

Gender and School Sports: Federal Action and Legal Challenges to State Laws

Updated September 15, 2026

Congressional Research Service

<https://crsreports.congress.gov>

R48448



R48448

September 15, 2026

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Policymakers have debated how schools should respond when transgender students (students who are assigned one sex at birth but identify with the opposite sex) seek to use facilities or participate in school activities consistent with their gender identities. One prominent area of contention is the participation of transgender athletes in school sports. Some states and local school districts allow student-athletes to compete on teams that align with their gender identity (referred to in this report as “permissive” policies), while many states and localities require students to compete on teams aligned with their sex assigned at birth (referred to as “restrictive” policies). *See, e.g.,* W. VA. CODE § 18-2-25d (2024). Some of these policies only prohibit transgender women and girls (who were assigned male at birth but identify as female) from participating on teams designated for women or girls by requiring all participants to be “biologically female,” though some policies apply to both men’s and women’s teams. Transgender student-athletes and their parents have contested policies that require participation according to biological sex, claiming that they discriminate on the basis of sex and/or transgender status in violation of Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and the Equal Protection Clause of the Fourteenth Amendment, U.S. CONST. amend. XIV, § 1. By contrast, some athletes who identify with the sex they were assigned at birth have used these same laws to challenge policies that permit transgender students to play sports consistent with their gender identities, arguing that such policies deprive them of equal athletic opportunities.

Title IX prohibits sex discrimination in federally funded education programs. Long-standing Title IX regulations permit sex separation in school sports provided schools offer equal athletic opportunities. 34 C.F.R. § 106.41 (2026). On February 5, 2025, President Trump signed Executive Order 14201, “Keeping Men Out of Women’s Sports,” which, in part, orders the Secretary of Education to enforce Title IX against “educational institutions” that allow transgender girls and women to participate in girls’ sports. Exec. Order No. 14201, 90 Fed. Reg. 9279 (Feb. 5, 2025). The Fourteenth Amendment’s Equal Protection Clause provides that a law may treat groups of people differently only if the government has a sufficient reason to do so. Many laws that draw distinctions between different groups are subject to rational basis review, under which a court will generally uphold a challenged classification if it is reasonably related to a legitimate government purpose. When classifications are based on characteristics that have historically been used to invidiously discriminate, however, the government must provide a more substantial justification for the law. Sex-based classifications are reviewed with an “intermediate” level of scrutiny (as opposed to race-based classifications, which are subject to the highest level of scrutiny).

In June 2026, the Court decided *West Virginia v. B.P.J. ex rel. Jackson*, a case addressing West Virginia and Idaho laws banning transgender girls from playing on women’s school sports teams. 146 S. Ct. 2356, 2367 (2026). The Court ruled that such laws do not violate the Equal Protection Clause or Title IX. For the equal protection challenge, the Court ruled that the laws classified on the basis of sex and therefore merited intermediate scrutiny. The Court concluded that the states satisfied intermediate scrutiny because the laws substantially furthered their interests in safety and competitive fairness in school sports. The Court did not rule on whether classifications turning on gender identity trigger heightened scrutiny. As to the Title IX challenge, the Court ruled that, at least for the purposes of athletics, “sex” in Title IX’s statutory text meant “biological sex,” and long-standing regulations allowing for separate teams based on biological sex were reasonable. Accordingly, the Court held that state laws limiting girls’ and women’s school sports to biological females did not violate Title IX. The Court also ruled that *Bostock v. Clayton County*—where the Court determined that employment discrimination based on sexual orientation and transgender status was sex discrimination under a different statute—did not answer the question of whether Title IX permitted athletic teams separated by biological sex. 590 U.S. 644, 651–52 (2020).

B.P.J. addressed only restrictive state laws; the Court explicitly disclaimed any opinion on the legality of permissive state policies. During the second Trump Administration, the Department of Education and the Department of Justice have pursued enforcement actions against states and school districts that have permissive policies, arguing that they deprive women of equal athletic opportunities in violation of Title IX. Private plaintiffs have brought similar challenges. Litigation is ongoing in these cases, although prior to *B.P.J.* at least one federal appellate court rejected a Title IX challenge to a permissive state policy. *Female Athletes United v. Ellison*, 172 F.4th 1019, 1023 (8th Cir. 2026).

Congress has considered addressing the topic through legislation. For example, in January 2025, the House of Representatives passed H.R. 28, which would restrict the participation of transgender women and girls in school sports.

Contents

Introduction	1
Policies Addressing Transgender Student-Athletes' Participation in School Sports	2
State Laws and Local Policies.....	2
Sports Organizations	3
Title IX and the Equal Protection Clause	4
Title IX of the Education Amendments of 1972	4
Title IX, Athletics, and Sex Separation	5
Title VII and <i>Bostock v. Clayton County</i>	6
Biden Administration Updates to Title IX Regulations Following <i>Bostock</i>	7
Judicial Application of <i>Bostock</i> to Title IX Before <i>B.P.J.</i>	8
Equal Protection Clause of the Fourteenth Amendment	10
Levels of Scrutiny	10
Gender Identity and Transgender Status	12
<i>West Virginia v. B.P.J.</i>	14
Legal Challenges to Permissive Policies	17
Trump Administration Enforcement of Title IX Against States and Institutions with Permissive Policies	17
Private Challenges to Permissive Policies in Court	19
Considerations for Congress.....	21

Tables

Table A-1. State Laws Restricting the Participation of Transgender Student-Athletes in School Sports.....	22
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Appendixes

Appendix. Relevant State Statutes	22
---	----

Contacts

Author Information.....	45
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Introduction

Policymakers have deliberated over how schools should respond when transgender students (students who are assigned one sex at birth but identify with the opposite sex) seek to use facilities or participate in school activities consistent with their gender identities. In particular, the participation of transgender women (who are assigned male at birth but identify as female) in women's sports has generated debate, raising questions of fairness in contexts ranging from the Olympics¹ to K-12 school sports teams.² Some state athletic associations, as well as school districts, allow students to compete on teams that align with their gender identity.³ This report refers to these policies as “permissive” policies or laws. In contrast, many states have passed laws that categorically ban transgender athletes, or sometimes only transgender women and girls, from competing on K-12 and collegiate sports teams that align with their gender identities (see **Table A-1**, below).⁴ These laws, which this report refers to as “restrictive” policies or laws, require student-athletes to participate on teams that are consistent with their sex assigned at birth, often referred to as “biological sex.” Proponents of restrictive laws express concern that allowing transgender athletes, particularly transgender women, to compete on teams aligned with their gender identity is unfair to cisgender women.⁵ (“Cisgender” individuals identify with the sex they were assigned at birth.) For example, some supporters of these laws argue that male physiology confers inherent physical benefits and that “biological females” are at a competitive disadvantage in many sporting events when “biological males” are allowed to play on women's teams.⁶

Transgender student-athletes and their parents contested restrictive policies and charges of unfairness in several lawsuits across the country. These lawsuits claimed that such policies were discriminatory and violated both Title IX of the Education Amendments of 1972 (Title IX)⁷ and

¹ Graham Dunbar, *Transgender Women Athletes Banned From Female Olympic Events By New IOC Policy*, ASSOCIATED PRESS (Mar. 26, 2026, at 18:11 ET), <https://apnews.com/article/ioc-olympic-transgender-female-eligibility-520cd9cee152a312767a667acf77dbc8> [https://perma.cc/AEY9-LUZF].

² Terry Spencer, *Mom of Transgender Girl Athlete Says Florida's Investigation Has Destroyed Her Daughter's Life*, ASSOCIATED PRESS (June 18, 2024, at 14:46 ET), <https://apnews.com/article/transgender-girl-sports-florida-be36fe49a6a4457630107aa56c34dc1e> [https://perma.cc/D6MZ-ECB5]; Sophie Austin and Jae Hong, *Trans Athlete Wins 2 Girls Events at California Track and Field Finals*, ASSOCIATED PRESS (June 1, 2025, at 7:42 ET), <https://apnews.com/article/california-track-field-championship-transgender-athlete-ba0331f9222a20729291f543d53f77a8> [https://perma.cc/8SWD-EQT8].

³ See, e.g., WASH. INTERSCHOLASTIC ATHLETIC CONF., 2024–2025 HANDBOOK 38 (2024), <https://assets.wiaa.com/results/handbook/2024-25/handbook.pdf> [https://perma.cc/R7XL-M2AH]; CONN. INTERSCHOLASTIC ATHLETIC CONF., 2024–2025 Handbook 65 (2024), <https://ciac.fpsports.org/resources/Resources/Handbook.pdf> [https://perma.cc/E4WN-89SQ]; R.I. INTERSCHOLASTIC LEAGUE, RULES AND REGULATIONS art. 3, § 3 (2024), <https://www.riil.org/page/2996> [https://perma.cc/HX6A-FPEZ]; MASS. INTERSCHOLASTIC ATHLETIC ASSOC., RULES AND REGULATIONS GOVERNING ATHLETICS, A HANDBOOK FOR PRINCIPALS AND ATHLETIC DIRECTORS, JULY 1, 2023–JUNE 30, 2025, at 31 (2024), <https://www.miaa.net/sites/default/files/2024-04/miaa-handbook-23-25.pdf> [https://perma.cc/6W2V-FM42]; L.A. UNIFIED SCH. DIST., GENDER IDENTITY AND STUDENTS – ENSURING EQUITY AND NONDISCRIMINATION 11 (2024), <https://www.lausd.org/cms/lib/CA01000043/Centricity/Domain/383/BUL-6224.3%20Gender%20Identity%20and%20Students%20-%20Ensuring%20Equity%20and%20Nondiscrimination.pdf> [https://perma.cc/686N-BUV7].

⁴ See **Table A-1**.

⁵ See, e.g., Tara Bahrapour et al., *Most Americans Oppose Trans Athletes in Female Sports, Poll Finds*, WASH. POST (June 14, 2022), <https://www.washingtonpost.com/dc-md-vi/2022/06/13/washington-post-umd-poll-most-americans-oppose-transgender-athletes-female-sports> [https://perma.cc/Y9BX-Q899].

⁶ See, e.g., Press Release, H. Comm. Oversight & Accountability, Hearing Wrap Up: The Biden Administration's Title IX Rule Change Denies Women Opportunities (Dec. 6, 2023), <https://oversight.house.gov/release/hearing-wrap-up-the-biden-administrations-title-ix-rule-change-denies-women-opportunities> [https://perma.cc/MG2S-5AGC].

⁷ 20 U.S.C. §§ 1681–1689.

the Equal Protection Clause of the Fourteenth Amendment.⁸ By contrast, some cisgender female athletes have challenged permissive policies as violating these laws by depriving them of equal athletic opportunities.⁹ On February 5, 2025, the Trump Administration issued Executive Order (EO) 14201, “Keeping Men Out of Women’s Sports,” which, in part, orders the Secretary of Education to enforce Title IX against “educational institutions” that allow transgender girls and women to participate in girls’ sports.¹⁰ In June 2026, the Supreme Court held in *West Virginia v. B.P.J. ex rel. Jackson* that state laws that base eligibility for girls’ and women’s athletics on biological sex do not violate Title IX or the Equal Protection Clause.¹¹

This report begins by briefly describing the range of approaches that states, school districts, and athletic associations have adopted with respect to the participation of transgender athletes in sports. It continues by examining the background constitutional and statutory bases that transgender students used to challenge restrictive policies, including Title IX and the Equal Protection Clause. The report then turns to the Supreme Court’s decision in *B.P.J.* Following the discussion of the Court’s decision upholding restrictive state laws, the report examines challenges by private plaintiffs and the federal government against permissive state policies. The report concludes by identifying several considerations for Congress. The report is followed by a table of state laws that regulate the participation of transgender students in school sports (see **Table A-1**).

Policies Addressing Transgender Student-Athletes’ Participation in School Sports

State legislatures, state athletic associations, and local school boards have passed laws and developed policies that establish separate athletics teams based on sex. Some regulate participation according to biological sex, while others permit transgender students to play sports consistent with their gender identities. Restrictive laws and policies are often limited to prohibiting “biological males” from competing in girls’ and women’s athletic activities. Athletic governing associations have also developed rules regulating the participation of transgender athletes. This section provides a short overview of how various authorities have generally approached the participation of transgender athletes in sex-separated sports.

State Laws and Local Policies

States and localities have taken a range of approaches to the participation of transgender student-athletes in sports. Some states and local school boards permit transgender students to compete in athletics consistent with their gender identities, with no particular requirements or restrictions.¹²

⁸ U.S. CONST. amend. XIV, § 1; see Libr. of Cong., *Fourteenth Amendment Equal Protection and Other Rights*, CONSTITUTION ANNOTATED, <https://constitution.congress.gov/browse/amendment-14> (last visited Sep. 9, 2026).

⁹ Soule *ex rel. Stanesco v. Conn. Ass’n of Schs.*, 90 F.4th 34, 40 (2d Cir. 2023) (en banc).

¹⁰ Exec. Order No. 14201, 90 Fed. Reg. 9279 (Feb. 5, 2025).

¹¹ *West Virginia v. B.P.J. ex rel. Jackson*, 146 S. Ct. 2356, 2367 (2026).

¹² See *supra* note 3.

Others allow such participation under certain conditions.¹³ At least twenty-seven states have passed laws regulating participation according to biological sex.¹⁴

Sports Organizations

Athletic governing bodies have also adopted policies to determine the eligibility of transgender athletes. These policies have changed over time. For example, between January 19, 2022, and February 6, 2025, the National Collegiate Athletic Association (NCAA) allowed the participation of transgender athletes to be regulated on a sport-by-sport basis.¹⁵ Under this policy, the NCAA relied heavily on the International Olympic Committee's (IOC's) Framework on Fairness, Inclusion and Non-Discrimination on the Basis of Gender Identity and Sex Variations. The IOC framework states that "it must be in the remit of each sport and its governing body to determine how an athlete may be at a disproportionate advantage against their peers, taking into consideration the nature of each sport. The IOC is therefore not in a position to issue regulations that define eligibility criteria for every sport, discipline or event across the very different national jurisdictions and sports systems."¹⁶

On February 6, 2025, the NCAA's Participation Policy for Transgender Student-Athletes (NCAA Policy) was updated in response to President Trump's executive order regarding the participation of transgender women and girls in women's sports.¹⁷ Although Title IX does not apply to the NCAA directly, the law does apply to most of the colleges and universities whose athletes compete in the NCAA.¹⁸ According to the NCAA, a "clear, consistent, and uniform eligibility standard[]" is important, and the executive order "provides a clear, national standard."¹⁹ Under the new NCAA Policy, transgender women student-athletes "may not compete on a women's team" but "may practice on the team consistent with their gender identity and receive all other benefits applicable to student-athletes who are otherwise eligible for practice."²⁰ All student-athletes "may participate (practice and compete)" with a men's team if they "meet all other NCAA eligibility requirements," though they must complete a medical exception process if they are taking testosterone.²¹ In cases where transgender men have begun taking testosterone, they

¹³ See ILL. HIGH SCH. ASSOC., HANDBOOK WITH ILLUSTRATIONS, 2024–25 SCHOOL TERM 126 (2024), <https://www.ihsa.org/documents/flip/Handbook/2024-25/Handbook%2024-25.html> [<https://perma.cc/93AF-XLKH>] (requiring approval to participate based on consideration of individual circumstances and consideration of "[w]hether allowing eligibility would be inconsistent with concepts of fairness in competition or present a risk of injury to the participants"); MICH. HIGH SCH. ATHLETIC ASSOC., ELIGIBILITY OF TRANSGENDER STUDENT-ATHLETES, <https://cdn.factcheck.org/UploadedFiles/TransgenderPolicy.pdf> [<https://perma.cc/GZ28-5YX5>] (allowing transgender girls to participate consistent with their gender identity on a case by case basis).

¹⁴ See **Table A-1**.

¹⁵ *Board of Governors Updates Transgender Participation Policy*, NCAA (Jan. 19, 2022, at 20:41 ET), <https://www.ncaa.org/news/2022/1/19/media-center-board-of-governors-updates-transgender-participation-policy.aspx> [<https://perma.cc/B2CR-TPY6>].

¹⁶ IOC, IOC FRAMEWORK ON FAIRNESS, INCLUSION AND NON-DISCRIMINATION ON THE BASIS OF GENDER IDENTITY AND SEX VARIATIONS 1 (2021), <https://stillmed.olympics.com/media/Documents/Beyond-the-Games/Human-Rights/IOC-Framework-Fairness-Inclusion-Non-discrimination-2021.pdf> [<https://perma.cc/D9CZ-8ZER>].

¹⁷ See *Participation Policy for Transgender Student-Athletes*, NCAA (Feb. 6, 2025), <https://www.ncaa.org/sports/2022/1/27/transgender-participation-policy.aspx> [<https://perma.cc/V69N-Z6KW>].

¹⁸ *NCAA v. Smith*, 525 U.S. 459 (1999).

¹⁹ See *NCAA Announces Transgender Student-Athlete Participation Policy Change*, NCAA (Feb. 6, 2025, at 15:11 ET), <https://www.ncaa.org/news/2025/2/6/media-center-ncaa-announces-transgender-student-athlete-participation-policy-change.aspx> [<https://perma.cc/T385-WFFX>].

²⁰ See *NCAA Policy*, *supra* note 15.

²¹ *Id.*

may not compete on a women's team, though they may practice with a women's team.²² The NCAA Policy notes that "schools are subject to local, state and federal legislation and such legislation supersedes the rules of the NCAA."²³

In March 2026, the IOC also altered its policies, limiting participation in women's athletics to biological females.²⁴ Likewise, the U.S. Olympic and Paralympic Committee Safety Policy now states that the Committee will work "to ensure that women have a fair and safe competition environment consistent with Executive Order 14201."²⁵

Title IX and the Equal Protection Clause

As explained in more detail below, student-athletes have challenged state and local laws and policies regarding gender and sports under the Equal Protection Clause and Title IX. In June 2026, the Supreme Court in *B.P.J.* upheld two restrictive state laws on both grounds, holding that such policies do not amount to illegal sex discrimination under either the Equal Protection Clause or Title IX.²⁶

Title IX of the Education Amendments of 1972

Title IX prohibits discrimination "on the basis of sex" in education programs that receive federal financial assistance.²⁷ Title IX is primarily enforced in two ways: through private litigation in federal court and by federal agencies that distribute funding to education programs.²⁸ The Department of Education (ED) distributes substantial funding to elementary, secondary, and postsecondary institutions, and its Office for Civil Rights (OCR) plays a lead role in enforcing Title IX.²⁹ Courts are also often asked to interpret Title IX in various contexts, including sexual harassment and athletics.³⁰

²² *Id.*

²³ *Id.*

²⁴ IOC, POLICY ON THE PROTECTION OF THE FEMALE (WOMEN'S) CATEGORY IN OLYMPIC SPORT AND GUIDING CONSIDERATIONS FOR INTERNATIONAL FEDERATIONS AND SPORTS GOVERNING BODIES (2026), <https://www.olympics.com/ioc/policy-protection-female-womens-category-in-olympic-sport> [<https://perma.cc/M6BN-YGJV>].

²⁵ U.S. OLYMPIC AND PARALYMPIC COMM., CHIEF OF SEC. & ATHLETE SERVS., USOPC ATHLETE SAFETY POLICY 5 (June 18, 2025), https://assets.contentstack.io/v3/assets/blt9e58afd92a18a0fc/blt456568858cc9c12/USOPC_Athlete_Safety_Policy.pdf [<https://perma.cc/2ZXB-4L67>].

²⁶ 146 S. Ct. 2356 (2026).

²⁷ 20 U.S.C. § 1681(a).

²⁸ CRS Legal Sidebar LSB11316, *Enforcing the Antidiscrimination Mandates of Title VI and Title IX: Executive Agency Options and Procedures*, by Abigail A. Graber (2025). If compliance with the statute cannot be achieved by an agency informally, the agency may make a referral to the Department of Justice for potential enforcement in court. 20 U.S.C. § 1682 ("Compliance with any requirement adopted pursuant to this section may be effected . . . by any other means authorized by law: Provided, however, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means."); 34 C.F.R. § 106.81 (2026) (incorporating the procedural provisions of Title VI); *id.* § 100.8(a)(1).

²⁹ The Attorney General, under Executive Order 12250, coordinates implementation and enforcement of Title IX across executive agencies. Exec. Order No. 12250, 3 C.F.R. pt. 298 (1980).

³⁰ See, e.g., *Davis ex rel. LaShonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 639 (1999). Courts must interpret Title IX when they consider allegations of sex discrimination in the health care context as well due to the statutory language of the Patient Protection and Affordable Care Act of 2010 (ACA), Pub. L. No. 111-148, 124 Stat. 119 (2010). (continued...)

The statute contains express carveouts that allow schools to make sex-based distinctions in certain situations. For instance, Title IX allows schools to “maintain[] separate living facilities for the different sexes.”³¹

Courts have treated Title IX as an exercise of Congress’s Spending Clause power.³² The Supreme Court has characterized legislation enacted under the Spending Clause as contractual—in exchange for funds, recipients agree to follow federal obligations.³³ The Court has explained that the “‘legitimacy of Congress’ power’ to enact Spending Clause legislation rests” on whether recipients “‘voluntarily and knowingly’” agree to the contract’s terms.³⁴ For Congress to impose enforceable conditions on federal funding, requirements must be “clear” and “unambiguous[]” so that recipients have “notice” of their obligations.³⁵ The semi-contractual nature of legislation enacted pursuant to the Spending Clause distinguishes it from laws resting on other sources of constitutional authority. For example, Congress often legislates pursuant to its power to regulate interstate commerce.³⁶ In that context, entities do not agree to comply with conditions in exchange for federal funding; instead, Congress imposes requirements on regulated parties whether they agree to those requirements or not.³⁷

Title IX, Athletics, and Sex Separation

The statutory text of Title IX does not mention athletics.³⁸ Two years after enacting Title IX, Congress passed the Javits Amendment, which directed the Secretary of Health, Education, and Welfare (HEW) to promulgate Title IX regulations “which shall include with respect to intercollegiate athletic activities reasonable provisions considering the nature of particular sports.”³⁹ HEW promulgated athletics regulations that went into effect in July 1975.⁴⁰ Following

Section 1557 of the ACA bars discrimination in federally funded health programs “on the ground prohibited under” Title IX. 42 U.S.C. § 18116(a).

³¹ 20 U.S.C. § 1686. Courts have upheld Title IX regulations that permit consideration of sex in the context of athletics and have also indicated that separating bathrooms by sex, as a general matter, is constitutionally permissible. *Kelley v. Bd. of Trs.*, 35 F.3d 265, 272 (7th Cir. 1994) (“To the extent that plaintiffs’ argument is that Title IX and the applicable regulation—rather than the actions of the defendants—are unconstitutional, it is without merit. While the effect of Title IX and the relevant regulation and policy interpretation is that institutions will sometimes consider gender when decreasing their athletic offerings, this limited consideration of sex does not violate the Constitution.”); *Cohen v. Brown Univ.*, 991 F.2d 888, 901 (1st Cir. 1993); *see Equity In Athletics, Inc. v. ED*, 639 F.3d 91, 105 (4th Cir. 2011) (rejecting equal protection claim against ED’s Policy Interpretation on Title IX and athletics); *see also Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 618 n.17 (4th Cir.), *as amended* (Aug. 28, 2020) (“Grimm does not think that sex-separated restrooms are unconstitutional, and neither do we.”).

³² *LaShonda D.*, 526 U.S. at 640 (stating that the Supreme Court has “repeatedly treated Title IX as legislation enacted pursuant to Congress’ authority under the Spending Clause”). *See generally* CRS Report R47109, *Federal Financial Assistance and Civil Rights Requirements*, by Christine J. Back and Jared P. Cole (2022).

³³ *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 286–87 (1998); *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981).

³⁴ *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 219 (2022) (quoting *Barnes v. Gorman*, 536 U.S. 181, 186 (2002)).

³⁵ *Pennhurst*, 451 U.S. at 17, 25.

³⁶ *See* Libr. of Cong., *United States v. Lopez and Interstate Commerce Clause*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artI-S8-C3-6-1/ALDE_00013418 (last visited Sep. 9, 2026).

³⁷ *Gebser*, 524 U.S. at 286.

³⁸ *See* 20 U.S.C. § 1681.

³⁹ Education Amendments of 1974, Pub. L. No. 93-380, § 844, 88 Stat. 484, 612 (codified at 20 U.S.C. § 1681 note).

⁴⁰ Nondiscrimination on Basis of Sex, 40 Fed. Reg. 24128 (June 4, 1975); *West Virginia v. B.P.J. ex rel. Jackson*, 146 S. Ct. 2356, 2370–71 (2026).

the transfer of HEW's education-related responsibilities to the newly created ED, that agency adopted HEW's Title IX regulations, and they remain in place today.⁴¹

Specifically, Title IX athletic regulations prohibit recipient institutions from discriminating based on sex in "interscholastic, intercollegiate, club or intramural athletics."⁴² Schools may operate separate athletics teams based on sex where selection is premised upon competitive skill or the activity is a contact sport.⁴³ The regulations specify that contact sports include "boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact."⁴⁴ Overall, schools must provide equal opportunities in athletics programs for both sexes.⁴⁵ In deciding whether an institution has provided equal opportunities, ED may consider factors outlined in the regulations, including an institution's support for things like coaching, equipment, scheduling, facilities, training, and publicity for each sex.⁴⁶ The regulations also provide that athletics options for students must "effectively accommodate the interests and abilities of members of both sexes."⁴⁷

Other parts of Title IX also allow sex separation in certain contexts. The statutory text of Title IX allows schools to maintain sex-separated living facilities.⁴⁸ Likewise, long-standing Title IX regulations allow for "separate toilet, locker room, and shower facilities" as long as they are comparable.⁴⁹

Title IX's statutory text and regulations thus contemplate separation of the sexes in certain circumstances, while simultaneously prohibiting sex discrimination. Neither the statute nor the regulations address how Title IX applies to transgender people.

Title VII and *Bostock v. Clayton County*

Some courts' interpretation of Title IX has been informed by jurisprudence interpreting Title VII of the Civil Rights Act of 1964 (Title VII), which forbids discrimination "because of . . . sex" in employment.⁵⁰ In *Bostock v. Clayton County*, the Supreme Court ruled that sex discrimination under Title VII includes discrimination based on sexual orientation and gender identity.⁵¹ The

⁴¹ In 1979, Congress divided HEW into ED and the Department of Health and Human Services. ED then duplicated the Title IX regulations. *McCormick ex rel. McCormick v. Sch. Dist.*, 370 F.3d 275, 287 (2d Cir. 2004).

⁴² 34 C.F.R. § 106.41(a).

⁴³ *Id.* § 106.41(b). The regulations provide that if a school has a team for one sex and not the other, "and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport." *Id.* § 106.41(b).

⁴⁴ *Id.* § 106.41(b).

⁴⁵ *Id.* § 106.41(c). The regulations provide that if a recipient institution awards athletic scholarships, it must "provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics." *Id.* § 106.37(c).

⁴⁶ *Id.* § 106.41(c)(2)–(10).

⁴⁷ *Id.* § 106.41(c)(1).

⁴⁸ 20 U.S.C. § 1686.

⁴⁹ 34 C.F.R. § 106.33.

⁵⁰ 42 U.S.C. § 2000e-2(a)(1); *see, e.g.*, *Franklin v. Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 75 (1992) ("[W]hen a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor 'discriminate[s]' on the basis of sex." We believe the same rule should apply when a teacher sexually harasses and abuses a student." (second alteration in original) (quoting *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 64 (1986))); *Vengalattore v. Cornell Univ.*, 36 F.4th 87, 103 (2d Cir. 2022); *Doe v. Mercy Cath. Med. Ctr.*, 850 F.3d 545, 564 (3d Cir. 2017); *Jennings v. Univ. of N.C.*, 482 F.3d 686, 695 (4th Cir. 2007); *Gossett v. Oklahoma ex rel. Bd. of Regents*, 245 F.3d 1172, 1176 (10th Cir. 2001).

⁵¹ 590 U.S. 644, 651–52 (2020).

Court in *Bostock* reasoned that the phrase “because of” incorporates a “but-for” standard of causation: a plaintiff establishes causation if an outcome would not have occurred “but-for” the purported cause.⁵² The Court assumed, but did not decide, that the term “sex” in Title VII refers to biological distinctions between females and males.⁵³ According to the Court, even proceeding on that assumption, an employer cannot discriminate based on sexual orientation or gender identity without considering a person’s sex.⁵⁴ If an employer fires a man for being attracted to men, but not a woman who is also attracted to men, the employer is treating the first employee differently because of his sex. Likewise, if an employer fires a transgender man for identifying as male, the employer penalizes that person for traits that it would tolerate in a person assigned male at birth.⁵⁵ In the Court’s view, sex is thus a but-for cause of sexual orientation and gender identity discrimination, rendering such treatment a violation of Title VII.⁵⁶

While the Supreme Court in *Bostock* was clear that discrimination based on sexual orientation or transgender status is sex discrimination under Title VII, it was careful to disclaim any broader ruling. The Court explicitly observed that its ruling did not address sex-separated bathrooms or locker rooms under Title VII or the requirements of any other law.⁵⁷ *Bostock* thus did not address potential claims by transgender people in circumstances where a law bans sex discrimination but permits certain sex separations.

As discussed below, courts and federal agencies under different administrations have disagreed about the application of *Bostock*’s logic to the Title IX context.⁵⁸ Title VII is predicated on Congress’s constitutional authority to regulate interstate commerce,⁵⁹ while Title IX was enacted pursuant to the Spending Clause.⁶⁰ Although the Supreme Court has sometimes drawn on Title VII in determining the meaning of Spending Clause antidiscrimination statutes, it has also sometimes distinguished between them based on their different underlying constitutional authorities.⁶¹ Courts and policymakers have emphasized other differences between Title VII and Title IX, such as the express carveouts in Title IX that permit sex separation, as well as the difference in context between adult workplaces and schools.⁶²

Biden Administration Updates to Title IX Regulations Following *Bostock*

Following *Bostock*, in 2024, ED updated its Title IX regulations generally and issued another proposal (discussed below) to amend the provisions concerning athletics specifically. The updated

⁵² *Bostock*, 590 U.S. at 656.

⁵³ *Id.* at 655.

⁵⁴ *Id.* at 660.

⁵⁵ *Id.* at 660–61.

⁵⁶ *Id.* at 662.

⁵⁷ *Id.* at 681.

⁵⁸ See *infra* “Biden Administration Updates to Title IX Regulations Following *Bostock*.”

⁵⁹ See *United Steelworkers of Am. v. Weber*, 443 U.S. 193, 206 n.6 (1979). The authority for damages suits against state governments under Title VII rests on Section 5 of the Fourteenth Amendment, which allows Congress to abrogate state sovereign immunity in certain circumstances. *Fitzpatrick v. Bitzer*, 427 U.S. 445, 447 (1976).

⁶⁰ *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 286 (1998).

⁶¹ *Id.* at 286–87.

⁶² See *infra* “Judicial Application of *Bostock* to Title IX Before *B.P.J.*”

regulations defined sex discrimination under Title IX to include sexual orientation and gender identity discrimination.⁶³ The preamble to the updated regulations relied on *Bostock*'s reasoning.⁶⁴

The updated regulations went beyond adopting *Bostock*'s logic that discrimination based on sexual orientation and transgender status is sex discrimination. They also contained a provision specifying that, absent an exception, even in situations where Title IX permits differential treatment or sex separation, policies that prevent individuals from participating in education programs consistent with their gender identities violate the law.⁶⁵ Thus, denying transgender students access to the bathrooms or locker rooms consistent with their gender identities generally would violate Title IX, according to ED's updated regulations.⁶⁶ Following legal challenges that resulted in several preliminary injunctions against the 2024 regulations,⁶⁷ a federal district court vacated them in January 2025.⁶⁸

In addition, under the Biden Administration ED issued a separate Notice of Proposed Rulemaking (NPRM) that would have amended the agency's Title IX regulations to address the participation of transgender students in athletics.⁶⁹ The NPRM proposed to prohibit categorical bans on transgender students participating in sports consistent with their gender identities but to allow restrictions that—for each grade level, sport, and level of competition—were substantially related to an important educational objective and tailored to minimize harm to transgender students.⁷⁰ The NPRM was never finalized, and ED eventually withdrew it before the Trump Administration took office.⁷¹

Judicial Application of *Bostock* to Title IX Before *B.P.J.*

Prior to *B.P.J.*, courts examined whether and how to apply *Bostock* to Title IX claims in the context of athletics, as well as in contexts like bathroom access, sexual harassment, and in challenges to the Biden-era Title IX regulations. Courts took different positions on whether to extend the logic of *Bostock* to Title IX. Even when courts agreed that *Bostock* applied to Title IX as a general matter, they sometimes disagreed on the outcome with respect to disputes in contexts where sex separation was allowed.

For instance, at least three federal appellate courts concluded that *Bostock*'s logic applied to Title IX but reached different conclusions on the outcome of that application in cases concerning bathroom access for transgender students. The U.S. Courts of Appeals for the Fourth and Seventh Circuits ruled that policies prohibiting transgender students from using bathrooms consistent with their gender identities violated Title IX, even though Title IX allows for sex-separated bathrooms

⁶³ Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33474, 33886 (Apr. 29, 2024) (to be codified at 34 C.F.R. pt. 106).

⁶⁴ *Id.* at 33805.

⁶⁵ *Id.* at 22887.

⁶⁶ *Id.* at 33818.

⁶⁷ See *ED v. Louisiana*, 603 U.S. 866, 867 (2024) (per curiam) (denying partial stays of preliminary injunctions against the Title IX rule).

⁶⁸ *Tennessee v. Cardona*, 762 F. Supp. 3d 615 (E.D. Ky.), as amended (Jan. 10, 2025).

⁶⁹ See Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams, 88 Fed. Reg. 22860 (Apr. 13, 2023) (to be codified at 34 C.F.R. pt. 106).

⁷⁰ *Id.* at 22891. For more on the details of this proposal, see CRS Legal Sidebar LSB10983, *Transgender Athletes: Education Department Proposes Amendment to Title IX Regulations*, by Jared P. Cole (2023).

⁷¹ Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams; Withdrawal, 89 Fed. Reg. 104936 (Dec. 26, 2024).

and living facilities.⁷² The U.S. Courts of Appeals for the Ninth Circuit (Ninth Circuit) also ruled that the logic of *Bostock* applied to Title IX⁷³ but rejected a challenge to a restrictive bathroom policy because, given Title IX's carveouts for sex-separated bathrooms, the state did not have clear notice when it accepted federal funding that separating bathrooms according to biological sex violated the law.⁷⁴

By comparison, the U.S. Courts of Appeals for the Eleventh Circuit (Eleventh Circuit) rejected applying *Bostock* to Title IX and ruled that a school policy that separated boys' and girls' bathrooms according to biological sex did not violate Title IX.⁷⁵ The court reasoned that the ordinary meaning of sex in 1972 referred to biological sex. If that term included "gender identity," the court indicated, it would render Title IX's carveouts for certain forms of sex separation "meaningless."⁷⁶ Further, the court held that interpreting "sex" under Title IX to include sexual orientation and gender identity would not meet the clear notice standard required for Spending Clause conditions.⁷⁷

On similar grounds, numerous courts also ruled that ED likely overstepped when, in 2024, it updated its Title IX regulations to define sex discrimination to include sexual orientation and gender identity and to require schools to largely treat students consistent with their gender identities.⁷⁸ The Eleventh Circuit reasoned that *Bostock* did not apply to Title IX because that case concerned employment discrimination, not schools and children.⁷⁹ As it explained in its prior decision, the court believed that applying *Bostock* to Title IX would swallow the statute's carveouts for sex separation.⁸⁰ Similarly, the U.S. Courts of Appeals for the Sixth Circuit (Sixth Circuit) maintained a preliminary injunction against the regulations, opining that Title VII's definition of discrimination in the employment context did not necessarily fit with other anti-discrimination mandates and that the Spending Clause required Congress to give clear notice of Title IX obligations (a requirement Title VII lacks).⁸¹ As mentioned previously, a federal district court ultimately vacated the 2024 regulations in January 2025.⁸²

In the context of Title IX challenges to state laws or school board policies restricting school sports teams by biological sex, courts in pre-*B.P.J.* cases generally followed the approach to *Bostock* adopted in their circuit on related topics, such as bathroom access.⁸³ In challenges brought by

⁷² *M.C. ex rel. A.C. v. Metro. Sch. Dist.*, 75 F.4th 760 (7th Cir. 2023); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 606 (4th Cir.), *as amended* (Aug. 28, 2020).

⁷³ *Grabowski v. Ariz. Bd. of Regents*, 69 F.4th 1110, 1116 (9th Cir. 2023); *Doe v. Snyder*, 28 F.4th 103, 114 (9th Cir. 2022).

⁷⁴ *Roe v. Critchfield*, 137 F.4th 912, 926 (9th Cir. 2025).

⁷⁵ *Adams v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 815 (11th Cir. 2022) (en banc).

⁷⁶ *Id.* at 813.

⁷⁷ *Id.* at 815–16.

⁷⁸ *See, e.g.*, *ED v. Louisiana*, 603 U.S. 866, 867 (2024) (per curiam) (denying motions to partially stay preliminary injunctions); *Alabama v. Sec'y of Educ.*, No. 24-12444, 2024 WL 3981994, at *5 (11th Cir. Aug. 22, 2024); *Louisiana v. ED*, No. 24-30399, 2024 WL 3452887, at *1 (5th Cir. July 17, 2024) (per curiam); *Tennessee v. Cardona*, No. 24-5588, 2024 WL 3453880, at *3 (6th Cir. July 17, 2024); *see also* *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 89 Fed. Reg. 33474, 33886 (Apr. 29, 2024) (to be codified at 34 C.F.R. pt. 106).

⁷⁹ *Alabama v. U.S. Sec'y of Educ.*, 2024 WL 3981994, at *5.

⁸⁰ *Id.*

⁸¹ *Cardona*, 2024 WL 3453880, at *2-3.

⁸² *Tennessee v. Cardona*, 762 F. Supp. 3d 615, 626–27 (E.D. Ky.), *as amended* (Jan. 10, 2025).

⁸³ *Compare Doe ex rel. Doe v. Hanover Cnty. Sch. Bd.*, No. 24CV493, 2024 WL 3850810, at *9 (E.D. Va. Aug. 16, (continued...))

transgender girls, successful plaintiffs also tended to be students receiving medical treatment to block puberty.

Most notably, for instance, the U.S. Courts of Appeals for the Fourth Circuit (Fourth Circuit) ruled that application of a restrictive state law to a transgender girl violated Title IX in *B.P.J.* itself.⁸⁴ In that case, the Fourth Circuit reviewed a Title IX challenge to West Virginia’s “Save Women’s Sports Act,” which prohibits transgender girls from playing on teams consistent with their gender identities.⁸⁵ The plaintiff was a middle school transgender girl taking puberty-blocking medication who had “publicly identified as a girl since third grade.”⁸⁶ As a result of her treatment for gender dysphoria, the plaintiff “never experienced elevated levels of circulating testosterone” and wanted to compete in cross country and track and field events.⁸⁷ The Fourth Circuit determined that, consistent with its prior ruling applying *Bostock* in the bathroom case mentioned above, this law similarly discriminated on the basis of gender identity, which amounted to sex discrimination.⁸⁸ Further, according to the court, the law categorically prohibited only transgender girls from participating on certain sports teams, depriving them of meaningful athletic opportunities.⁸⁹

Equal Protection Clause of the Fourteenth Amendment

In addition to federal antidiscrimination statutes, the Equal Protection Clause of the Fourteenth Amendment may affect the legality of policies that address the participation of transgender student-athletes in sports. Courts have disagreed over how equal protection principles apply in this context, including the level of scrutiny courts should apply when reviewing challenges to these policies. While the Supreme Court’s decision in *B.P.J.* provided clarity as to how courts should review restrictive policies, the Court did not address every equal protection question that a lower court may face when considering the legality of restrictive or permissive policies.

Levels of Scrutiny

The Equal Protection Clause provides that “no state shall . . . deny to any person within its jurisdiction the equal protection of the laws.”⁹⁰ Courts interpret this to mean that laws cannot treat groups of people differently without a sufficient reason. Whether a governmental classification

2024) (ruling against a restrictive state law because of the precedential value of the Fourth Circuit’s decisions in *Grimm* and *B.P.J.*), with D.N. *ex rel.* Jessica N. v. DeSantis, 701 F. Supp. 3d 1244, 1248 (S.D. Fla. 2023) (rejecting a challenge to a restrictive state law because of the Eleventh Circuit’s *Adams* decision); L.E. *ex rel.* Esquivel v. Lee, 728 F. Supp. 3d 806, 839 (M.D. Tenn. 2024) (rejecting a challenge to a restrictive state law because the Sixth Circuit had foreclosed application of *Bostock*’s reasoning to Title IX); *see also* Tirrell v. Edelblut, 748 F. Supp. 3d 19, 27–28 (D.N.H. 2024) (observing no controlling decision on *Bostock*’s application to Title IX but reasoning that the First Circuit regularly draws on Title VII cases to inform Title IX and ruling against a restrictive state law).

⁸⁴ *B.P.J. ex rel.* Jackson v. W.Va. State Bd. of Educ., 98 F.4th 542 (4th Cir. 2024), *rev’d and remanded*, 146 S. Ct. 2356 (2026).

⁸⁵ *Id.* at 556; *see* W. VA. CODE § 18-2-25d (2024).

⁸⁶ *B.P.J.*, 98 F.4th at 550.

⁸⁷ *Id.* at 551, 560–61.

⁸⁸ *Id.* at 563.

⁸⁹ *Id.* at 563–65. The panel also reversed the district court’s grant of summary judgment for the defendants on the plaintiff’s equal protection claim. However, the court declined to enter summary judgment for the plaintiff, instead remanding for further evidentiary proceedings. *Id.* at 562.

⁹⁰ U.S. CONST. amend. XIV, § 1. The Equal Protection Clause of the Fourteenth Amendment applies only to state action by state and local governments. However, courts have held that the same principles apply to the federal government through the Due Process Clause of the Fifth Amendment. *See, e.g.,* *Buckley v. Valeo*, 424 U.S. 1, 93 (1976) (per curiam).

survives an equal protection challenge depends on the basis for the classification (i.e., who the law treats differently), the government’s rationale for the classification, and the fit between the classification and the rationale.

Courts apply one of three tiers of scrutiny depending on the type of classification at issue. The first and most deferential standard of equal protection review is *rational basis*, under which courts uphold a challenged classification if it is reasonably related to a legitimate government purpose.⁹¹ Because “most legislation classifies for one purpose or another,”⁹² rational basis review acts as the default standard that courts apply to laws challenged under the Equal Protection Clause.

Some laws classify people based on characteristics that have historically been used to invidiously discriminate between groups.⁹³ In some such instances, the government must provide a more substantial justification for making that classification. Under the second tier of judicial scrutiny, called *intermediate scrutiny*,⁹⁴ a *quasi-suspect* classification⁹⁵—including classifications based on sex—must be supported by an “exceedingly persuasive justification”⁹⁶ that the classification is “substantially related” to “an important governmental objective.”⁹⁷ The third tier, known as *strict scrutiny*, applies to classifications, such as those based on race, that the Court has determined to be inherently “suspect.”⁹⁸ To withstand strict scrutiny, a law that involves a suspect classification must be “narrowly tailored to further compelling governmental interests.”⁹⁹

There are few suspect or quasi-suspect classifications. The Supreme Court has held that a classification is suspect in nature only if

- the group at issue has historically been subject to discrimination;
- the classification is not related to the group’s ability to contribute to society;
- the group is discrete with immutable characteristics; and
- the group is a minority that lacks political power.¹⁰⁰

When determining whether a trait is quasi-suspect, the Court has focused on the history of discrimination and stereotyping against certain groups. The Court has called sex-based classifications “quasi-suspect” because they are often based upon “outdated misconceptions” or “loose-fitting characterizations” about the abilities of men and women.¹⁰¹ The Court is particularly likely to strike down laws that, in its view, perpetuate these stereotypes. For example, in 1984 the Court ruled in *Mississippi University for Women v. Hogan* that a female-only admissions policy at a public nursing school violated the Equal Protection Clause.¹⁰² The state

⁹¹ *Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985).

⁹² *United States v. Skrmetti*, 605 U.S. 495, 509 (2025) (quoting *Romer v. Evans*, 517 U.S. 620, 631 (1996)).

⁹³ *Plyler v. Doe*, 457 U.S. 202, 218 n.14 (1982) (“Some classifications are more likely than others to reflect deep-seated prejudice rather than legislative rationality in pursuit of some legitimate objective.”)

⁹⁴ *Craig v. Boren*, 429 U.S. 190, 197 (1976).

⁹⁵ See Libr. of Cong., *Equal Protection and Rational Basis Review Generally*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/amdt14-S1-8-1-2/ALDE_00000817/ (last visited Sep. 9, 2026).

⁹⁶ *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 724 (1982).

⁹⁷ *United States v. Virginia*, 518 U.S. 515, 533 (1996).

⁹⁸ See *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007).

⁹⁹ *Grutter v. Bollinger*, 539 U.S. 306, 326 (2003).

¹⁰⁰ See, e.g., *Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 442–46 (1985).

¹⁰¹ See *Craig v. Boren*, 429 U.S. 190, 199 (1976).

¹⁰² *Miss. Univ. for Women v. Hogan*, 458 U.S. 718 (1982).

argued that the policy remedied discrimination against women, but the Court rejected this argument because the state failed to show that women lacked opportunities in the nursing field.¹⁰³ Rather, the Court found that the school's policy perpetuated the stereotype of nursing as a "woman's job."¹⁰⁴ Moreover, the school had a policy permitting men to audit classes, which the Court found contradicted the state's claim that women were harmed by having men in class.¹⁰⁵ Therefore, the Court held that the record did not show that "excluding men from [admissions] was necessary to reach any of [the school's] educational goals."¹⁰⁶

Sex-based distinctions are subject to only intermediate, not strict, scrutiny, because the Supreme Court has held that there are instances where the sexes are not similarly situated and distinctions between them are therefore constitutional. In its 1981 decision *Michael M. v. Superior Court*, the Court upheld a state criminal law that punished males, but not females, for statutory rape.¹⁰⁷ The plurality opinion accepted the state's justification for the statute—the prevention of illegitimate teenage pregnancies—as an important government interest.¹⁰⁸ The plurality also held that the statute's sex-based punishment scheme was sufficiently related to this purpose, reasoning that females already bear the harmful consequences of teenage pregnancy.¹⁰⁹ Therefore, the Court held that criminal sanctions for males alone could help balance the deterrents to teenage pregnancy between the sexes.¹¹⁰

Gender Identity and Transgender Status

When a law or policy is challenged under the Equal Protection Clause for discriminating against transgender individuals, courts must determine what level of scrutiny to apply. To do so, courts must consider two issues:

- First, does the policy classify on the basis of sex? If so, intermediate scrutiny presumably applies.
- Second, does the policy classify on the basis of transgender status? If so, is transgender status a suspect or quasi-suspect classification?
 - If transgender status is not a suspect or quasi-suspect classification, rational basis scrutiny presumably applies.
 - If transgender status is a suspect or quasi-suspect classification, heightened scrutiny applies.

Once a court has identified the applicable level of scrutiny, it must determine whether the government has supported the policy with an appropriate justification.

The Supreme Court has addressed the standard of review for laws challenged as discriminating against transgender individuals in two instances, without deciding whether transgender status or gender identity are suspect or quasi-suspect traits. In *B.P.J.*, the Supreme Court held that two state laws prohibiting transgender girls and women from playing on girls' and women's sports teams

¹⁰³ *Id.* at 729.

¹⁰⁴ *Id.* at 743.

¹⁰⁵ *Id.* at 731.

¹⁰⁶ *Id.*

¹⁰⁷ *Michael M. v. Superior Ct.*, 450 U.S. 464 (1981) (plurality opinion).

¹⁰⁸ *Id.* at 470.

¹⁰⁹ *Id.* at 472–73.

¹¹⁰ *Id.* at 473.

differentiated on the basis of sex, but not transgender status or gender identity.¹¹¹ Accordingly, the Court applied intermediate scrutiny. In *United States v. Skrmetti*, the Court held that a law banning certain medical treatments for minors with gender dysphoria differentiated on the basis of diagnosis and age rather than sex, gender identity, or transgender status.¹¹² There, because neither diagnosis nor age are subject to heightened scrutiny, the Court applied rational basis review. Because the Court did not hold in either case that the laws classified on the basis of transgender status or gender identity, the Court did not address the level of scrutiny applicable to policies that classify on those grounds.

In the absence of Supreme Court guidance, lower courts have disagreed over whether transgender individuals constitute a quasi-suspect class to which heightened scrutiny applies, regardless of whether a law that distinguishes based on gender identity is considered sex-based. The Fourth and Ninth Circuits have determined that, regardless of context, transgender individuals are a quasi-suspect class, and as a result, classifications based on gender identity trigger intermediate scrutiny.¹¹³ In *Grimm v. Gloucester County School Board*, for instance, the Fourth Circuit considered factors that have been used to determine whether a class is suspect and found that transgender individuals constitute a minority group that has historically faced discrimination based on their characteristics rather than their ability to contribute to society.¹¹⁴ The Sixth Circuit, on the other hand, has held that neither gender identity nor transgender status are suspect classifications, in part because neither is “definitively ascertainable at the moment of birth.”¹¹⁵

Prior to *B.P.J.*, courts that addressed questions about the application of the Equal Protection Clause to laws and policies relating to the participation of transgender students in sports specifically sometimes turned to prior decisions addressing whether transgender individuals are a suspect or quasi-suspect class.¹¹⁶ For example, the Ninth Circuit in *Hecox v. Little* applied circuit precedent regarding military service when analyzing an equal protection challenge to Idaho’s Fairness in Women’s Sports Act.¹¹⁷ The act (1) prohibits “students of the male sex” from playing on “[a]thletic teams or sports designated for females, women, or girls”; (2) requires physical examinations in the event of a dispute as to an athlete’s sex; and (3) creates a private cause of action against a school for any student who suffers any harm due to a violation of this law.¹¹⁸ The plaintiffs in *Hecox* were a transgender woman who intended to try out for her university’s female track and cross country teams and a cisgender woman who played on high school women’s varsity teams but was concerned that competitors might question her sex due to her “masculine”

¹¹¹ 146 S. Ct. 2356, 2378–79 (2026); see also *infra* “*West Virginia v. B.P.J.*”

¹¹² 605 U.S. 495, 517–18 (2025).

¹¹³ See *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 610–13 (4th Cir. 2020) (explaining why transgender individuals are, in the view of the Fourth Circuit, a quasi-suspect class), and *Hecox v. Little*, 104 F.4th 1061, 1079 (9th Cir. 2024) *as amended* (June 14, 2024) (stating that the circuit considers transgender status to be “at least” a quasi-suspect class), *rev’d sub nom.* *West Virginia v. B.P.J. ex rel. Jackson*, 146 S. Ct. 2356 (2026).

¹¹⁴ *Grimm*, 972 F.2d at 611–13 (citing *Bowen v. Gilliard*, 483 U.S. 587 (1987); *Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1985)); see also *supra* “Equal Protection Clause of the Fourteenth Amendment” and “Levels of Scrutiny.”

¹¹⁵ *L.W. ex rel. Williams v. Skrmetti*, 83 F.4th 460, 487 (6th Cir. 2023).

¹¹⁶ See e.g., *Doe ex rel. Doe v. Hanover Cnty. Sch. Bd.*, No. 24cv493, 2024 WL 3850810, at *11 (E.D. Va. Aug. 16, 2024) (relying on circuit precedent applying intermediate scrutiny to policies addressing school bathroom use); *D.N. ex rel. Jessica N. v. DeSantis*, 701 F. Supp. 3d 1244, 1253 (S.D. Fla. 2023) (same). But see *L.E. ex rel. Esquivel*, 728 F. Supp. 3d 806, 831 (M.D. Tenn. 2024) (holding that circuit precedent regarding access to gender affirming care for minors did not apply in challenge to restrictive sports law).

¹¹⁷ *Hecox*, 104 F.4th at 1079–80.

¹¹⁸ IDAHO CODE §§ 33-6203, 33-6205 (2026).

appearance.¹¹⁹ The Ninth Circuit held that the plaintiffs were likely to succeed in challenging the law as it applied to them.¹²⁰ Pointing to a prior decision holding that transgender status is a quasi-suspect classification in the context of military service,¹²¹ the Ninth Circuit reviewed the equal protection claim under intermediate scrutiny. The court reasoned that the state had not provided evidence sufficient to show that categorically banning transgender women from participating in school sports consistent with their gender identities was substantially related to the state's proffered interest in equal opportunity in women's sports.¹²² As discussed in more detail below, the Supreme Court overturned *Hecox* on appeal in *B.P.J.*

West Virginia v. B.P.J.

In *B.P.J.*, the Supreme Court ruled that state laws determining eligibility for girls' and women's athletics according to biological sex did not violate Title IX or the Equal Protection Clause.¹²³ The decision consolidated the appeal from the Fourth Circuit in *B.P.J.* and the appeal from the Ninth Circuit in *Hecox*, discussed above.¹²⁴

Justice Kavanaugh wrote the majority opinion, first holding that Title IX and its implementing regulations do not require schools to allow transgender girls, including students using puberty blockers or hormone therapy, to participate on girls' sports teams.¹²⁵ The Court observed that the statute does not explicitly address sports, but the 1974 Javits Amendment directed agency promulgation of regulations that include "reasonable provisions considering the nature of particular sports."¹²⁶ Regulations adopted in 1975 authorize separate athletics teams for the sexes¹²⁷ where selection is premised upon competitive skill or the activity is a contact sport.¹²⁸ Overall, the regulations require schools to provide equal opportunities in athletics programs for both sexes.¹²⁹ At the threshold, the Court ruled that the meaning of the term "sex" in Title IX, the Javits Amendment, and the 1975 regulations was biological sex; according to the Court, the ordinary meaning of the term in the early 1970s was biological sex, not gender identity, "particularly in the sports context."¹³⁰

The parties in *B.P.J.* agreed that Title IX allows for sex-separated sports teams and the prohibition of most biological males from participating on women's and girls' teams.¹³¹ According to the Court, they disagreed about whether "schools must make an exception . . . for biological males who identify as female and have taken puberty blockers or hormones."¹³² The Court concluded

¹¹⁹ *Hecox*, 104 F.4th at 1072. The plaintiffs in *Hecox* alleged that the Idaho law violated both Title IX and the Equal Protection Clause.

¹²⁰ *Id.* at 1080–81.

¹²¹ *Id.* at 1079 (citing *Karnoski v. Trump*, 926 F.3d 1180, 1200–01 (9th Cir. 2019) (per curiam)).

¹²² *Id.* at 1083–85.

¹²³ *West Virginia v. B.P.J. ex rel. Jackson*, 146 S. Ct. 2356, 2367 (2026).

¹²⁴ The Supreme Court rejected an argument that the challenge to Idaho's law was now moot. *Id.* at 2373 n.3.

¹²⁵ *Id.* at 2370.

¹²⁶ *Id.* (quoting Education Amendments of 1974, Pub. L. No. 93-380, § 844, 88 Stat. 484, 612).

¹²⁷ *Id.*

¹²⁸ 34 C.F.R. § 106.41(b). The regulations specify that contact sports include "boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact." *Id.*

¹²⁹ *Id.* § 106.41(c).

¹³⁰ *B.P.J.*, 146 S. Ct. at 2371.

¹³¹ *Id.* at 2371–72.

¹³² *Id.* at 2372.

that the statute and implementing regulations simply do not indicate there must be an exception for such individuals.¹³³ B.P.J. also argued that if the regulations were read to impose such a categorical rule, then they are not “reasonable” as required by the Javits Amendment.¹³⁴ The Court rejected this argument.¹³⁵ Instead, the Court held that regulations allowing for teams to be separated on the basis of biological sex, without exceptions, are entirely reasonable given “inherent physical differences between the sexes” in the context of sports, reducing the risk of injury and ensuring fair competition.¹³⁶

B.P.J., who had been taking puberty blockers and hormones, additionally argued that restrictive policy limited her own athletic opportunity in violation of Title IX regulations by excluding her “from any competitive sports teams.”¹³⁷ The Court expressed sympathy for the plaintiff but held that “the Title IX regulations guarantee ‘equal athletic opportunity[,]’” not that all students can play on the team they desire.¹³⁸ The Court also rejected the plaintiff’s argument that *Bostock* supported an interpretation of Title IX that requires schools to permit transgender girls and women to play on female sports teams.¹³⁹ The Court ruled that the Title VII context of employment is “vastly different” from school sports.¹⁴⁰ While Title VII generally requires that men and women be treated without regard to their sex at work, Title IX allows for separate men’s and women’s athletic teams.¹⁴¹ Thus, the Court ruled, *Bostock* and Title VII “are not relevant in this very different” context.¹⁴²

Turning to the Equal Protection Clause, the Court began its analysis by determining that the West Virginia and Idaho laws classified on the basis of sex in allowing for separate male and female sports teams and restricting women’s and girls’ sports teams to “biological females.”¹⁴³ Applying intermediate scrutiny, the Court held that the states had satisfied that test: in the Court’s view, the states had an important interest in ensuring “safety and competitive fairness,” and limiting girls’ sports to cisgender girls was substantially related to that interest.¹⁴⁴ The Court rejected the argument that, while the state laws might generally be permissible, they were unconstitutional as applied to transgender girls taking puberty blockers and hormones. The plaintiffs argued that these treatments eliminated any potential biological advantage transgender girls had over cisgender girls, such that there was no substantial relationship between the states’ interests and the restrictive policies as applied to them.¹⁴⁵ In the Court’s view, a fit between a policy and a state’s objectives may not be close enough to pass intermediate scrutiny if “a State’s interests do not apply to an especially large subclass” governed by the policy.¹⁴⁶ Because the Court indicated that “biological males” generally have an athletic advantage over “biological females,” however, the Court held that “[s]tates are not required to conduct an individual-by-individual comparison

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.* at 2373.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.* (quoting *Jackson v. Birmingham Bd. of Ed.*, 544 U.S. 167, 175 (2005)).

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.* at 2374.

¹⁴⁴ *Id.* at 2374–75.

¹⁴⁵ *Id.* at 2377.

¹⁴⁶ *Id.*

of the physical athletic capabilities of all biological males in order to satisfy intermediate scrutiny,” regardless of an athlete’s gender identity.¹⁴⁷ The Court also stated that it would be “an almost impossible task” for courts to determine, case-by-case, whether the abilities of a transgender athlete on hormones and puberty blockers were more like those of a biological male or female, and that states and schools were better equipped to draw an appropriate line.¹⁴⁸

The Court also rejected the argument that the state laws unconstitutionally discriminated based on transgender status, reasoning that the laws at issue in *B.P.J.* classified based on biological sex rather than gender identity or transgender status.¹⁴⁹ By way of comparison, the Court explained that if a school had a co-ed sports team but excluded all transgender students from the team, that would be a classification based on gender identity.¹⁵⁰ Given its conclusion that the West Virginia and Idaho laws did not classify on the basis of gender identity or transgender status, the Court declined to decide what standard of review would apply to such classifications.¹⁵¹

The primary partial dissent, authored by Justice Sotomayor, disagreed with the majority’s equal protection analysis.¹⁵² The dissent stated that “a sex classification violates equal protection when there is an incongruity between the sex classification in general and its application to a discrete subclass.”¹⁵³ Justice Sotomayor explained that the Court had found laws to be overbroad, and thus fail intermediate scrutiny, when they did not serve a state’s interest as applied to a particular subclass.¹⁵⁴ For example, Justice Sotomayor pointed to two cases regarding a state law giving unwed mothers, but not unwed fathers, the authority to veto adoption of a child. The state had justified the law by stating that unwed mothers were more likely than unwed fathers to have a close relationship with their child and were thus easier to locate. In those cases, the Court held that, given this justification, the law was overbroad when applied to fathers who had a close relationship with their children¹⁵⁵ but not when applied to absent fathers.¹⁵⁶ Justice Sotomayor argued that in light of this precedent, the Court should have determined whether the states’ justifications in *B.P.J.* were appropriate when applied to the plaintiffs’ subclass of “transgender girls who have never experienced an endogenous puberty and who receive gender-affirming treatment from doing the same.”¹⁵⁷ Justice Sotomayor also interpreted the Court’s intermediate scrutiny precedent to require it to analyze the “nature of the burdens imposed” on the subclass to achieve the state’s objective.¹⁵⁸ In her view, an overbroad policy may be permissible if the burden imposed on a discrete subclass is “minimal,” but it may also indicate that the state made

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 2378.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 2378–2379.

¹⁵¹ *Id.* at 2379. Justice Thomas wrote separately to state his view that transgender status does not constitute a suspect class. *Id.* at 2383 (Thomas, J., concurring). In dissent, Justice Sotomayor proffered her view that transgender status constitutes a quasi-suspect class in its own right. *Id.* at 2389 n.3 (Sotomayor, J., concurring in part and dissenting in part).

¹⁵² The dissenting Justices concurred with the majority’s conclusion that the restrictive laws at issue did not violate Title IX, reasoning that the respondents did not dispute that “sex” means “biological sex” under Title IX or its regulations. *B.P.J.*, 146 S. Ct. at 2401–02 (Sotomayor, J., concurring in part and dissenting in part). Because that issue was conceded, the dissent would have assumed without deciding that “sex” is equivalent to “biological sex” under Title IX and its regulations. *Id.* at 2401 n.14.

¹⁵³ *Id.* at 2391.

¹⁵⁴ *Id.*

¹⁵⁵ *Caban v. Mohammed*, 441 U.S. 380 (1979).

¹⁵⁶ *Lehr v. Robertson*, 463 U.S. 248 (1983).

¹⁵⁷ *B.P.J.*, 146 S. Ct. at 2392 (Sotomayor, J., concurring in part and dissenting in part).

¹⁵⁸ *Id.* at 2392.

discriminatory generalizations if the subclass could be exempted without “unnecessarily jeopardiz[ing]” the state’s interest.¹⁵⁹ Because “it matters if B.P.J. is right” under that analysis, the dissent would have allowed the district court to address the factual questions about the physical abilities of this subclass before reaching a conclusion on the merits.¹⁶⁰

Legal Challenges to Permissive Policies

Some states allow all or some transgender athletes to compete in sports consistent with their gender identities. The Supreme Court’s decision in *B.P.J.* did not resolve whether such permissive athletics policies violate Title IX or the Equal Protection Clause. The Court explicitly observed that its decision did not address the validity of state policies that allow transgender athletes to participate in sports consistent with their gender identities.¹⁶¹ Legal challenges to some permissive policies are ongoing in the lower courts, with some plaintiff-athletes arguing that they violate Title IX and/or the Equal Protection Clause by reducing the odds of success for cisgender women.¹⁶² These plaintiffs typically argue that biological males have inherent physical advantages over biological females, that transgender women retain those advantages regardless of gender-affirming treatments, and that allowing biological males into spaces designated for females is inherently harmful. The Trump Administration has also initiated investigations and brought lawsuits against states with permissive policies for transgender athletes.

Trump Administration Enforcement of Title IX Against States and Institutions with Permissive Policies

As mentioned above, on February 5, 2025, the Trump Administration issued an EO directing the Secretary of Education to prioritize enforcement of Title IX against “educational institutions” that allow transgender girls and women to participate in girls’ sports.¹⁶³ The order also adopts the definitions from another EO, “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government,” which defines *sex* to mean “an individual’s immutable biological classification as either male or female.”¹⁶⁴ That EO also directs the Attorney General to issue guidance to agencies to “correct the [prior Administration’s] misapplication of the Supreme Court’s decision in *Bostock* . . . to sex-based distinctions in agency activities.”¹⁶⁵

The Trump Administration has initiated Title IX investigations into various educational entities with policies that allow transgender athletes to compete in sports consistent with their gender identities.¹⁶⁶ Other federal agencies that distribute federal financial assistance to education programs have conducted compliance reviews on the same basis.¹⁶⁷

¹⁵⁹ *Id.* at 2392–95.

¹⁶⁰ *Id.* at 2394, 2400.

¹⁶¹ *Id.* at 2367 n.1.

¹⁶² *See infra* “Private Challenges to Permissive Policies in Court.”

¹⁶³ Exec. Order No. 14201, 90 Fed. Reg. 9279 (Feb. 5, 2025).

¹⁶⁴ Exec. Order No. 14168, 90 Fed. Reg. 8615 (Jan. 30, 2025).

¹⁶⁵ *Id.*

¹⁶⁶ *President Trump’s First 100 Days: Education in America*, ED, <https://www.ed.gov/preview-link/node/7799/e78ad0c8-18ed-44cb-bd91-504a8ebd61bf> [<https://perma.cc/E8CC-CN3K>] (last visited July 18, 2025).

¹⁶⁷ Notice of Compliance Review, DO-25-610531-RV-CRR, from Anthony F. Archeval, Acting Dir., OCR, Dep’t of (continued...)

Some educational entities have rejected the Administration's position on Title IX and transgender athletes, and some of these disputes are now playing out in courts. On April 2, 2025, the U.S. Department of Agriculture (USDA) issued a letter to the governor of Maine announcing a freeze on certain funding on the grounds that the state's permissive policy for transgender girls participating in athletics violated Title IX.¹⁶⁸ It appears that USDA froze certain funds relating to school meals and child nutrition programs. Maine sued, and a federal district court issued a temporary restraining order (TRO) against the agency, ruling that USDA's actions violated Title IX's enforcement requirements.¹⁶⁹ It observed that USDA did not provide the notice and hearing before termination of funds that the statute requires.¹⁷⁰ Following the TRO, the parties settled; under the settlement terms, USDA agreed to refrain from freezing the state's access to funding based on an alleged Title IX violation unless USDA follows the procedures required under the statute and applicable regulations.¹⁷¹

In addition, both the Department of Health and Human Services and ED notified Maine's Department of Education (MDOE) of Title IX compliance reviews based on the state's permissive policy.¹⁷² Both federal agencies subsequently notified the state that it was out of compliance with Title IX and proposed resolution agreements.¹⁷³ The agencies referred the matter to the Department of Justice (DOJ) after, they said, they were unable to obtain compliance through the informal process.¹⁷⁴ DOJ sued MDOE in federal district court, arguing that the state's athletics policy "den[ies] girls the opportunity to compete in student sports on a level playing field in which they have the same opportunities as boys" in violation of Title IX.¹⁷⁵ According to DOJ, the state's policy "forces girls to compete against boys—despite the real physiological differences between the sexes," which denies equal athletic opportunities to girls.¹⁷⁶ The case is currently pending.

ED OCR also concluded a Title IX investigation into the California Department of Education (CDE) and the California Interscholastic Federation (CIF).¹⁷⁷ OCR decided that both entities are violating Title IX by "allowing males in girls' sports."¹⁷⁸ The agency issued a proposed resolution

Health and Human Servs. (Feb. 21, 2025), <https://storage.courtlistener.com/recap/gov.uscourts.med.67828/gov.uscourts.med.67828.1.2.pdf> [<https://perma.cc/M4KJ-8CVT>]; Notice of Compliance Review from U.S. Dep't of Agriculture (Feb. 22, 2025), <https://www.usda.gov/sites/default/files/documents/maine-notice-of-compliance.pdf> [<https://perma.cc/XP3M-T3QY>].

¹⁶⁸ Letter from Secretary of the Department of Agriculture Brooke Rollins to Governor of Maine Janet Mills (Apr. 2, 2025), <https://storage.courtlistener.com/recap/gov.uscourts.med.67828/gov.uscourts.med.67828.1.14.pdf> [<https://perma.cc/2JFT-NT8A>].

¹⁶⁹ *Maine v. USDA*, 778 F. Supp. 3d 200, 238–39 (D. Me. 2025).

¹⁷⁰ *Id.* at 229.

¹⁷¹ Settlement Agreement, *Maine v. USDA*, No. 25-cv-00131 (D. Me. May 2, 2025), <https://mainemorningstar.com/wp-content/uploads/2025/05/Settlement-Agreement-executed.pdf> [<https://perma.cc/L6T8-AWJM>].

¹⁷² Complaint at 26, *United States v. MDOE*, 25-cv-00173 (D. Me. Apr. 16, 2025), Dkt. No. 1.

¹⁷³ *Id.* at 26–27.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 2.

¹⁷⁶ *Id.* at 3.

¹⁷⁷ Press Release, U.S. Department of Education Finds California Department of Education and California Interscholastic Federation in Violation of Title IX, ED (June 25, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-finds-california-department-of-education-and-california-interscholastic-federation-violation-of-title-ix> [<https://perma.cc/BU77-E9Y4>].

¹⁷⁸ *Id.*

agreement, which the state rejected.¹⁷⁹ DOJ sued CDE and CIF for violating Title IX.¹⁸⁰ The Administration has similarly sued Minnesota on the same basis.¹⁸¹

In 2026, a district court dismissed DOJ's Title IX lawsuit against California for its permissive policy.¹⁸² DOJ argued that the state policy violated Title IX because the law requires schools to determine eligibility for girls' teams and facilities according to biological sex.¹⁸³ The district court observed that Title IX allows schools to separate teams based on sex and, according to the decision in *B.P.J.*, allows schools to specifically limit girls' teams to biological females.¹⁸⁴ However, the court reasoned there is no *requirement* in Title IX or its implementing regulations that schools must exclude transgender girls from girls' teams.¹⁸⁵ According to the court, the state thus did not have clear notice that Title IX contained any such requirement and the Spending Clause barred DOJ from enforcing it.¹⁸⁶ Finally, at least one institution has entered into a resolution agreement with OCR to resolve a noncompliance finding. The University of Pennsylvania committed to, among other things, issuing a public statement specifying that "male students" may not compete in athletics programs restricted to "women."¹⁸⁷

Private Challenges to Permissive Policies in Court

In addition to the enforcement actions against permissive policies pursued by the government described above, private plaintiffs have challenged permissive policies in court. Two federal courts of appeals have weighed in on whether allowing transgender women to participate in women's sports causes any legally cognizable harm to biological women competing in the same sports. In *Soule ex rel. Stanesco v. Connecticut Association of Schools*, four cisgender members of a high school girls' track team brought a Title IX challenge against the Connecticut Interscholastic Athletic Conference's policy of allowing students to participate on sports teams consistent with their gender identities, arguing that the policy limited their ability to succeed in athletics or obtain the benefits of excellent athletic ability, like scholarships.¹⁸⁸ The student-plaintiffs sought monetary damages and to remove records set by transgender girls who had

¹⁷⁹ Soumya Karlamangla, *California Rejects Trump Demand to Remove Trans Athletes from Women's Sports*, N.Y. Times (July 8, 2025), <https://www.nytimes.com/2025/07/08/us/politics/trump-transgender-athletes-california.html>.

¹⁸⁰ Complaint, *United States v. Cal. Interscholastic Fed'n*, No. 25-cv-01485 (C.D. Cal. July 9, 2025).

¹⁸¹ Complaint, *United States v. Minn. Dep't of Educ. & State High Sch. League*, No. 26-cv-02078 (D. Minn. Mar. 30, 2026).

¹⁸² *United States v. Cal. Interscholastic Fed.*, No. 25-CV-01485, 2026 WL 2575930, at *1 (C.D. Cal. Aug. 31, 2026). See also *Minnesota v. Trump*, No. 25-CV-1608, 2026 WL 2295012, at *15 (D. Minn. Aug. 10, 2026) (allowing the state's Spending Clause claim against the Trump Administration's Executive Order and letters taking the position that Title IX requires barring transgender women and girls from participating in sports and using locker rooms and restrooms consistent with their gender identity); *Brown v. Wash. Interscholastic Activ. Assoc.*, No. 26-CV-05616, 2026 WL 2525463, at *15 (W.D. Wash. Aug. 23, 2026) ("The Court is persuaded by the Eighth Circuit's decision in *FAU*, which addressed a challenge to transgender athlete participation in high school sports on substantially similar grounds."); *id.* at *26 ("Accordingly, the Court concludes Plaintiffs have not met their burden to show that Defendants had clear notice of the conditions and potential for liability undergirding their acceptance of Title IX funding."), *appeal docketed*, No. 26-5488 (9th Cir. Aug. 25, 2026).

¹⁸³ *Cal. Interscholastic Fed.*, 2026 WL 2575930, at *1.

¹⁸⁴ *Id.* at *7.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* at *1.

¹⁸⁷ Resolution Agreement between University of Pennsylvania and Department of Education's Office for Civil Rights, OCR Investigation No. 03256901 (June 30, 2025), <https://ocras.ed.gov/sites/default/files/ocr-letters-and-agreements/03256901-b.pdf> [<https://perma.cc/3R8D-VXWG>].

¹⁸⁸ *Soule ex rel. Stanesco v. Conn. Ass'n of Schs.*, 90 F.4th 34 (2d Cir. 2023) (en banc).

participated in the conference.¹⁸⁹ The district court initially dismissed the case, finding that the plaintiffs lacked *standing*, or were not eligible to seek relief in federal court.¹⁹⁰ The court held that the plaintiffs did not have standing because the claims, in its view, were based on speculation,¹⁹¹ and because the monetary damages sought were unavailable under Spending Clause jurisprudence. Moreover, the district court reasoned, Spending Clause legislation must give federal grantees “clear notice” of all conditions to those grants, and the conference did not have clear notice that its policy potentially violated Title IX.¹⁹² A panel of the U.S. Court of Appeals for the Second Circuit (Second Circuit) affirmed on the standing issue.¹⁹³ The en banc Second Circuit changed course in December 2023 and held that the plaintiffs did have standing to challenge the policy.¹⁹⁴ The court said that, assuming that allowing transgender girls to race on girls’ track teams violated Title IX, it was plausible that changing public athletic records could provide relief for the plaintiffs.¹⁹⁵ On remand, in November 2024, the district court incorporated the Second Circuit’s reasoning and determined both that the plaintiffs’ allegations were sufficient to claim discrimination under Title IX and that such a claim was not precluded by the Spending Clause notice requirement.¹⁹⁶ A final decision on the merits has not yet been made.

The U.S. Courts of Appeals for the Eighth Circuit (Eighth Circuit) also ruled that plaintiffs had standing to challenge a state sports league’s permissive policy but ultimately rejected the Title IX challenge.¹⁹⁷ In that case, plaintiffs sued Minnesota state and independent school district board officials, arguing that enforcement of a permissive policy by allowing a transgender girl to compete in varsity girls’ softball violated Title IX.¹⁹⁸ The district court dismissed a motion for a preliminary injunction against the policy, and the Eighth Circuit affirmed.¹⁹⁹ The Eighth Circuit reasoned that under binding Supreme Court precedent, Title IX provides a private right of action only for claims of intentional discrimination, not for disparate impact.²⁰⁰ The Eighth Circuit agreed with the district court that the plaintiffs had not alleged intentional discrimination by the state—the plaintiffs conceded that the policy applied equally to men and women and alleged only discriminatory impacts on female athletes.²⁰¹ The panel also concluded that the plaintiffs failed to allege an inference of discriminatory intent in adopting the policy, which could potentially allow a Title IX claim to go forward.²⁰² The plaintiffs failed to allege that the league enforced the policy

¹⁸⁹ *Id.*

¹⁹⁰ *Soule ex rel. Stanescu v. Conn. Ass’n of Schs.*, No. 20-cv-00201, 2021 WL 1617206, at *10 (D. Conn. Apr. 25, 2021), *aff’d*, 57 F.4th 43 (2d Cir. 2022), and *vacated*, 90 F.4th 34 (2d Cir. 2023).

¹⁹¹ *Id.* at *5 (stating that the possibility that transgender students may attempt to join a sports team is insufficient to develop a legally cognizable injury).

¹⁹² *Id.* at *8–10; see *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981).

¹⁹³ *Soule ex rel. Stanescu v. Conn. Ass’n of Schs.*, 57 F.4th 43 (2d Cir. 2022).

¹⁹⁴ *Soule*, 90 F.4th at 45–51.

¹⁹⁵ *Id.* at 48.

¹⁹⁶ *Soule ex rel. Stanescu v. Conn. Ass’n of Schs.*, No. 20-cv-00201, 2024 WL 4680533, at *18 (D. Conn. Nov. 5, 2024).

¹⁹⁷ *Female Athletes United v. Ellison*, 172 F.4th 1019, 1023 (8th Cir. 2026).

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.* at 1027–28 (citing *Alexander v. Sandoval*, 532 U.S. 275, 281 (2001); and then *Cannon v. Univ. of Chi.*, 441 U.S. 677, 694–96 (1979)).

²⁰¹ *Id.* at 1028.

²⁰² *Id.* at 1028–29.

because of its impact on girls' sports or that the league disregarded concerns about the potential negative effect of transgender girls' participation on female athletics.²⁰³

Considerations for Congress

The legal landscape with respect to the participation of transgender student-athletes in sports is in flux. Prior to *B.P.J.*, some courts had ruled for plaintiffs challenging restrictive laws or policies where there was a prior controlling circuit court decision holding that preventing transgender individuals from accessing services consistent with their gender identities is discriminatory. Courts ruling for plaintiffs challenging restrictive athletics policies also tended to bar the policies from applying to the particular plaintiffs rather than striking them down entirely. The Supreme Court in *B.P.J.*, however, held that restrictive policies are generally permissible under both Title IX and the Equal Protection Clause, and it rejected an "as applied" challenge seeking to invalidate a restrictive policy only as to the plaintiffs in the case. Nevertheless, that decision does not speak to the legality of permissive laws and policies. The Trump Administration has made clear its stance that permissive policies run afoul of Title IX,²⁰⁴ though at least one circuit court has disagreed. Other legal challenges to permissive policies are still playing out.

Congress has several options if it seeks to address this subject. It may restrict participation in school sports based on the biological sex of athletes. For instance, the House passed H.R. 28, the Protection of Women and Girls in Sports Act of 2025, in January 2025.²⁰⁵ That bill would amend Title IX by making it illegal for educational institutions that take federal funds to permit "a person whose sex is male," defined "solely on a person's reproductive biology and genetics at birth," to participate in athletics programs designated for women or girls.²⁰⁶ The bill would allow "males to train or practice" with programs designated for women or girls subject to certain conditions.²⁰⁷ The Supreme Court's decision in *B.P.J.* indicates that such legislation would likely survive a challenge under the Equal Protection Clause.

Congress could also amend Title IX to require funding recipients to allow students to participate on teams that match their gender identities. Congress could also pass legislation taking an approach similar to ED's now-withdrawn proposed rule, which would have allowed some limitations on the participation of certain student-athletes but would not have allowed categorical bans.²⁰⁸ Congress could provide for different rules for athletics at K-12 and intercollegiate levels, or draw other distinctions, if desired.

Congress could also amend Title IX to leave these decisions entirely in funding recipients' hands, by clarifying that neither permissive nor restrictive policies violate the law.

²⁰³ *Id.*

²⁰⁴ *See supra* "Trump Administration Enforcement of Title IX Against States and Institutions with Permissive Policies."

²⁰⁵ H.R. 28, 119th Cong. (as passed by House, Jan. 14, 2025).

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *See supra* "Biden Administration Updates to Title IX Regulations Following *Bostock*."

Appendix. Relevant State Statutes

Table A-1. State Laws Restricting the Participation of Transgender Student-Athletes in School Sports

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
AL	ALA. CODE § 16-1-52 (2026)	Yes	Yes	Yes	Yes	Yes	Partial	(b)(1) Except as provided in subsection (c), a public K-12 school may not participate in, sponsor, or provide coaching staff for interscholastic athletic events within this state that are either scheduled by or conducted under the authority of any athletic association of the state that permits or allows participation in athletic events within the state conducted exclusively for males by any individual who is not a biological male or participation in athletic events within the state conducted exclusively for females by any individual who is not a biological female. (2) A public K-12 school may not allow a biological female to participate on a male team if there is a female team in a sport. A public K-12 school may not allow a biological male to participate on a female team. (c) Subsection (b) does not apply to athletic events at which both biological males and biological females are permitted or allowed to participate. (d)(1) An intercollegiate athletic team or sport sponsored by a public two-year or four-year institution of higher education that is designated for females, women, or girls shall not be open to a biological male. (2) An intercollegiate athletic team or sport sponsored by a public two-year or four-year institution of higher education that is designated for males, men, or boys shall not be open to a biological female. (3) Nothing in this subsection shall be construed to restrict the eligibility of any student to participate on any intercollegiate or intramural athletic team or sport designated as coed or mixed.
AK	ALASKA ADMIN CODE tit. 4, § 06.115 (b)(5)(D) (2026)	No	No	Yes	No	Yes	No	(b) A school or school district may join and, to the extent authorized by its budget, may pay dues to the Alaska School Activities Association, Inc., or any other voluntary, nonprofit association whose purpose is to administer and promote interscholastic activities in Alaska so long as the association ... (5) administers interscholastic activities in a manner that ...

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
								(D) ensures fairness, safety, and equal opportunity for female students in high school athletics by providing, in consideration of responses to a school survey under 4 AAC 06.520, that if a separate high school athletics team is established for female students, participation shall be limited to females who were assigned female at birth; in this subparagraph, “athletics” means competitive or contact sports, as determined by the association. . . .
AZ	ARIZ. REV. STAT. ANN. § 15-120.02 (2026)	Yes	Yes	Yes	Yes	Yes	No	A. Beginning on January 1, 2027, each school that sponsors an interscholastic or intramural athletic team and each athletic association that sponsors an interscholastic or intramural sport shall expressly designate the athletic team or sport as one of the following, based on the sex of the athletes who participate on the athletic team or in the sport: 1. “Males,” “men” or “boys.” 2. “Females,” “women” or “girls.” 3. “Coeducational” or “mixed.” B. A school or athletic association may not open any interscholastic or intramural athletic team or sport that is designated for females, women or girls to athletes of the male sex. C. This section does not restrict the eligibility of any athlete to participate in any interscholastic or intramural athletic team or sport that is aligned with the athlete's sex or that is designated as “coeducational” or “mixed.” D. Beginning on January 1, 2027, if a school or athletic association provides and maintains restrooms, locker rooms, shower rooms or other private spaces that are integral to athletic engagement, the school or athletic association, including employees of the school or athletic association, may not authorize any individual to use a restroom, locker room, shower room or other private space that is not designated for that individual's sex. . . . J. For the purposes of this section: 1. “Athlete” means an individual, including a student, who participates in any interscholastic or intramural athletic team or sport. 2. “Athletic association” means a league, corporation, association or organization that has a primary purpose of sponsoring or administering extracurricular athletic contests or competitions. 3. School” means either:

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
								(a). A public or private school that provides instruction in any combination of kindergarten programs or grades one through twelve. (b). An institution of higher education.
AR	ARK. CODE ANN. §§ 6-1-107, 16-130-103, 16-130-104 (West 2026)	Yes	Yes	Yes	Yes	Yes	No	ARK. CODE ANN. § 6-1-107 . . . (b)(1) As used in this section, “school” means: (A) A public elementary or secondary school; (B) An open-enrollment public charter school; and (C) A public two-year or four-year institution of higher education. (2) “School” includes a private educational institution whose interscholastic, intercollegiate, intramural, or club athletic teams or sports compete against a public school. (c) Interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by a school shall be expressly designated as one (1) of the following based on biological sex: (1) “Male,” “men’s,” or “boys”; (2)(A) “Female,” “women’s,” or “girls.” (B) An interscholastic, intercollegiate, intramural, or club athletic team or sport that is expressly designated for females, women, or girls shall not be open to students of the male sex; or (3) “Coed” or “mixed.” . . . ARK. CODE ANN. § 16-130-103 (1) “Covered entity” means: (A) An elementary school, high school, secondary school, or postsecondary school that is located in Arkansas and receives state funds; (B) Any other school or institution that is located in Arkansas whose students or teams compete in interscholastic, intercollegiate, intramural, or club athletic teams or sports against an entity defined in subdivision (1)(A) of this section; and

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
								(C) An entity that receives membership fees or any other funds from an entity defined in subdivision (1)(A) or subdivision (1)(B) of this section; and (2) "Sex" means a person's immutable biological sex as objectively determined by anatomy and genetics existing at the time of birth. ARK. CODE ANN. § 16-130-104 (a) Any interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by a covered entity shall be expressly designated for one (1) of the following groups based on sex: (1) Males, men, or boys; (2) Females, women, or girls; or (3) Coed or mixed. (b) Members of the male sex are prohibited from an interscholastic, intercollegiate, intramural, or club athletic team or sport that is expressly designated for females, women, or girls.
FL	FLA. STAT. § 1006.205 (2026)	Yes	Yes	Yes	Yes	Yes	No	(3) Designation of athletic teams or sports.— (a) Interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by a public secondary school or public postsecondary institution must be expressly designated as one of the following based on the biological sex at birth of team members: 1. Males, men, or boys; 2. Females, women, or girls; or 3. Coed or mixed, including both males and females. (b) Athletic teams or sports designated for males, men, or boys may be open to students of the female sex. (c) Athletic teams or sports designated for females, women, or girls may not be open to students of the male sex. (d) For purposes of this section, a statement of a student's biological sex on the student's official birth certificate is considered to have correctly stated the student's biological sex at birth if the statement was filed at or near the time of the student's birth. . . .
GA	GA. CODE ANN. § 20-	No	Partial ^a	Yes	No	Yes	Partial ^b	(c)(1) No high school which receives funding under this article shall participate in, sponsor, or provide coaching staff for interscholastic sports events which are conducted under the authority of,

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
	2-316 (West 2026)							conducted under the rules of, or scheduled by any athletic association unless the athletic association complies with the provisions of this subsection by having a charter, bylaws, and other governing documents which provide for governance and operational oversight by an executive oversight committee as follows: ... (E) The authority and duties of the executive oversight committee shall include: ... (v) If the athletic association determines that it is necessary and appropriate to prohibit students whose gender is male from participating in athletic events that are designated for students whose gender is female, then the athletic association may adopt a policy to that effect; provided, however, that such policy shall be applied to all of the athletic association's participating public high schools; and. . .
ID	IDAHO CODE ANN. § 33-6203 (West 2026)	Yes	Yes	Yes	Yes	Yes	No	(1) Interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by a public primary or secondary school, a public institution of higher education, or any school or institution whose students or teams compete against a public school or institution of higher education shall be expressly designated as one (1) of the following based on biological sex: (a) Males, men, or boys; (b) Females, women, or girls; or (c) Coed or mixed. (2) Athletic teams or sports designated for females, women, or girls shall not be open to students of the male sex. . . .
IN	IND. CODE §§ 20-33-13-4, 21-18-13.5-2 (2026)	Yes	Yes	Yes	Yes	Yes	No	IND. CODE § 20-33-13-4 (a) A school corporation, public school, nonpublic school, or association that organizes, sanctions, or sponsors an athletic team or sport described in section 1 of this chapter shall expressly designate the athletic team or sport as one (1) of the following: (1) A male, men's, or boys' team or sport. (2) A female, women's, or girls' team or sport. (3) A coeducational or mixed team or sport.

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
								(b) A male, based on a student's biological sex at birth in accordance with the student's genetics and reproductive biology, may not participate on an athletic team or sport designated under this section as being a female, women's, or girls' athletic team or sport. . . . IND. CODE § 21-18-13.5-2 (a) A state educational institution or private postsecondary educational institution that organizes, sanctions, or sponsors an athletic team or sport described in section 1 of this chapter shall expressly designate the athletic team or sport as one (1) of the following: (1) A male, men's, or boys' team or sport. (2) A female, women's, or girls' team or sport. (3) A coeducational or mixed team or sport. (b) A male, based on a student's biological sex at birth in accordance with the student's genetics and reproductive biology, may not participate on an athletic team or sport designated under this section as being a female, women's, or girls' athletic team or sport.
IA	IOWA CODE §§ 2611.1, 2611.2 (2026)	Yes	Yes	Yes	Yes	Yes	No	IOWA CODE § 2611.1 . . . 3. "Sex" means a person's biological sex as either female or male. The sex listed on a student's official birth certificate or certificate issued upon adoption may be relied upon if the certificate was issued at or near the time of the student's birth. . . . IOWA CODE § 2611.2 1. a. An interscholastic athletic team, sport, or athletic event that is sponsored or sanctioned by an educational institution or organization must be designated as one of the following, based on the sex at birth of the participating students: (1) Females, women, or girls. (2) Males, men, or boys. (3) Coeducational or mixed. b. Only female students, based on their sex, may participate in any team, sport, or athletic event designated as being for females, women, or girls. . . .

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
KS	KAN. STAT. ANN. § 60-5603 (West 2026)	Yes	Yes	Yes	Yes	Yes	No	(a) Interscholastic, intercollegiate, intramural or club athletic teams or sports that are sponsored by a public educational entity or any school or private postsecondary educational institution whose students or teams compete against a public educational entity shall be expressly designated as one of the following based on biological sex: (1) Males, men or boys; (2) females, women or girls; or (3) coed or mixed. (b) Athletic teams or sports designated for females, women or girls shall not be open to students of the male sex. (c)(1) The Kansas state high school activities association shall adopt rules and regulations for its member schools to implement the provisions of this section. (2) The state board of regents and the governing body for each municipal university, community college and technical college shall adopt rules and regulations for the postsecondary educational institutions governed by each such entity, respectively, to implement the provisions of this section.
KY	KY. REV. STAT. ANN. §§ 156.070, 164.2813 (West 2026)	Yes	Yes	Yes	Yes	Yes	No	KY. REV. STAT. ANN. § 156.070 ... (g) The state board or any agency designated by the state board to manage interscholastic athletics shall promulgate administrative regulations or bylaws that provide that: 1. A member school shall designate all athletic teams, activities, and sports for students in grades six (6) through twelve (12) as one (1) of the following categories: a. “Boys”; b. “Coed”; or c. “Girls”; ... 3. a. An athletic activity or sport designated as “girls” for students in grades six (6) through twelve (12) shall not be open to members of the male sex. b. Nothing in this section shall be construed to restrict the eligibility of any student to participate in an athletic activity or sport designated as “boys” or “coed”; and

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
								4. Neither the state board, any agency designated by the state board to manage interscholastic athletics, any school district, nor any member school shall entertain a complaint, open an investigation, or take any other adverse action against a school for maintaining separate interscholastic or intramural athletic teams, activities, or sports for students of the female sex. ... KY. REV. STAT. ANN. § 164.2813 (1) (a) A public postsecondary education institution or private postsecondary education institution that is a member of a national intercollegiate athletic association shall designate all intercollegiate and intramural athletic teams, activities, sports, and events that are sponsored or authorized by the institution as one (1) of the following categories: 1. "Men's"; 2. "Coed"; or 3. "Women's." (b) 1. A public postsecondary education institution or private postsecondary education institution that is a member of a national intercollegiate athletic association shall prohibit a member of the male sex from competing in any intercollegiate or intramural athletic team, activity, sport, or event designated as "women's." 2. Nothing in this section shall be construed to restrict the eligibility of any student to participate in an athletic activity or sport designated as "men's" or "coed." . . .
LA	LA. STAT. ANN. §§ 4:443, 4:444, 9:60 (2026)	Yes	Yes	Yes	Yes	Yes	No	LA. STAT. ANN. § 4:443 In this Chapter, unless otherwise indicated, the following definitions shall apply: (1) "Biological sex" means a statement of a student's biological sex on the student's official birth certificate which is entered at or near the time of the student's birth. ... (8) "Schools" means all of the following: (a) A public elementary or secondary school. (b) A nonpublic elementary or secondary school that receives state funds. (c) A public postsecondary educational institution. (d) A nonpublic postsecondary educational institution that receives state funds.

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
								... LA. STAT. ANN. § 4:444 A. Each intercollegiate or interscholastic athletic team or sporting event that is sponsored by a school and that receives state funding shall be expressly designated, based upon biological sex, as only one of the following: (1) Except as provided in Subsection C of this Section, a male, boys, or mens team or event shall be for those students who are biological males. (2) A female, girl's, or women's team or event shall be for those students who are biological females. (3) A coeducational or mixed team or event shall be open for participation by biological females and biological males. B. Athletic teams or sporting events designated for females, girls, or women shall not be open to students who are not biologically female. C. Nothing in this Chapter shall be construed to restrict the eligibility of any student to participate in any intercollegiate or interscholastic athletic team or sport designated as "male," "mens," or "boys," or designated as "coed" or "mixed." LA. STAT. ANN. § 9.60 Notwithstanding any other provision of law to the contrary, no governmental agency . . . shall prohibit distinctions between the sexes with respect to athletics. . .
MS	MISS. CODE ANN. § 37-97-1 (West 2026)	Yes	Yes	Yes	Yes	Yes	No	(I) Interscholastic or intramural athletic teams or sports that are sponsored by a public primary or secondary school or any school that is a member of the Mississippi High School Activities Association or public institution of higher education or any higher education institution that is a member of the NCAA, NAIA or NJCCA shall be expressly designated as one of the following based on biological sex: (a) "Males," "men" or "boys"; (b) "Females," "women" or "girls"; or (c) "Coed" or "mixed."

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
								(2) Athletic teams or sports designated for “females,” “women” or “girls” shall not be open to students of the male sex. . . .
MO	MO. REV. STAT. § 163.048 (2026)	Yes	Yes	Yes	Yes	Yes	Partial ^c	1. As used in this section, the following terms mean: (1) “Athletics,” any interscholastic athletic games, contests, programs, activities, exhibitions, or other similar competitions organized and provided for students; (2) “Sex,” the two main categories of male and female into which individuals are divided based on an individual’s reproductive biology at birth and the individual’s genome. ... 3. (1) Except as provided under subdivision (2) of this subsection, no private school, public school district, public charter school, or public or private institution of postsecondary education shall allow any student to compete in an athletics competition that is designated for the biological sex opposite to the student’s biological sex as correctly stated on the student’s official birth certificate as described in subsection four of this section or, if the student’s official birth certificate is unobtainable, another government record. (2) A private school, public school, public charter school, or public or private institution of postsecondary education may allow a female student to compete in an athletics competition that is designated for male students if no corresponding athletics competition designated for female students is offered or available. . . .
MT	MONT. CODE ANN. § 20-7-1306 (2025)	Yes	Yes	Yes	Yes ^d	Yes	No	(1) Interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by a public elementary or high school, a public institution of higher education, or any school or institution whose students or teams compete against a public school or institution of higher education must be expressly designated as one of the following based on biological sex: (a) males, men, or boys; (b) females, women, or girls; or (c) coed or mixed. (2) Athletic teams or sports designated for females, women, or girls may not be open to students of the male sex. . . .

NE	NEB. REV. STAT. §§ 79-3803, 79-3804, 79-3805 (2026)	Yes	Yes	Yes	Yes	Yes	Yes	NEB. REV. STAT. § 79-3803 For purposes of the Stand With Women Act: (1) Athletic association means a corporation, association, or organization which has as one of its primary purposes the sponsoring or administration of extracurricular interscholastic athletic contests or competitions; (2) Boy means an adolescent human male; (3) Female means an individual who naturally has, had, will have, or would have, but for a congenital anomaly or intentional or unintentional disruption, the reproductive system that at some point produces, transports, and utilizes eggs for fertilization. Female includes a woman and a girl; (4) Girl means an adolescent human female; (5) Male means an individual who naturally has, had, will have, or would have, but for a congenital anomaly or intentional or unintentional disruption, the reproductive system that at some point produces, transports, and utilizes sperm for fertilization. Male includes a man and a boy; (6) Man means an adult human male; (7) Postsecondary educational institution means a university, college, or community college located in Nebraska that is a member institution of an accrediting body recognized by the United States Department of Education; (8) Private school means any private, denominational, or parochial school offering instruction in elementary or high school grades; (9) Public school means any public school offering instruction in elementary or high school grades; (10) Sex means an individual's sex, either male or female; and (11) Woman means an adult human female. NEB. REV. STAT. § 79-3804 (1) For an interscholastic athletic team or sport sponsored by a public school, a private school whose students or teams compete against a public school in an interscholastic sport, or a private school that is a member of an athletic association, the team or sport shall be expressly designated as one of the following based on sex: (a) Males, men, or boys; (b) Females, women, or girls; or (c) Coed or mixed. (2)(a) For an interscholastic athletic team or sport sponsored by a public school, a private school whose students or teams compete against a public school in an interscholastic sport, or a private school that is a member of an athletic association, a team or sport designated for females, women, or girls shall not be open to a male student.
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							(b) For an interscholastic athletic team or sport sponsored by a public school, a private school whose students or teams compete against a public school in an interscholastic sport, or a private school that is a member of an athletic association, a team or sport designated for males, men, or boys shall not be open to a female student unless there is no female team offered or available for such sport for such female student. (3) For an interscholastic athletic team or sport sponsored by a public postsecondary educational institution, a private postsecondary educational institution whose students or teams compete against a public postsecondary educational institution, or a private postsecondary educational institution that is a member of an athletic association, the team or sport shall be expressly designated as one of the following based on sex: (a) Males, men, or boys; (b) Females, women, or girls; or (c) Coed or mixed. (4)(a) For an interscholastic athletic team or sport sponsored by a public postsecondary educational institution, a private postsecondary educational institution whose students or teams compete against a public postsecondary educational institution, or a private postsecondary educational institution that is a member of an athletic association, a team or sport designated for females, women, or girls shall not be open to a male student. (b) For an interscholastic athletic team or sport sponsored by a public postsecondary educational institution, a private postsecondary educational institution whose students or teams compete against a public postsecondary educational institution, or a private postsecondary educational institution that is a member of an athletic association, a team or sport designated for males, men, or boys shall not be open to a female student unless there is no female team offered or available for such sport for such female student. (5) In order to participate in an interscholastic athletic team or sport that is designated for males, men, or boys or designated for females, women, or girls and that is sponsored by (a) a public school or a public postsecondary educational institution or (b) a private school or a private postsecondary educational institution subject to the Stand With Women Act, a student shall provide to such school or postsecondary educational institution confirmation of such student's sex on a document signed by a doctor or signed under the authority of a doctor. (6) Nothing in this section shall be construed to restrict the eligibility of any student to participate in any interscholastic athletic teams or sports designated as coed or mixed. NEB. REV. STAT. § 79-3805 A government entity, licensing or accrediting organization, or athletic association shall not entertain a complaint, open an investigation, or take any other adverse action against a public or private school
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State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
								or a public or private postsecondary educational institution for maintaining any separate interscholastic athletic team or sport for female students.
NC	N.C. GEN. STAT. ANN. §§ 115C-407.55, 115C-407.59, 115C-407.70, 116-401 (West 2026)	Not Found	Yes	Yes	Yes	Yes	No	N.C. GEN. STAT. ANN. § 115C-407.55 The State Board of Education shall adopt rules governing high school interscholastic athletic activities conducted by public school units that include the following: (1) Student participation rules.—These rules shall govern student eligibility to participate in interscholastic athletic activities. The adoption of these rules shall not be delegated to an administering organization, and student participation rules shall not be altered or expanded by an administering organization. The rules shall include, at a minimum, the following: ... e. Biological participation requirements as required by G.S. 115C-407.59. ... N.C. GEN. STAT. ANN. § 115C-407.59 (a) All teams participating in interscholastic or intramural athletic activities shall comply with the following: (1) Each team shall be expressly designated by the biological sex of the team participants as one of the following: a. Males, men, or boys. b. Females, women, or girls. c. Coed or mixed. (2) Athletic teams designated for females, women, or girls shall not be open to students of the male sex. (3) For purposes of this sub-subdivision, a student's sex shall be recognized based solely on the student's reproductive biology and genetics at birth. N.C. GEN. STAT. ANN. § 115C-407.70 (a) The State Board of Education shall adopt rules governing middle school interscholastic athletic activities conducted by public school units consistent with the requirements of G.S. 115C-407.55 for student participation rules, student health and safety rules, penalty rules, appeals rules, administrative rules, gameplay rules, fee rules, and reporting rules.

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
								... N.C. GEN. STAT. ANN. § 116-401 (a) All teams that are part of an intercollegiate athletic program of an institution of higher education shall comply with the following: (1) Each team shall be expressly designated by the biological sex of the team participants as one of the following: a. Males, men, or boys. b. Females, women, or girls. c. Coed or mixed. (2) Athletic teams designated for females, women, or girls shall not be open to students of the male sex. (b) For the purposes of this section, sex shall be recognized based solely on a person's reproductive biology and genetics at birth.
ND	N.D. CENT. CODE §§ 15-10.6.02, 15.1-39-02 (2026)	Yes	Yes	Yes	Yes	Yes	No	N.D. CENT. CODE § 15-10.6-02 1. An intercollegiate or intramural athletic team or sport sponsored by an institution must be expressly designated as one of the following based on the sex of the intended participants: a. "Males," "men," or "boys"; b. "Females," "women," or "girls"; or c. "Coed" or "mixed." 2. An athletic team or sport designated for "females," "women," or "girls" may not be open to students of the male sex. 3. This section may not be construed to restrict the eligibility of a student to participate in interscholastic or intramural athletic teams or sports designated as "males," "men," or "boys" or designated as "coed" or "mixed." N.D. CENT. CODE § 15.1-39-02 1. An interscholastic or intramural athletic team or sport sponsored by a school must be expressly designated as one of the following based on the sex of the intended participants: a. "Males," "men," or "boys";

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
								b. “Females,” “women,” or “girls”; or c. “Coed” or “mixed.” 2. An athletic team or sport designated for “females,” “women,” or “girls” may not be open to students of the male sex. 3. This section may not be construed to restrict the eligibility of a student to participate in interscholastic or intramural athletic teams or sports designated as “males,” “men,” or “boys” or designated as “coed” or “mixed.”
NH	N.H. REV. STAT. ANN. § 193:41 (2026)	No	Yes	Yes	No	Yes	No	I. In this subdivision, “school” means a public high school in which any combination of grades 9 through 12 are taught or a public middle school in which any combination of grades 5 through 8 are taught. This shall not apply to students in any grade kindergarten through fourth grade. II. (a) An interscholastic sport activity or club athletic team sponsored by a public school or a private school whose students or teams compete against a public school must be expressly designated as one of the following based on the biological sex at birth of intended participants: (1) Males, men, or boys; (2) Females, women, or girls; or (3) Coed or mixed. (b) Athletic teams or sports designated for females, women, or girls shall not be open to students of the male sex. . . .
OH	OHIO REV. CODE ANN. §§ 3313.5320, 3345.562 (West 2026)	Yes	Yes	Yes	Yes	Yes	No	OHIO REV. CODE ANN. § 3313.5320 (A) Each school that participates in athletic competitions or events administered by an organization that regulates interscholastic athletic conferences or events shall designate interscholastic athletic teams based on the sex of the participants as follows: (1) Separate teams for participants of the female sex within female sports divisions; (2) Separate teams for participants of the male sex within male sports divisions; (3) If applicable, co-ed teams for participants of the female and male sexes within co-ed sports divisions. (B) No school, interscholastic conference, or organization that regulates interscholastic athletics shall knowingly permit individuals of the male sex to participate on athletic teams or in athletic competitions designated only for participants of the female sex.

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
								(C) Nothing in this section shall be construed to restrict the eligibility of any student to participate on any athletic teams or in athletic competitions that are designated as male or co-ed. ... OHIO REV. CODE ANN. § 3345.562 ... (B) Each state institution of higher education or private college that is a member of the national collegiate athletics association, the national association of intercollegiate athletics, or the national junior college association shall designate intercollegiate athletic teams and sports based on the sex of the participants as follows: (1) Separate teams for participants of the female sex within female sports divisions; (2) Separate teams for participants of the male sex within male sports divisions; (3) If applicable, co-ed teams for participants of the female and male sexes within co-ed sports divisions. (C) No state institution or private college to which division (B) of this section applies shall knowingly allow individuals of the male sex to participate on athletic teams or in athletic competitions designated for only participants of the female sex. (D) Nothing in this section shall be construed to restrict the eligibility of any student to participate on any athletic teams or in athletic competitions that are designated as male or co-ed. . . .
OK	OKLA. STAT. tit. 70, § 27-106 (2026)	Yes	Yes	Yes	Yes	Yes	No	B. As used in this section: 1. “School” means a public school district or public charter school in this state or an institution within The Oklahoma State System of Higher Education; 2. “School athletic association” shall have the same meaning as provided for in Section 27-102 of Title 70 of the Oklahoma Statutes; and 3. “Intercollegiate association” shall mean a national association that sets eligibility requirements for participation in sports at the collegiate level and that provides the coordination, supervision and regulation of the intercollegiate competitions. C. Athletic teams that are sponsored by a school or sponsored by a private school whose students or teams compete against a school shall be expressly designated as one of the following based on biological sex:

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
								1. "Males," "men" or "boys"; 2. "Females," "women" or "girls"; or 3. "Coed" or "mixed." ... E. 1. Athletic teams designated for "females," "women" or "girls" shall not be open to students of the male sex. . . .
SC	S.C. CODE ANN. § 59-1-500 (2026)	Yes	Yes	Yes	Yes	Yes	Partial ^e	(A) For purposes of this section, a statement of a student's biological sex on the student's official birth certificate is considered to have correctly stated the student's biological sex at birth if the statement was filed at or near the time of the student's birth. (B)(1) Interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by a public elementary or secondary school or public postsecondary institution must be expressly designated as one of the following based on the biological sex at birth of team members: (a) males, men, or boys; (b) females, women, or girls; or (c) coed or mixed, including both males and females. (2) Athletic teams or sports designated for males, men, or boys shall not be open to students of the female sex, unless no team designated for females in that sport is offered at the school in which the student is enrolled. (3) Athletic teams or sports designated for females, women, or girls shall not be open to students of the male sex. (4) A private school or a private institution sponsoring an athletic team or sport in which its students or teams compete against a public school or institution must also comply with this section for the applicable team or sport. . . .
SD	S.D. CODIFIED LAWS § 13-67-1 (2026)	Yes	Yes	Yes	Yes	Yes	No	Any interscholastic, intercollegiate, intramural, or club athletic team, sport, or athletic event that is sponsored or sanctioned by an accredited school, school district, an activities association or organization, or an institution of higher education under the control of either the Board of Regents or the Board of Technical Education must be designated as one of the following, based on the biological sex at birth of the participating students: (1) Females, women, or girls;

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
								(2) Males, men, or boys; or (3) Coeducational or mixed. Only female students, based on their biological sex, may participate in any team, sport, or athletic event designated as being for females, women, or girls. . . .
TN	TENN. CODE §§ 49-6-310, 49-7-180, 49-50-805 (West 2026)	No	Yes	Yes	Yes	Yes	Partial ^f	TENN. CODE § 49-6-310 (a) A student's gender for purposes of participation in a public middle school or high school interscholastic athletic activity or event must be determined by the student's sex at the time of the student's birth, as indicated on the student's original birth certificate. If a birth certificate provided by a student pursuant to this subsection (a) does not appear to be the student's original birth certificate or does not indicate the student's sex upon birth, then the student must provide other evidence indicating the student's sex at the time of birth. The student or the student's parent or guardian must pay any costs associated with providing the evidence required under this subsection (a). ... (d) As used in this section: (1) "High school" means a school in which any combination of grades nine through twelve (9-12) are taught; and (2) "Middle school" means a school in which any combination of grades five through eight (5-8) are taught. (e) This section does not apply to students in any grade kindergarten through four (K-4). ... TENN. CODE § 49-7-180 (a)(1) Intercollegiate or intramural athletic teams or sports that are designated for "females," "women," or "girls" and that are sponsored, sanctioned, or operated by a public institution of higher education or by a private institution of higher education whose students or teams compete against public institutions of higher education shall not be open to students of the male sex. (2) Subdivision (a)(1) does not restrict the eligibility of a student to participate in an intercollegiate or intramural athletic team or sport designated for "males," "men," or "boys" or designated as "coed" or "mixed." (b) For purposes of this section, an institution of higher education shall rely upon the sex listed on the student's original birth certificate, if the birth certificate was issued at or near the time of birth. If

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
								a birth certificate provided by a student is not the student's original birth certificate issued at or near the time of birth or does not indicate the student's sex, then the student must provide other evidence indicating the student's sex. ... TENN. CODE § 49-50-805 (a) In connection with an interscholastic athletic activity or event where membership in the Tennessee Secondary School Athletic Association is required, a student enrolled in a private school in this state is eligible to participate in such athletic activity or event only in accordance with the student's sex, as defined in § 49-2-802. (b) This section does not prohibit a student whose sex, as defined in § 49-2-802, is female from participating on a team designated for male students if the school does not offer a separate team for female students in that sport.
TX	TEX. EDUC. CODE ANN. §§ 33.0834, 51.980 (West 2026)	Yes	Yes	Yes	Yes	Yes	Partial [§]	TEX. EDUC. CODE ANN. § 33.0834 (a) Except as provided by Subsection (b), an interscholastic athletic team sponsored or authorized by a school district or open-enrollment charter school may not allow a student to compete in an interscholastic athletic competition sponsored or authorized by the district or school that is designated for the biological sex opposite to the student's biological sex as correctly stated on: (1) the student's official birth certificate, as described by Subsection (c); or (2) if the student's official birth certificate described by Subdivision (1) is unobtainable, another government record. (b) An interscholastic athletic team described by Subsection (a) may allow a female student to compete in an interscholastic athletic competition that is designated for male students if a corresponding interscholastic athletic competition designated for female students is not offered or available. (c) For purposes of this section, a statement of a student's biological sex on the student's official birth certificate is considered to have correctly stated the student's biological sex only if the statement was: (1) entered at or near the time of the student's birth; or (2) modified to correct any type of scrivener or clerical error in the student's biological sex.

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
								(d) The University Interscholastic League shall adopt rules to implement this section, provided that the rules must be approved by the commissioner in accordance with Section 33.083(b). The rules must ensure compliance with state and federal law regarding the confidentiality of student medical information, including Chapter 181, Health and Safety Code, and the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.). TEX. EDUC. CODE ANN. § 51.980 (a) In this section: (1) “Athletic competition” means any athletic display between teams or individuals, such as a contest, exhibition, performance, or sport. (2) “Institution of higher education” has the meaning assigned by Section 61.003. (b) Except as provided by Subsection (c), an intercollegiate athletic team sponsored or authorized by an institution of higher education may not allow: (1) a student to compete on the team in an intercollegiate athletic competition sponsored or authorized by the institution that is designated for the biological sex opposite to the student’s biological sex; or (2) a male student to compete on the team in a mixed-sex intercollegiate athletic competition sponsored or authorized by the institution in a position that is designated by rule or procedure for female students. (c) An intercollegiate athletic team described by Subsection (b) may allow a female student to compete in an intercollegiate athletic competition that is designated for male students if a corresponding intercollegiate athletic competition designated for female students is not offered or available. . . .
UT ^h	UTAH CODE ANN. § 53G-6-902 (West 2026)	Yes	Yes	Yes	No	Yes	No	(1) Notwithstanding any state board rule: (a) a public school or LEA, or a private school that competes against a public school or LEA, shall expressly designate school athletic activities and teams as one of the following, based on sex: (i) designated for students of the male sex; (ii) designated for students of the female sex; or (iii) “coed” or “mixed”;

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
								(b) a student of the male sex may not compete, and a public school or LEA may not allow a student of the male sex to compete, with a team designated for students of the female sex in an interscholastic athletic activity; and (c) a government entity or licensing or accrediting organization may not entertain a complaint, open an investigation, or take any other adverse action against a school or LEA described in Subsection (1)(a) for maintaining separate school athletic activities for students of the female sex. (2) Nothing in this section prohibits an LEA or school from allowing a student of either gender from participating with a team designated for students of the female sex, consistent with school policy, outside of competition in an interscholastic athletic activity, in accordance with Subsection (1)(b).
WV	W. VA. CODE § 18-2-25d (2026)	No	Yes	Yes	Yes	Yes	No	(b) Definitions.—As used in this section, the following words have the meanings ascribed to them unless the context clearly implies a different meaning: (1) “Biological sex” means an individual’s physical form as a male or female based solely on the individual’s reproductive biology and genetics at birth. (2) “Female” means an individual whose biological sex determined at birth is female. As used in this section, “women” or “girls” refers to biological females. (3) “Male” means an individual whose biological sex determined at birth is male. As used in this section, “men” or “boys” refers to biological males. (c) Designation of Athletic Teams.— (1) Interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by any public secondary school or a state institution of higher education, including a state institution that is a member of the National Collegiate Athletic Association (NCAA), National Association of Intercollegiate Athletics (NAIA), or National Junior College Athletic Association (NJCAA), shall be expressly designated as one of the following based on biological sex: (A) Males, men, or boys; (B) Females, women, or girls; or (C) Coed or mixed. (2) Athletic teams or sports designated for females, women, or girls shall not be open to students of the male sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport.

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
								(3) Nothing in this section shall be construed to restrict the eligibility of any student to participate in any interscholastic, intercollegiate, or intramural athletic teams or sports designated as “males,” “men,” or “boys” or designated as “coed” or “mixed”: Provided, That selection for a team may still be based on those who try out and possess the requisite skill to make the team. . . .
WY	WYO. STAT. ANN. §§ 21-25-101, 21-25-102 (West 2026)	No	Yes	Yes	No	Yes	No	WYO. STAT. ANN. § 21-25-101 (a) As used in this chapter: (i) “Coed” or “mixed” means that a team is composed of members of both sexes who traditionally compete together; (ii) “Interscholastic athletic activity” means that a student represents the student's school in a Wyoming high school activities association sanctioned sport; (iii) “School” means a school consisting of grades seven (7) through 12 (twelve), or any combination of grades within this range, as determined by the plan of organization by the school district board of trustees; (iv) “Sex” means the biological, physical condition of being male or female, determined by an individual's genetics and anatomy at birth. WYO. STAT. ANN. § 21-25-102 (a) A public school or a private school that competes against a public school shall expressly designate school athletic activities and teams as one (1) of the following based on sex: (i) Designated for students of the male sex; (ii) Designated for students of the female sex; or (iii) Coed or mixed. (b) A student of the male sex shall not compete, and a public school shall not allow a student of the male sex to compete, in an athletic activity or team designated for students of the female sex. (c) A government entity or licensing or accrediting organization shall not entertain a complaint, open an investigation or take any other adverse action against a school described in subsection (a) of this section for maintaining separate school athletic activities and teams for students of the female sex. . . .

Source: CRS.

- a. According to the Georgia High School Association's Bylaws, some eighth-grade students may participate in sub-varsity competition in high schools., *Constitution By-Laws* 1.45, GA. HIGH SCH. ASS'N (Aug. 1, 2024), <https://www.ghsa.net/constitution-section-2024-2025-law-100-student#1.40> [<https://perma.cc/7ANH-2ULY>].
- b. The Georgia statute provides that athletic associations may prohibit students whose gender is male from participating in athletic events that are designated for students whose gender is female. The Georgia High School Association's Bylaws provide, "Girls may participate on boys' teams when there is no girls' team offered in that sport or activity by the school (exception: wrestling). Boys may not participate on girls' teams even when there is no corresponding boys' sport or activity." They also specify that a "student's sex is determined by the sex noted on his/her certificate at birth." *Constitution By-Laws* 1.45, GA. HIGH SCH. ASS'N (Aug. 1, 2024), <https://www.ghsa.net/constitution-section-2024-2025-law-100-student#1.40> [<https://perma.cc/7ANH-2ULY>].
- c. Subsection 3, paragraph 2 provides that "a private school, public school, public charter school, or public or private institution of postsecondary education may allow a female student to compete in an athletics competition that is designated for male students if no corresponding athletics competition designated for female students is offered or available."
- d. The Montana Supreme Court ruled that the law was unconstitutional as applied to the Montana University System. *Barrett v. State*, 547 P.3d 630 (Mont. 2024).
- e. Paragraph B(2) states that "athletic teams or sports designated for males, men, or boys shall not be open to students of the female sex, unless no team designated for females in that sport is offered at the school in which the student is enrolled."
- f. The statute does not designate who may participate in male designated sports at the college or university level.
- g. At interscholastic and intercollegiate levels, female students may be permitted to compete in sports designated for males if a corresponding competition is not offered for female students.
- h. A Utah state court has enjoined enforcement of the Utah law. *Roe v. Utah High Sch. Activities Ass'n*, No. 220903262, 2022 WL 3907182 (Utah Dist. Ct. Aug. 19, 2022).

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Acknowledgments

Table A-1 was created with assistance from CRS Law Librarian Jason Hawkins.

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