)
17 a likelihood of success on the merits; (2) a likelihood of irreparable harm to the moving party in
18 the absence of preliminary relief; (3) that the balance of equities tips in favor of the moving
19 party; and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*,
20 555 U.S. 7, 20 (2008). The first factor “is a threshold inquiry and is the most important
21 factor.” *Env’t Prot. Info. Ctr. v. Carlson*, 968 F.3d 985, 989 (9th Cir. 2020). However, parties
22 do not need to meet the “high bar for reconsideration to secure an injunction pending appeal.”
23 *NetChoice v. Bonta*, 761 F. Supp. 3d 1232, 1235 (N.D. Cal. 2025). “[T]he fact that a court
24

1 previously found that a preliminary injunction was not warranted should carry significant weight,
2 so the circumstances must be of unusual magnitude to justify a district court granting an
3 injunction pending appeal after denying a preliminary injunction.” *Id.* at 1236.

4 In their motion, Plaintiffs argue Defendants’ transgender-inclusive policies force Brown
5 to “condition K.M.K.’s access to public education benefits—here, athletics—on forfeiting her
6 right to direct her daughter’s care and upbringing and to make consequential decisions about
7 [K.M.K.’s] physical safety.” (Dkt. No. 63 at 4.) They argue Defendants’ policies support an
8 inference of both intentional discrimination and reflect a deliberate indifference toward an
9 obvious risk of injury to girls in violation of Title IX. (*Id.* at 6.) Finally, they argue the District’s
10 “official misconduct” by failing to properly address K.M.K.’s allegations of sexual assault has
11 created a hostile environment in its own right. (*Id.* at 8–9.) Plaintiffs “move for an injunction
12 pending appeal to avoid the irreparable harm that will occur without interim protection[]” and
13 seek the same relief they requested in their motion for preliminary injunction. (*Id.* at 2; Dkt. No.
14 63-1 at 4–5.) In their responses, Defendants collectively argue that Plaintiffs have presented no
15 new evidence or argument that warrant granting an injunction. (Dkt. Nos. 65 at 1; 66 at 1–2; 68
16 at 2.) The Court agrees.

17 Plaintiffs raise the argument that Defendants (and the Court) erroneously relied on Ninth
18 Circuit precedent that has been overruled in considering Brown’s Fourteenth Amendment
19 parental rights claim. (Dkt. No. 63 at 2–3.) Specifically, Plaintiffs argue *Mirabelli v. Bonta*, 607
20 U.S. 492 (2026) (per curiam) and *Mahmoud v. Taylor*, 606 U.S. 522 (2025), overturned *Parents*
21 *for Privacy v. Barr*, 949 F.3d 1210 (9th Cir. 2020), which held in part that parents lack the due
22 process right to direct school administration generally. (*See id.* at 3); *Barr*, 949 F.3d at 1231.
23 However, as OSPI points out, neither *Mirabelli* nor *Mahmoud* “purported to disturb *Barr*’s
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1 recognition of nearly a century of precedent limiting the substantive due process rights of parents
2 to direct school administration more generally[.]” and further, both cases “support the doctrinal
3 distinction *Barr* placed on parents’ religious upbringing and substantive due process upbringing
4 claims[.]” (Dkt. No. 65 at 3.)

5 For Plaintiffs’ theory to be true, the decisions of the Supreme Court “must have undercut
6 the theory or reasoning underlying the prior circuit precedent in such a way that the cases are
7 clearly irreconcilable.” *Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (en banc). “It is
8 not enough for there to be ‘some tension’ between the cases or for the intervening authority to
9 ‘cast doubt’ on this Court’s prior authority.” *Tingley v. Ferguson*, 47 F.4th 1055, 1075 (9th Cir.
10 2022) (quoting *Lair v. Bullock*, 697 F.3d 1200, 1207 (9th Cir. 2012)), *abrogated on other*
11 *grounds by Chiles v. Salazar*, 607 U.S. ----, 146 S. Ct. 1010 (2026). That has not happened here.
12 *Mirabelli* applied narrowly to the context of parents’ notice of their *own* child’s gender dysphoria
13 at school; it protected a “right not to be shut out of decisions about their child’s mental health[.]”
14 but did not extend to a right to notice about *other* children. 607 U.S. at 497. And although
15 *Mahmoud* recognized a parental opt-out right in the context of LGBTQ+ storybooks on First
16 Amendment grounds, that right permitted parents to “have their children opt out of a particular
17 educational requirement” rather than “the right to micromanage the public school curriculum[.]”
18 606 U.S. at 568. In short, Plaintiffs have not met the “high standard” of the clearly irreconcilable
19 requirement to show that *Barr* has been overruled. *Avilez v. Garland*, 69 F.4th 525, 533 (9th Cir.
20 2023) (citation and quotation marks omitted). And because this Court can apply Ninth Circuit
21 precedent “consistently with that of the higher authority, [it] must do so.” *Id.* (citation and
22 quotation marks omitted).

1 In general, the Court relies on its analysis in its order denying Plaintiffs' motion for
2 preliminary injunction to deny Plaintiff's motion for an injunction pending appeal. (*See* Dkt. No.
3 58.) Plaintiffs have not shown a likelihood of success on the merits of their claims, nor have
4 they shown they will suffer irreparable harm in the absence of relief. (*Id.*) And in fact, in its
5 response to Plaintiffs' motion, the District explains that K.M.K. has applied—and been approved
6 for—a transfer to Puyallup High School on an expedited timeline. (Dkt. Nos. 68 at 2–3; 69 at 2.)
7 This weakens Plaintiffs' claims of irreparable harm because one of their requested remedies has
8 been granted outside the scope of this litigation.

9 In conclusion, the Court finds Plaintiffs have not met the standard for granting an
10 injunction pending appeal. Plaintiffs' motion (Dkt. No. 63) is therefore DENIED.

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12 Dated this 31st day of August, 2026.

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15 _____
David G. Estudillo
United States District Judge

FOR PUBLICATION

**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,

No. 26-5488

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

ORDER

Defendants - Appellees.

Filed September 25, 2026

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

SUMMARY*

Injunction Pending Appeal

The panel denied an emergency motion for an injunction pending appeal of the district court's order denying Plaintiffs' request for a preliminary injunction in underlying litigation challenging, under the Due Process Clause of the Fourteenth Amendment and Title IX, state and district policies that permit student athletes to compete on the team that aligns with their gender identity.

Plaintiffs 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, sought a preliminary injunction that would require Defendants, the Washington Interscholastic Athletic Association and Puyallup School 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

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

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.

The panel held that Plaintiffs failed to satisfy the “doubly demanding” standard for mandatory injunctive relief. Plaintiffs failed to demonstrate that there was a genuine emergency necessitating urgent relief. Plaintiffs requested relief by September 25, 2026, but the record indicates that wrestling season does not begin until well after the date of their requested relief. That alone would be sufficient to deny the requested relief. On the merits of their request for an injunction pending appeal, Plaintiffs failed to make a strong enough showing that they are likely to succeed on their contention that the district court erred by denying their motion for a preliminary injunction. Finally, Plaintiffs did not show that the balance of hardships tips sharply in their favor such that injunctive relief should issue.

COUNSEL

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ORDER

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 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

¹ We deny as moot Plaintiffs’ request for oral argument.

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

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). 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

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)).

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).

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 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

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.

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**.