

No. 26A458

In the Supreme Court of the United States

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

STEPHANIE LYNNE BROWN,

Applicants,

v.

WASHINGTON INTERSCHOLASTIC ACTIVITIES
ASSOCIATION, et al.,

Respondents.

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

**OPPOSITION OF RESPONDENT PUYALLUP SCHOOL
DISTRICT TO EMERGENCY APPLICATION FOR AN
INJUNCTION PENDING APPEAL**

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INTRODUCTION

Applicants ask this Court to exercise a power it uses “sparingly and only in the most critical and exigent circumstances”: to enter, in the first instance, an injunction the district court twice declined to enter and a unanimous court of appeals panel declined to enter, directed at a school district that has no means of carrying it out.¹

K.M.K. reports that she was hurt, frightened, and violated during a wrestling match in December 2025. Respondent Puyallup School District (the District or PSD) does not minimize that report. It notified law enforcement, retained an independent investigator, offered supportive measures, and expedited the transfer K.M.K. requested to a different high school, Puyallup High School, where she is now enrolled and eligible to compete athletically. Its Title IX investigation of the wrestling incident is ongoing and unresolved. The local prosecutor investigated the alleged assault and declined to press charges.

This Application is not about the District’s response to K.M.K.’s report or about K.M.K.’s allegation of assault. Applicants do not even renew those theories here. And it is not about whether K.M.K. may compete, which is settled. She may. Instead, the Application asks this Court, on an emergency basis and based on an undeveloped record to order the District to do what it has no power to do: ensure K.M.K. is not matched in girls’ wrestling against transgender students (who the Application calls

¹ Citations to “Appl.” are to the Application; to “App.” are to Applicants’ appendix; and to “PSD App.” are to the Puyallup School District’s appendix. Consistent with state law, District policies, and the privacy interests of the minors involved, this Opposition refers to the opposing student wrestler in the December 2025 wrestling match as “the other student” and uses “transgender” rather than the Application’s term “male”.

“male competitors”) by means the Application never specifies.

The Emergency Application should be denied.

First, nothing requires this Court to act before the Ninth Circuit. Wrestling season begins in mid-November, Applicants’ appeal is under way and the future injury for which they seek relief is speculative. K.M.K.’s mother is free to decline any match for her daughter without any penalty at the District level. She is already aware of two athletes who concern her. The choice of whether K.M.K. competes is up to her.

Second, the requested relief sought is a mandatory injunction the District cannot implement. The District does not know any student’s sex assigned at birth or transgender status, does not unilaterally control who wrestles whom, cannot change the national rules under which a withdrawal is deemed a forfeit, and could only partly comply by collecting, using, or disclosing private information about non-party minors. Both courts below so found while refusing to grant premature injunctive relief.

Third, Applicants are not likely to succeed, much less in an “indisputably clear” way. *Mirabelli v. Bonta* concerned a parent’s right to information about her own child’s mental health, not a right to direct which students her child competes against. *West Virginia v. B.P.J.* expressly reserved the Title IX question Applicants press.

Fourth, the circuit disagreement on the tests for mandatory and prohibitory injunctions, which the Application leads with, is no reason to grant relief. Applicants invoked the Ninth Circuit’s standard themselves. Both lower courts ruled on grounds that do not depend on the Circuit’s test so that “resolution” of the split would be dicta.

Fifth, certiorari before judgment is unwarranted on this interlocutory, preliminary record where answers have not been filed nor any discovery conducted and the underlying triggering event is still being investigated. Applicants seek to use their requested relief as a blunt instrument to invalidate Washington’s anti-discrimination and privacy laws to the extent they protect transgender persons in sports, but without a proper legal or factual predicate of a case to challenge them. This case is far too undeveloped to provide a principled basis for such a challenge.

OBJECTION TO AMICUS BRIEFS

Three entities have each submitted an amicus curiae brief in support of Applicants’ Emergency Application For An Injunction Pending Appeal. Rule 37.4 governs amicus filings under Rule 22 for applications to individual justices. The Rule “discourages” such filings. These filings should be disregarded because they do not “bring[] to the attention of the Court relevant matter not already presented by the parties”. They thus would not be of any help to the Court. The District objects to consideration of amicus briefs at this stage which, like these, add nothing.

STATEMENT OF THE CASE

A. Washington law, the WIAA’s rules, the District’s policies, and wrestling competition scheduling.

Washington law prohibits sex discrimination in public schools, including discrimination on the basis of gender expression and gender identity. It directs the Washington State Office of Public Instruction (“OSPI”) to enforce that prohibition and school districts to adopt implementing policies. Wash. Rev. Code §§ 28A.640.010 (1975)–.020 (2023), 28A.642.005 (2010), .010 (2025), .050 (2010), .080 (2023); App. 3a–

4a. Since 2007 the Washington Interscholastic Activities Association (WIAA) has provided that students may participate “in a manner that is consistent with their gender identity.” App. 5a (quoting WIAA Rule 18.16.0). The District follows that rule, it follows state law, it follows OSPI’s requirements, and it follows its own Policy 3211. *See* Complaint, ex. 25 (D.Ct.Dkt. 1-34). Its Title IX coordinator confirms that the District is “required to adopt the policies advanced by” OSPI and “to abide by the requirements and regulations issued by” the WIAA, and that it “has no ability to alter” them. Brobbey Decl. ¶ 34(c) nn.8–11 and ¶ 50 (PSD App. 8-9, 12; D. Ct. Dkt. 41).

The District’s athletic director, James Meyerhoff, declared the information he has about student athletes in the District is limited to a “Legal gender” field in each student’s digital file; that he has “no indication within the files for any particular student as to whether they are cisgender or transgender”; that the medical-eligibility forms the District receives contain no physician indication of sex and require no genital examination; and that he has no access to information about wrestlers in other districts. Meyerhoff Decl. ¶¶ 3–5 & Ex. 1 (PSD App. 18-19, 24; CA9 Dkt. 38.2); *see* App. 77a.

Mr. Meyerhoff explained that wrestling matchups are set in three ways: Saturday tournaments set up by individual schools where wrestlers can compete in up to six matches per day, *id.* ¶6; dual matches organized by the league of 12 schools in which each school competes against another in each of 14 weight classes, *id.* at ¶7; and post-season league tournaments. *Id.*, ¶8 (PSD App. 19-20; CA9 Dkt. 38.2).

Tournament directors set the brackets (often randomized by weight class) for Saturday tournaments attended by eight to thirty or more schools. *Id.*, ¶6. The league commissioner sets dual-meet schedules for the twelve schools of the 4A South Puget Sound League, subject to approval by those schools’ athletic directors. In a dual meet two schools meet and compete in each of fourteen weight classes. *Id.*, ¶7. Coaches seed post-season brackets by record. *Id.*, ¶¶ 8. Although Mr. Meyerhoff also serves as the league’s 4A wrestling commissioner, *id.*, ¶ 1, the schedule requires approval by twelve schools and tournaments and seedings are set by others. *Id.*, ¶¶ 6-8. The chart in ¶10 of Mr. Meyerhoff’s declaration shows how complex the tournament brackets are, in part because there are competitors from around the state. *Id.*, ¶10 (PSD App. 21). Applicants allege that K.M.K. “competes against wrestlers from all over the state.” Complaint ¶ 147 (ER 821; D. Ct. Dkt. 1 at 23). Under the National Federation of State High School Associations (NFHS) rules, a match is forfeited when an opponent “for any reason, fails to appear”; a forfeit is a loss, and the opponent advances. Meyerhoff Decl. ¶¶ 9–10 (PSD App. 20; CA9 Dkt. 38.2).

B. The December 2025 match and the District’s response.

K.M.K. was a sophomore at Rogers High School, one of the District’s three high schools, and wrestled on the junior varsity girls’ team in the 190 lb. division. App. 6a (district court decision). On December 6, 2025, at a tournament hosted by Emerald Ridge High School, the Emerald Ridge girls head wrestling coach, John Morrison, testified later that K.M.K. wrestled a freshman student from Emerald Ridge who is transgender and for whom it was the first competition of the season. *See* Morrison

Decl. ¶ 4 (PSD App. 26; D.Ct. Dkt. 42); App. 6a-7a. K.M.K. reported that during the match the other student digitally penetrated her, App. 6a,² and she later learned from a coach from another district team that the opponent was transgender. Complaint at ¶89 (ER 812; D.Ct. Dkt. 1). Her mother emailed K.M.K.’s coaches on the next school day to report: first, an apparent painful injury received at the competition; and second, the “oil check” incident.³ K.M.K. did not return to the team that season due to the injury. App. 7a; Appl. 7.⁴

The District’s Title IX Coordinator, Dr. Gordon Brobbey, learned of the allegation on January 30, 2026, when he was alerted to a media inquiry. Brobbey Decl. ¶ 2 (PSD App. 2; D.Ct. Dkt. 41).⁵ The District obtained and reviewed video, notified the school resource officer of the allegation, obtained statements from both students, and offered both counseling. *Id.*, ¶ 3. It sought an outside investigator on February 10, retained one on February 17, and gave K.M.K. and her mother written notice, with an offer of supportive measures, on February 20. *Id.*, ¶¶4, 12–14 (PSD

² It is a known, illegal tactic and hazard in wrestling competitions referred to as an “oil check”, used to cause shock for the purpose of gaining advantage. Complaint at ¶85 (ER 812). This was central to the prosecutor’s decision not bring criminal charges. *See* App. 10a (district court decision); D.Ct. Dkt 36-15, pp 8-9 (prosecutor’s declination letter).

³ Complaint, Ex.1 (ER 874). The email exchange shows K.M.K suffered a physical injury (details redacted). The “leg injury” was unrelated to the alleged assault by “oil check” and, as noted in the Complaint, the injury prevented further wrestling that season. *See* Complaint at ¶99 (ER 814).

⁴ The Pierce County Prosecuting Attorney investigated and declined to file charges. App. 10a. The District recites that fact not to minimize K.M.K.’s account but because the Application presents as established a characterization which no tribunal has determined. The district court made no findings on the point, App. 1a–2a, 6a.

⁵ Applicants contend that the District had earlier notice through the December 8 email to Rogers coaches. The district court identified a question of fact on that point, App. 46a–48a, which is not raised or referenced in the Application.

App. 2,4). Because criminal investigations take precedence, the investigator could not contact the students until the week of April 6. K.M.K., through counsel, declined an interview but answered written questions and the evidence was circulated to the parties in June and July under the ten-day review periods District regulation requires. *Id.* ¶¶15–26 (PSD App. 4-6). The investigation was ongoing when the district court ruled, App. 12a, 47a, and is still ongoing. The District has not been informed that a determination has been made.

C. The supportive-measure requests and K.M.K.’s transfer.

On March 27, K.M.K., through counsel, requested supportive measures. On April 3 the District granted a separate testing room and offered that K.M.K. could forfeit matches against transgender opponents “without any adverse consequences imposed by the district.” Appl. 8 (quoting ER-781). The District’s April 3 response noted that, since it “has no ability to alter WIAA rules regarding forfeits, nor to disclose another student’s gender identity information,” Brobbey Decl. ¶ 34(c) (PSD App. 8-9; D.Ct. Dkt. 41), the District could not give advance notice of any transgender student’s participation, citing FERPA, WIAA rules, and District policy. *Id.*, ¶ 34(d). The April 3 response also declined to let K.M.K. compete for Puyallup High School while enrolled at Rogers due to WIAA rules. *Id.*, ¶ 34(b) (PSD App. 8).

The District heard nothing further until June 29, when K.M.K. requested a transfer, transportation, and the District’s agreement that her circumstances constituted a “hardship” for WIAA eligibility purposes. *Id.* ¶¶ 35, 45 (PSD App. 9, 10-11). The District pointed her to its ordinary transfer policy. *Id.* ¶ 48 (PSD App. 12). She applied on August 27, the District expedited approval, and K.M.K. is now

enrolled at Puyallup High School after purchasing a parking pass and arranging her own transportation. What Decl. ¶¶ 3–4 (PSD App. at 30; D. Ct. Dkt. 69); App. 67a. The WIAA explained that K.M.K. had not applied for the hardship waiver its rules provide as of its filing on September 17. CA9 Dkt. 40.1 at 7.

D. Proceedings below.

K.M.K. and her mother sued on June 9, 2026, ER 799-872 (complaint), and moved for a preliminary injunction on July 10. App. 16a. After briefing and argument, Judge Estudillo denied the motion on August 23 in a 62-page order. App. 1a–62a. The court held that Applicants had not shown a likelihood of success: no authority supported the asserted parental right to “direct the administration of extracurricular student sports activities” and to obtain “private, sensitive information about other students,” App. 3a, 25a–30a; the policies are facially neutral and no evidence showed intent to treat girls differently, App. 32a–34a; the record was “inconclusive” on any known or obvious risk, App. 3a, 40a–44a; and Defendants lacked clear notice, App. 50a–55a. It also found the claimed future harm speculative and the relief neither narrowly tailored nor capable of being granted “in a manner that did not simultaneously violate other students’ privacy rights.” App. 55a–59a. The first factor was “dispositive,” App. 55a, and the relief was mandatory. App. 59a–61a & n.11. The court denied an injunction pending appeal on August 31, observing that the transfer “weakens Plaintiffs’ claims of irreparable harm.” App. 67a.

A Ninth Circuit panel denied an injunction pending appeal on September 25. App. 72a. It held that Applicants had not shown a “genuine emergency necessitating urgent relief,” App. 73a; had not made a sufficiently strong merits showing under the

deferential standard governing review of a preliminary-injunction denial, App. 73a–75a; and had not shown that the hardships tipped their way, App. 75a–78a. The decision noted that K.M.K. had identified two transgender athletes who might compete and she could decline to wrestle them without any District-imposed penalty; that the relief requested was overbroad and “could compromise other students’ privacy rights”; and that it was unclear “from the record how the District could withhold K.M.K. from competition in a weight- and seed-based tournament-bracket system . . . without negatively impacting other competitors or identifying those competitors.” App. 75a–77a.

E. The Application for Immediate Injunctive Relief.

Applicants ask for “an injunction pending appeal that protects K.M.K. from [transgender] competitors in girls’ wrestling,” or, alternatively, an injunction plus certiorari before judgment. Appl. 3, 43. They do not propose an order or say whether they still seek the terms they proposed below, which would have barred OSPI, the WIAA, and the District from “matching K.M.K. against a [transgender athlete] in girls’ wrestling” unless Brown first received notice and a right to opt out “without academic or athletic penalty,” which was defined to include “posting a loss or forfeit for K.M.K. or her team.” Proposed Order (PSD App. 38; D.Ct. Dkt. 36-1 at 4). The proposed order would have broadly barred OSPI, the WIAA, and the District from allowing any transgender athlete “to compete with or against K.M.K.” in wrestling, soccer, “or other contact sports.” In this Court, Applicants describe the relief as “the opportunity to opt K.M.K. out of wrestling [transgender athletes] with notice when necessary,” Appl. 14, and as an arrangement in which “Defendants could opt K.M.K.

out of such a match themselves.” Appl. 36. They do not renew their requests for a transfer, transportation, a WIAA waiver, or separation from Rogers staff. In effect, Applicants seek to disqualify, if not eliminate, all transgender student athletes.

ARGUMENT

I. APPLICANTS HAVE NOT SHOWN ENTITLEMENT TO AN INJUNCTION FROM THIS COURT.

A. An injunction pending appeal requires a showing well beyond the ordinary stay factors.

Applicants invoke the formulation drawn from *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 16 (2020) (per curiam), and *Tandon v. Newsom*, 593 U.S. 61, 64 (2021) (per curiam), as their basis for an injunction from this Court. Appl. 13. But those decisions enjoined restrictions already in force on those applicants’ own religious exercise under precedent the Court found well settled. They did not displace the rules governing when this Court issues an injunction rather than a stay.

The All Writs Act, 28 U.S.C. § 1651(a), is the only source of this Court’s authority to issue such an injunction. *Turner Broad. Sys., Inc. v. FCC*, 507 U.S. 1301, 1303 (1993) (Rehnquist, C.J., in chambers). That authority “is to be used ‘sparingly and only in the most critical and exigent circumstances.’” *Wisconsin Right to Life, Inc. v. FEC*, 542 U.S. 1305, 1306 (2004) (Rehnquist, C.J., in chambers) (citation omitted)); see Sup. Ct. R. 20.1. Because an injunction “does not simply suspend judicial alteration of the status quo but grants judicial intervention that has been withheld by lower courts,” it “demands a significantly higher justification” than a stay. *Ohio Citizens for Responsible Energy, Inc. v. NRC*, 479 U.S. 1312, 1313 (1986) (Scalia, J., in chambers) (citation omitted). The applicant must show both 1) that “the legal

rights at issue are “indisputably clear,” *Lux v. Rodrigues*, 561 U.S. 1306, 1307 (2010) (Roberts, C.J., in chambers) (quoting *Turner*, 507 U.S. at 1303); and 2) a reasonable prospect that the Court would grant review. See *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam); *Does 1–3 v. Mills*, 142 S. Ct. 17, 17–18 (2021) (Barrett, J., concurring in denial of application for injunctive relief).

The Application does not mention this standard. Nor can Applicants meet it. Applicants identify no decision of this Court granting an injunction pending appeal where the requested order would require a public body to collect and act upon information about non-party minors that it has no legal authority to collect. And they cannot satisfy even the more forgiving formulation they invoke.

B. There is no emergency, nor one requiring this Court to act before the Ninth Circuit.

1. *Timing.* Wrestling season “does not begin until mid-November,” App. 73a, and Applicants’ appeal is well under way. They filed their opening merits brief in the Ninth Circuit on September 22, 2026, before filing here. Appl. 4 n.1.⁶ The Ninth Circuit found that Applicants had not shown “what, if any, harm will befall them” on the date they demanded relief or “why they must receive relief on an emergency basis.” App. 73a. The question is whether this Court must act now rather than the court in which their appeal is pending. The answer is no.

2. *The harm is speculative.* The injury Applicants describe depends on a future chain of events the record does not and cannot establish: that a particular student

⁶ The District’s answering brief is due November 19, 2026. (Dkt. 59).

competes in 2026–27, enters the same tournament or dual meet, is in the same weight class K.M.K. wrestles, and is paired with her. The district court found “much of the future harm alleged by Plaintiffs is speculative,” App. 24a, and that “it is speculative to assume K.M.K. will necessarily suffer a competitive disadvantage or injury when competing against a transgender opponent,” App. 56a. The record shows the district court was correct. Applicants’ verified complaint alleges that the other student “had withdrawn from the girls wrestling state championship” after the publicity and the opening of criminal and federal investigations and says only that the student “is able to compete in WIAA girls wrestling next year.” Complaint at ¶ 143 (ER 820-821; D.Ct. Dkt. 1)). A second student “is believed to still be” on the Emerald Ridge team, and a matchup with that student depends in part on whether K.M.K. weighs into that student’s 235-pound class or remains in the 190-pound class. *Id.*

3. Applicants already have the ability to choose not to compete that they say they lack. Brown’s core complaint is that she cannot decide whether K.M.K. wrestles against a transgender athlete because the District will not tell her that such a match-up is coming. But Brown is “now aware of two [transgender] athletes on the Emerald Ridge team,” Appl. 39; App. 75a–76a, and the District told Applicants in April that K.M.K. may decline any such match against them without any District-imposed penalty. Brobbey Decl. ¶34(c) (PSD App. 8-9; D.Ct. Dkt. 41). As to the athletes Applicants identify, no order of this Court is needed for Brown to make the decision she says is hers.

What Applicants seek by the injunction is a guarantee that declining a match against those two wrestlers will carry no competitive consequence. But competitive consequences turn on NFHS and WIAA scoring rules which the District has no authority to change. Meyerhoff Decl. ¶¶ 9–12 (PSD App. 20-22; CA9 Dkt. 38.2). It also requires notice of, or avoidance of, matches against students Applicants have not identified – but that is not interim relief. It is a new competitive system, as shown below.

4. As to the District, K.M.K. is not excluded and the other requests have been resolved or dropped. No one has barred K.M.K. from wrestling. Although Applicants say K.M.K. is “already missing soccer,” Appl. 37, they allege no transgender opponent in soccer and the Ninth Circuit held she lacks standing to seek relief on that basis. App. 73a n.3. To the extent soccer depends on varsity eligibility after her transfer, the WIAA’s hardship-waiver process has not been invoked. CA9 Dkt. 40.1 at 7. The school transfer was approved by the District. Applicants no longer seek a transfer order, transportation, a WIAA waiver, or separation from Rogers staff. Much of the Application’s account of harm recounts the December match. But a preliminary injunction is designed to address ongoing or threatened harm. As the district court correctly ruled, relief tied to a past event is “ill-suited” to injunctive relief. App. 59a.

5. No presumption of irreparable harm applies. The principle that denial of constitutional rights is irreparable harm, Appl. 38 (citing *Mirabelli v. Bonta*, 607 U.S. 492, 497 (2026)), presupposes a likely violation. Where the claim is “tenuous,” irreparable harm cannot be found. App. 55a. Brown retains the authority to decide

whether K.M.K. competes. Her objection is to the consequence of exercising it, which flows from rules that apply to every wrestler and over which the District has no authority or control. It has provided all the relief it can.

C. The requested injunction is a mandatory, first-instance order that cannot be implemented and would burden non-party minor athletes.

1. *The requested relief is undefined and every version requires affirmative action.* The Application sets out no proposed order and does not even offer a version of its original proposed order to the district court, a copy of which is in the District’s appendix. (PSD App. 35-40; D.Ct. Dkt 36-1).⁷ The Application seeks “protect[ion] . . . from [transgender] competitors,” Appl. 43; “opt[ing] K.M.K. out of wrestling [transgender athletes], with notice when necessary,” Appl. 14; and the District “opt[ing] K.M.K. out” on its own, Appl. 36. The order proposed below would have barred the Defendants from “matching K.M.K. against a [transgender athlete]” and from allowing “any [transgender athlete] to compete with or against K.M.K.” in several sports, while forbidding “posting a loss or forfeit for K.M.K. or her team.” (PSD App. at 38; D.Ct. Dkt. 36-1 at 4). The Complaint’s prayer went further, asking the court to require OSPI, the WIAA, and the District “to declare ineligible any [transgender] athletes competing or seeking to compete with or against K.M.K.” Complaint ¶70 (ER 868, D.C. Dkt. 1). In the Ninth Circuit Applicants described an

⁷ The later proposed order for the injunction pending appeal brought after the district court denied the preliminary injunction is virtually identical to the initial proposed order for the preliminary injunction. See PSD App. 35-40 (D.Ct. Dkt 36-1) and PSD App. 41-46 (D.Ct. Dkt 63-1). The salient points are: (1) that both orders are dramatically different from the relief requested in this emergency application; and (2) that much of the relief requested from the District in the orders below has already been granted by the District.

injunction “prohibiting Defendants from enforcing the gender-identity-participation policy so that sports teams are sex-separated.” CA9 Dkt. 42.1 at 12.

These are different orders. The last two are irreconcilable with Applicants’ representation that they seek relief “for themselves only.” D. Ct. Dkt. 53 at 21. Each would require the District to determine which students fall within a category, to notify Brown, or require the District itself to withhold K.M.K., and to change how matches are scheduled or scored. That speaks of a mandatory injunction: it “orders a responsible party to take action.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009) (citation omitted). The status quo is “the legally relevant relationship *between the parties* before the controversy arose,” which includes the policies that had long governed K.M.K.’s participation. App. 59a–60a (quoting *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1061 (9th Cir. 2014)). Applicants’ alternative “status quo,” “an educational environment free of sex discrimination,” D. Ct. Dkt. 53 at 21, assumes the merits.

2. The District lacks the information the order requires. The District’s athletic director can review a “Legal gender” field for the District’s own students, but it has “no indication within the files for any particular student as to whether they are cisgender or transgender”. Meyerhoff Decl. ¶4 (PSD App. 18-20; CA9 Dkt. 38.2); *see* App. 77a. He has no access to information about wrestlers in other districts. *Id.* The medical forms the District receives contain no physician indication of sex. *Id.*, ¶ 3 (PSD App. 18, 24). “Biological male,” the proposed order’s operative term, is not a category the District records for any student. *Id.* Applicants respond that the District

already uses the “legal gender” field to sort wrestlers. CA9 Dkt. 42.1 at 4. But that proves the point: the field does not record the information the proposed order seeks to require. As the district court ruled, to comply with such an order the District would “have to collect new, invasive information from an unknown number of students.” App. 77a.

3. *The District does not unilaterally control who wrestles whom.* Brackets for tournaments of eight to thirty or more schools are set by tournament directors, dual-meet schedules by the league with twelve schools’ approval, and post-season seeding by coaches. Meyerhoff Decl. ¶¶ 6–10 (PSD App. 19-20; CA9 Dkt. 38.2). An order against the District cannot reach other schools’ brackets and Applicants propose none against the hosts who set them. The District’s athletic director also serves as league wrestling commissioner. *Id.*, ¶ 1. But that role concerns league scheduling and supplies neither the information the desired order would require nor control over tournaments hosted elsewhere. Nor is there any showing for how the District could withhold K.M.K. from a weight- and seed-based bracket “without negatively impacting other competitors or identifying those competitors.” App. 77a.

4. *The District cannot alter the forfeit rules.* Under established state and national wrestling rules, a wrestler who does not appear forfeits, the forfeit is a loss, and the opponent advances. Meyerhoff Decl. ¶¶ 9–12 (PSD App. 20-22; CA9 Dkt. 38.2). As the athletic director testified, “[t]here is no way [for the District] to permit K.M.K. to forfeit matches without penalty”; doing so “would be in violation of the NFHS rules” and “would also displace another wrestler who did not forfeit.” *Id.*, ¶ 12.

Applicants claim they do not seek a win for a match K.M.K. does not wrestle. CA9 Dkt. 42.1 at 6. But their proposed orders bar “posting a loss or forfeit for K.M.K. or her team” at all (PSD App. 38, 44) and a bracket cannot record “no result” for K.M.K. without changing her opponent’s path. Meyerhoff Decl. ¶ 10 (PSD App. 20-21). Whether the WIAA could authorize an exception to the NFHS rules, as Applicants suggest, CA9 Dkt. 42.1 at 5–6, is a question for the WIAA. The District’s offer to impose no penalty of its own stands.

5. The proposed order would require the use and disclosure of private information about non-party minors. Applicants say notice need only communicate “that a scheduled match falls outside Brown’s permission: no name, status, or reason need be given.” Appl. 40. But that notice necessarily conveys to a competitor’s parent that their student wrestler is within the category Brown has designated. In a single weight class at a single tournament it absolutely identifies the student – it outs them. The proffered alternative, that Defendants “withhold K.M.K. on their own without saying a word,” Appl. 40, requires the same classification and conveys the same information to all the other students, coaches, and bracket.

Either way the District would be classifying students by transgender status for the purpose of excluding them from matches and would use education-record information to do so. The Ninth Circuit credited the district court’s finding that this “could compromise other students’ privacy rights.” App. 76a–77a; *see* App. 58a–59a; 20 U.S.C. § 1232g(b)(1); Wash. Rev. Code §§ 28A.642.010 (2025), 49.60.040(2) (2024), 70.58A.540 (2026). Applicants respond that FERPA conditions funds, creates no

private right, and permits disclosure under judicial order. CA9 Dkt. 17.1 at 7. This misunderstands the District's position. The District's point is not that FERPA gives Applicants a cause of action; it is that FERPA and Washington's anti-discrimination and vital-records statutes bear on feasibility and the public interest. An order reaching non-party minors' records, issued on an emergency basis and a preliminary record, would be extraordinary. It would be extraordinarily unfair to all those non-party minor-athletes and parents who will be affected.

OSPI will address the state-law dimensions. The District notes only that Applicants have not asked any court to invalidate those statutes or hold them preempted. Complaint at 69–70, ER 868-869. The Applicants seek to place the District between a federal order and conflicting state law on a preliminary, wholly factually inadequate record where no answers have been filed or discovery conducted. There are no equities in this position. Rather, it reinforces why the emergency application should be denied.

6. This Court has cautioned against such orders Applicants request. The district court sagely noted this Court's observation that "the Judiciary is not the proper institution to make what would often be arbitrary and highly intrusive athlete-by-athlete assessments." App. 39a (quoting *West Virginia v. B.P.J.*, 146 S. Ct. 2356, 2378 (2026)). The requested relief demands just that. It should be denied.

7. These are record-bound findings. The district court found that Applicants "do not meaningfully engage with the practical challenges associated with the relief they seek," App. 59a, and the Ninth Circuit found the relief infeasible and overbroad.

App. 76a–77a. Applicants strangely call these “accommodation question[s]” for “a different analytical stage.” Appl. 36. But on an application for an injunction that must take effect immediately, an applicant must show the relief is workable and no broader than necessary. They have not done that here. Nor can they.

D. The equities and the public interest weigh against relief.

The equities and public interest merge when government parties are the non-movants. *Nken v. Holder*, 556 U.S. 418, 435 (2009). As *Mirabelli* observed, “children’s safety is the overriding equity.” 607 U.S. at 497. That applies with added force to the non-party student-athletes whose status, privacy, and place on a team would be affected by the requested order – and who have had no opportunity to be heard.

As for the District, it has no discretion to depart from OSPI’s requirements, the WIAA’s rules, or state law. Brobbey Decl. ¶ 50 (PSD App. 12; D.Ct. Dkt. 41). The State, which will respond separately, has a sovereign interest in administering its schools and enforcing its anti-discrimination statutes passed by the Washington Legislature and Washington State voters. The District has given K.M.K. what it can: a separate testing room, the assurance that it will impose no penalty, an independent investigation, and an expedited transfer. And Applicants’ suggestion that Defendants “can easily return to the sex-based sports system,” Appl. 3, 40, is a request for a state-wide policy change that the District has no authority to make and which is incompatible with Applicants’ claim of seeking individual relief.

II. APPLICANTS ARE NOT LIKELY TO SUCCEED ON THE MERITS, MUCH LESS IN AN “INDISPUTABLY CLEAR” WAY.

The question is whether Applicants are likely to show that the district court abused its discretion, a standard that is “limited and deferential.” App. 73a–74a (quoting *Feldman v. Arizona Sec’y of State’s Off.*, 843 F.3d 366, 374 (9th Cir. 2016) (en banc) (citation omitted)). The District limits its response to addressing Brown’s parental-rights claim, on which it is a defendant, and the central point on Title IX. To the extent that OSPI and the WIAA will address the Title IX intent, deliberate-indifference, regulatory, and clear-notice issues in detail, the District joins their arguments.

A. The parental-rights claim.

1. *Mirabelli* does not recognize the right Applicants assert to direct the District.

As to posture, *Mirabelli* was an application to vacate a stay of a permanent injunction entered for a certified class after discovery and summary judgment. The question was whether the parents were “entitled to the benefit of the judgment entered by the District Court while California tries to overturn that judgment on appeal,” a judgment “entered after a full merits process.” 607 U.S. at 500 (Barrett, J., concurring). Here there is no judgment and no injunction, only a preliminary record that a district court weighed and found wanting.

As to substance, the right recognized “includes the right not to be shut out of participation in decisions regarding their children’s mental health.” *Id.* at 497 (per curiam) (citing *Parham v. J.R.*, 442 U.S. 584, 602 (1979)). The policies in *Mirabelli* concealed information about the parents’ own children: “when a child exhibits

symptoms of gender dysphoria at school, California’s policies conceal that information from parents and facilitate a degree of gender transitioning during school hours.” *Id.* Justice Barrett stressed that the result was “dictated by existing law,” a “straightforward application” of *Meyer*,⁸ *Pierce*,⁹ and *Parham*, because the policy “quite obviously excludes parents from highly important decisions about their child’s mental health.” *Mirabelli* at 499 (Barrett, J., concurring).

There is nothing comparable here. The School District has withheld nothing about K.M.K. from her mother. It has made no decision about her health or care without her mother. The only information Applicants seek concerns *other* children. Applicants cite no decision recognizing a parental right to direct which classmates or opponents a child will encounter in a school activity, or to require a school to keep a child apart from particular students on the basis of their protected status. The Ninth Circuit has held that parents “lack constitutionally protected rights to direct school administration more generally.” *Parents for Privacy v. Barr*, 949 F.3d 1210, 1231 (9th Cir. 2020). See the district court decision at App. 27a. Although Applicants cite *Mahmoud v. Taylor*, 606 U.S. 522 (2025) as well as *Mirabelli*, neither *Mahmoud* nor *Mirabelli* mentions *Barr*, as the district court recognized. App. 65a–66a. An unenumerated right must be carefully described and “deeply rooted in this Nation’s history and tradition.” *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997); see *Mirabelli*, 607 U.S. at 498–99 (Barrett, J., concurring). Although Applicants invoke

⁸ *Meyer v. Nebraska*, 262 U.S. 390 (1923).

⁹ *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

the general tradition of parental authority, Appl. 34–35, they make no attempt to show that the specific right they assert to direct the District is deeply rooted. A “right” this Court has not recognized and which the Ninth Circuit has rejected is not “indisputably clear.”

2. *Mahmoud addressed a different claim and does not help Applicants.* *Mahmoud v. Taylor*, 606 U.S. at 543, arose under the Free Exercise Clause and concerned compulsory instruction. The Court stressed that the parents sought “not the right to micromanage the public school curriculum, but rather to have their children opt out of a particular educational requirement that burdens their well-established right to direct the religious upbringing of their children.” *Id.* at 568 (citation modified). Applicants assert no religious claim, App. 74a, and no one has imposed any “educational requirement” on K.M.K.. Interscholastic wrestling is a voluntary activity.

3. *The District has not shut Brown out.* Brown has never been prevented from deciding whether K.M.K. wrestles. The District told Applicants in April that K.M.K. may decline any match with no District-imposed penalty, and Applicants know of two athletes who concern them. As the district court ruled, Brown remains free to use her authority as a “shield (choosing to remove her child from certain scenarios she deems inappropriate),” though not as a “sword (dictating the conduct of the school).” App. 28a. Applicants assert that a forfeit carries competitive consequences and that Brown cannot know in advance whom K.M.K. is opting out of. The first concern reflects the Applicants’ disagreement with state and national scoring rules that apply to every

wrestler who withdraws for any reason, rules the District must comply with. The second is a claim to information about other students that no decision of this Court recognizes. The “opt-out” Applicants seek would require the school to arrange a voluntary activity or protocol so that a child never meets particular others.

4. Strict scrutiny does not apply, and would be satisfied if it did. Strict scrutiny applies only if a fundamental right is likely infringed and the district court concluded it was not. App. 25a–30a. If it applied, the interests here are specific, not “broadly formulated,” *Fulton v. City of Philadelphia*, 593 U.S. 522, 541 (2021), quoting *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418, 431 (2006). Moreover, Applicants identify no less restrictive means the District could implement. Their suggestion that the District could “simply not send K.M.K. to wrestle [transgender athletes],” CA9 Dkt. 17.1 at 8, presupposes information and control the District lacks, as discussed *supra*. In *Mirabelli*, California’s safety interest “could be served by a policy that allows religious exemptions while precluding gender-identity disclosure to parents who would engage in abuse,” 607 U.S. at 497 (per curiam), a workable exception. None has been identified here.

B. The Title IX claim.

The district court rejected K.M.K.’s Title IX theory on several independent grounds: no evidence of intentional discrimination, no regulatory violation, no known or obvious risk on this record, and no clear notice. App. 30a–55a. The District will not repeat OSPI’s and WIAA’s treatment of those grounds but makes three other points.

First, B.P.J. reserved the question. The Application’s lead merits argument is that *B.P.J.* shows that allowing transgender athletes to compete on girls’ teams

“treats females worse than males.” Appl. 2, 18–21. But *B.P.J.* held that Title IX *permits* States to limit girls’ teams to biological females. It did not hold that Title IX *requires* them to, and it said so in its first footnote: the cases “do not present the distinct question of whether, under Title IX and the Equal Protection Clause, schools may allow biological males who identify as female to participate on girls’ and women’s sports teams,” and “[n]othing in this opinion is intended to decide that question.” 146 S. Ct. at 2367 n.1 (emphasis omitted); *see* App. 38a, 54a, 75a. A question this Court reserved less than four months ago cannot be one on which Applicants’ right to relief is “indisputably clear.” *Lux*, 561 U.S. at 1307, quoting *Turner*, 507 U.S. at 1303 (Rehnquist, C.J., in chambers). *B.P.J.* also described the question as “a debated *policy* question” and cautioned against “swooping in and invalidating laws.” App. 39a (quoting 146 S. Ct. at 2372, 2379).

Second, the “legislative facts” argument does not show error. Applicants contend that *B.P.J.*’s statements about the “reality of sports” bind lower courts and foreclose the district court’s finding that this record is inconclusive. Appl. 22–24 (citing *Frank v. Walker*, 768 F.3d 744, 750 (7th Cir. 2014)). But neither the district court nor the Ninth Circuit refused to follow *B.P.J.* The district court explained that *B.P.J.* “answered only the question of whether states were permitted to limit” girls’ teams to biological females, App. 38a, and the Ninth Circuit recognized that *B.P.J.* “expressly left open the relevant question in this case” and that the district court’s ruling rested on its “evaluation of the evidence,” reviewed deferentially. App. 75a. The statements Applicants quote supported the conclusion only that sex-based

eligibility lines are “reasonable”. They were not findings that every gender-inclusive policy violates Title IX, or that K.M.K. will face a heightened risk in any match, or that any Respondent herein intended to disadvantage girls. The district court weighed competing expert evidence, including the concession that female athletes “already have higher rates of concussive injury than males” even against other females, App. 15a, 40a–41a, 56a–57a, a task committed to its discretion. Any dispute is fact-based that must be resolved in the trial court on a full record.

Third, the relief does not fit the theory. K.M.K. contends that Washington’s policies deprive girls, as a class, of “a forum of their own.” Appl. 20. Avoidance of particular opponents would not restore that forum; it is a personal accommodation untethered to the alleged violation, the “mismatch” the Ninth Circuit identified. App. 76a (quoting *Garcia v. Google, Inc.*, 786 F.3d 733, 744 (9th Cir. 2015) (*en banc*)).

III. THE CIRCUIT DISAGREEMENT ON THE TEST FOR MANDATORY INJUNCTIONS THAT APPLICANTS IDENTIFY DOES NOT WARRANT RELIEF.

The Application leads with the argument that the Ninth Circuit applied the wrong standard because it treated the injunction as mandatory and therefore “doubly demanding.” Appl. 1–2, 12–17. The District does not need to dispute that circuits use different formulations because it does not matter. The question is whether such disagreement supplies any reason to enter emergency relief here. It does not.

A. Applicants invoked the Ninth Circuit’s standard themselves.

In the Ninth Circuit, mandatory injunctions “are not granted unless extreme or very serious damage will result and are not issued in doubtful cases,” and the

movant must show “that the law and facts *clearly favor* her position, not simply that she is likely to succeed.” *Marlyn*, 571 F.3d at 879 (citation omitted); *Garcia*, 786 F.3d at 740. Those rules come from the en banc court. In the filings the District has reviewed, Applicants never asked either court to depart from them or mentioned a circuit disagreement. They argued that their relief was prohibitory, D. Ct. Dkt. 53 at 21; CA9 Dkt. 17.1 at 5; CA9 Dkt. 42.1 at 2, 12, and, in the alternative, that “mandatory relief would be appropriate here because ‘the facts and law clearly favor’ relief, and ‘very serious damage would result that [i]s not compensable in damages.’” D. Ct. Dkt. 53 at 21, citing *Does 1—3*, 142 S. Ct. at 17—18 (2021). The District does not contend that Applicants had to press an argument foreclosed by *en banc* precedent. The point is narrower: Applicants accepted the heightened standard in the alternative and obtained decisions that, as shown next, rest on grounds independent of it. This Court is “a court of review, not of first view.” *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005).

B. The disagreement is not outcome-determinative.

First, the district court held that Applicants “fail[ed] to establish a likelihood of success on the merits,” App. 2a–3a; that “the first *Winter* factor is dispositive,” App. 55a; and, in the alternative, that even under the “serious questions” sliding-scale approach it “would be unable to find the balance of hardships tips sharply enough in Plaintiffs’ favor” because “the record does not establish irreparable harm would likely occur.” App. 60a–61a n.11. Its merits conclusions each reflect Applicants’ failure to meet the ordinary standard. Its findings that the harm was speculative and the relief untailored and privacy-invading, App. 55a–59a, do not turn on the label.

Second, the Ninth Circuit rested on three independent grounds: no emergency, App. 73a; a merits assessment under the deferential standard governing any appeal from the denial of a preliminary injunction, App. 73a–75a; and the balance of hardships, including findings of overbreadth, privacy concerns, and infeasibility, App. 75a–78a. The first ground and those findings have nothing to do with whether the injunction is mandatory. The “doubly demanding” label appears in the summary and final paragraph, App. 70a, 77a–78a; it did not alter the core analysis. Applicants say the standard “made a difference here,” Appl. 17, but do not say which finding a different standard would overturn: that the District lacks the information the order requires, that it does not control brackets, that the relief would burden non-party minors, or that the district court could credit the District’s evidence? Those findings defeat the Application under the traditional four-factor test Applicants urge.

Third, in this Court the question is academic: an applicant for an injunction pending appeal bears the heightened burden described in Part I.A., however the lower courts label the relief. The concept Applicants disparage is built into that rule. An injunction “does not simply suspend judicial alteration of the status quo but grants judicial intervention that has been withheld by lower courts.” *Ohio Citizens*, 479 U.S. at 1313. *See also University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981) (preliminary injunction “is merely to preserve the relative positions of the parties until a trial on the merits can be held”). Asking the Court to reject any “higher bar” for injunctions that alter the status quo asks it to abandon the standard under which the Application must be decided.

C. The disagreement is less stark than presented, and this is not a suitable vehicle.

Applicants acknowledge that the circuits apply “slightly different formulations” and that the conflict is “muddled,” Appl. 14–16, ranging from a “clear or substantial likelihood of success” to “indisputably clear” to “the exigencies of the situation,” to simply “more searching” appellate review. Appl. 15. They quote Justice Kavanaugh’s observation in a stay case that “[t]here is no good blanket answer to the question of what the status quo is.” Appl. 17 (quoting *Labrador v. Poe*, 144 S. Ct. 921, 930 (2024) (Kavanaugh, J., concurring in grant of stay)). Here the status quo is easy to identify: the state anti-discrimination and national wrestling policies governed K.M.K.’s participation for years, including in December 2025. App. 60a. Every version of Applicants’ proposed relief would alter those policies by requiring affirmative steps. If the Court deems the standard worthy of review, it should take up the question in a case where it was pressed and the label is outcome-determinative, not on an emergency application where the result would be the same under any standard.

IV. CERTIORARI BEFORE JUDGMENT IS NOT WARRANTED.

Review before judgment is reserved for cases “of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court.” Sup. Ct. R. 11; *see* 28 U.S.C. § 2101(e). This is an interlocutory appeal from the denial of a preliminary injunction on a record developed over mere weeks. The merits appeal of denial of the preliminary injunction is pending in the Ninth Circuit where Applicants’ opening brief is on file, Appl. 4 n.1.

The District’s answering brief is due in weeks. The case in the district court remains at the pleading stage. No discovery has occurred and the District’s Title IX investigation is incomplete. App. 16a. The Title IX question was reserved by this Court less than four months ago and the lower courts are only now addressing it. *See* Appl. 21, 24–25, 33–34 (citing recent decisions of the Seventh and Eighth Circuits and a district court in the Ninth Circuit), This counsels percolation and in this case, to wait for a fully developed record.

Moreover, the three questions Applicants would present are poorly suited for consideration. The first on the injunction standard was not pressed below and is not outcome-determinative. The second is entangled with intent, clear notice, state-law compliance, and disputed expert evidence. And the third depends on feasibility findings and a notice-and-opt-out right whose scope Applicants have not even yet defined and which faces standing and mootness questions as to soccer and the transfer. Finally, the request for argument “this Term,” Appl. 3, would produce a decision after the 2026–27 wrestling season ends, so certiorari before judgment does not address the claimed urgency Applicants assert.

V. THE DISTRICT JOINS THE OTHER RESPONDENTS.

OSPI and Superintendent Reykdal and the WIAA will file separate responses. The District joins them to the extent they are consistent with this one, including on the Title IX issues, the State’s interests in its anti-discrimination laws, and the WIAA’s rules on eligibility and forfeits.

CONCLUSION

The Application for an injunction pending appeal should be denied, as should Applicants' alternative request that the Application be treated as a petition for certiorari before judgment.

Respectfully submitted,

s/Gregory M. Miller

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October 13, 2026

PROOF OF SERVICE

A copy of this application was served by U.S. Mail and e-mail to the parties or their attorneys listed below in accordance with Supreme Court Rules 22.2 and 29.3:

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PUYALLUP SCHOOL DISTRICT APPENDIX
Supreme Court No. 26A458

Brobbey Decl., without exhibits, D.Ct. Dkt 41	PSD App_01–16
Meyerhoff Decl., with exhibit, COA9 Dkt 38.2	PSD App_17–24
Morrison Decl. D.Ct. Dkt 42.....	PSD App_25–28
What Decl., without exhibits, D.Ct. Dkt. 69.....	PSD App_29–34
Proposed Order Granting Preliminary Injunction, D.Ct.Dkt 36-1 (7/10/26).....	PSD App_35–40
Proposed Order Granting Injunction Pending Appeal, D.Ct.Dkt 63-1 (8/26/26).....	PSD App_41–46

The Honorable David G. Estudillo

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

K.M.K, by and through her mother,
guardian, and next friend,
STEPHANIE LYNNE BROWN;
STEPHANIE LYNNE BROWN,

Plaintiffs,

v.

WASHINGTON INTERSCHOLASTIC
ACTIVITIES ASSOCIATION;
WASHINGTON OFFICE OF
SUPERINTENDENT OF PUBLIC
INSTRUCTION;
WASHINGTON SUPERINTENDENT
OF PUBLIC INSTRUCTION CHRIS
REYKDAL in his official and individual
capacities;
PUYALLUP SCHOOL DISTRICT;
PUYALLUP SCHOOL DISTRICT
TITLE IX COORDINATOR DR.
GORDON BROBBEY in his official and
individual capacities;
ROGERS HIGH SCHOOL
PRINCIPAL JASON SMITH in his
official and individual capacities; and
EMERALD RIDGE HIGH SCHOOL
COACH JOHN MORRISON in his
official and individual capacities,

Defendants.

NO. 3:26-cv-05616-DGE

**DECLARATION OF DR. GORDON
BROBBEY, PhD IN SUPPORT OF
PUYALLUP SCHOOL DISTRICT
AND BROBBEY'S RESPONSE TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

1 I, GORDON BROBBEY, declare under penalty of perjury under the laws of the United
2 States of America, that the following is true and correct:

3 1. I am the Director of Equity and Student Success and the Title IX Coordinator for
4 Students for Defendant Puyallup School District. I have a bachelor's degree in Secondary Education
5 (2005), Masters in Exceptional Student Education (2012), and a terminal degree in Special
6 Education Leadership and Policy (2019). I have been the Title IX Coordinator for the Puyallup
7 School District for nearly five years now. Prior to assuming this role, I was an assistant professor at
8 the University of Washington Tacoma School of Education where I specialized in training educators
9 and school leaders and conducting educational research, among other responsibilities.

10 2. On January 30, 2026, I was alerted to a media inquiry regarding a student who
11 alleged she had been sexually assaulted during a wrestling match and that the school and district
12 had failed to report the incident to law enforcement or investigate it.

13 3. Upon learning of the December 8, 2025, email and the nature of Plaintiff Stephanie
14 Brown's report, the District gathered information to understand the allegation, including obtaining
15 and reviewing video of the December 6, 2025, match at issue, notifying the Rogers High School
16 Student Resource Officer (law enforcement) that there was an allegation of sexual assault, obtaining
17 statements from the two student athletes, and reaching out to both students to connect them with
18 counselor support at their respective schools. It is my understanding that K.M.K. declined
19 counseling support.

20 4. District administrators reviewed the newly obtained information and on February
21 10, 2026, elected to seek an outside investigation conducted by a neutral third party.

22 **BOARD POLICIES PROHIBITING SEXUAL HARASSMENT**

23 5. Puyallup School District's Board Policies, Policy 3205 and Regulation 3205R, set
24 forth the framework for both reporting and investigating complaints of sexual harassment of
25 students. Form 3205F provides a formal Sexual Harassment Complaint Form.

26
DECLARATION OF DR. BROBBEY - 2
NO. 3:26-cv-05616-DGE

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TEL: (360) 534-9960 TEL: (360) 752-2000
FAX: (360) 534-9959 FAX: (360) 656-5013
EMAIL: mail@ssslawgroup.com

6. **Attached as Exhibit 1** is a true and correct copy of *Policy 3205: Sexual Harassment of Students Prohibited*.

7. **Attached as Exhibit 2** is a true and correct copy of *Regulation 3205R: Sexual Harassment of Students Prohibited*.

8. **Attached as Exhibit 3** is a true and correct copy of *Regulation 3205R B: Sex Discrimination and Sex-Based Harassment of Students Prohibited*.

9. **Attached as Exhibit 4** is a true and correct copy of *Form 3205F: Sexual Harassment Complaint Form*.

10. These and all other Board Policies, Regulations, and Forms are publicly available at <https://go.boarddocs.com/wa/psd/Board.nsf/Public>.

TITLE IX INVESTIGATION PROCEDURES

11. Regulation 3205R¹ details the process for an investigation of a Title IX Formal Complaint. To summarize:

a. The District bears the burden of proof and of gathering evidence sufficient to reach a determination regarding responsibility for the alleged sexual harassment;

b. The District must provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;

c. Prior to the completion of an investigative report, the District must provide an equal opportunity for the parties to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint. The parties then have at least ten days to submit a written response for the investigator to consider prior to completion of the investigative report.

¹ Exhibit 2.

d. At least ten days prior to a determination regarding responsibility, the District must create an investigative report that fairly summarizes the relevant evidence and send the investigative report to each party and each party's advisor for their review and written response.

e. After transmitting the investigative report to the parties, but before reaching a final determination regarding responsibility, the District's decision maker must give each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.

THE DISTRICT'S THIRD-PARTY TITLE IX INVESTIGATION

12. The District initiated its request for a third-party investigation on February 10, 2026. The investigation is ongoing at this time.

13. The Investigator handling this Title IX Investigation completed a conflict check on February 12 and 13, 2026, and was formally retained on February 17, 2026, following the Presidents' Day holiday. The Investigator keeps the District regularly informed of his progress.

14. On February 20, 2026, the District provided written notice to K.M.K. and her mother, Stephanie Brown, of the investigation, including offering supportive measures that may be necessary for K.M.K. to restore or preserve her access to her education. **Attached as Exhibit 5** is a true and correct copy of the notice and attachments provided to Plaintiffs with appropriate redactions to protect K.M.K.'s privacy.

15. The Investigator was required to coordinate with the Pierce County Sheriff's Office (PCSO) because criminal investigations take precedence over Title IX investigations.

16. As of March 17, 2026, the Investigator still had not been authorized by PCSO to interview either of the involved student athletes or a District assistant coach. Another District staff

1 interview needed to be rescheduled due to illness. The parties were both informed on March 26,
2 2026, via email, of the reasons for the delay.

3 17. The Investigator received PCSO authorization to contact the involved student
4 athletes the week of April 6, 2026.

5 18. The Investigator requested an interview of K.M.K. through her counsel on April 13,
6 2026. K.M.K. was not willing to participate in an interview.

7 19. The parties were both informed on April 21, 2026, via email, of the status of the
8 investigation—that interviews were still being scheduled.

9 20. In light of K.M.K.'s refusal to consent to a Title IX Investigation interview, the
10 Investigator obtained written responses to questions, through counsel, on April 27 and May 8, 2026.

11 21. As of May 11, 2026, the Investigator reported numerous delays in working with the
12 parties' attorneys.

13 22. The parties were both informed on May 20, 2026, via email, of the status of the
14 investigation—that interviews were still being completed.

15 23. As of June 4, 2026, the Investigator confirmed that the respondent student athlete
16 had obtained counsel and an interview with the respondent student athlete had been scheduled for
17 June 12, 2026.

18 24. On June 22, 2026, the Investigator provided the Title IX Related Evidence to the
19 parties and notified them of their ten-day opportunity to review and submit a written response for
20 the Investigator's consideration prior to completion of the investigative report, consistent with
21 *Regulation 3205R: Sexual Harassment of Students Prohibited*.²

22 25. As of July 6, 2026, the Investigator confirmed that K.M.K.'s counsel provided a
23 written response and identified additional evidence to be considered, including portions of the
24

25
26 ² Exhibit 2.

1 Complaint and attachments filed in this litigation. The Investigator obtained those filings and
2 requested the additional evidence identified by K.M.K.'s counsel from District staff.

3 26. On July 13, 2026, following retrieval and review of the additional related evidence
4 identified by K.M.K.'s counsel, the Investigator provided new notices to the parties of Title IX
5 Additional Related Evidence and notified them of their ten-day opportunity to review and submit a
6 written response for the Investigator's consideration prior to completion of the investigative report,
7 as required by *Regulation 3205R: Sexual Harassment of Students Prohibited*.³

8 27. As provided in *Regulation 3205R: Sexual Harassment of Students Prohibited*,⁴ once
9 that ten-day period has elapsed, and assuming no further questions need to be asked and no
10 additional documents are provided that trigger another ten-day review period, the Investigator will
11 prepare a preliminary investigative report that considers all evidence gathered. The investigative
12 report, *without* any determination regarding responsibility, will be delivered to the parties' advisors.
13 The parties will then have ten days to provide a written response to the preliminary report.

14 28. Before reaching a final determination regarding responsibility, and as required by
15 *Regulation 3205R: Sexual Harassment of Students Prohibited*,⁵ the District's decision maker must
16 give each party the opportunity to submit written, relevant questions that the party wants asked of
17 any party or witness, provide each party with the answers, and allow for additional, limited follow-
18 up questions from each party.

19 **SUPPORTIVE MEASURES: FIRST REQUEST**

20 29. The District's February 20, 2026, Investigation Notice⁶ reminded both K.M.K.
21 and Brown that supportive measures may be available for K.M.K. under Regulation 3205R
22 (attached to the Notice), and specifically stated: "Supportive measures are non-disciplinary, non-
23

24 ³ Exhibit 2.

25 ⁴ Exhibit 2.

26 ⁵ Exhibit 2.

⁶ Exhibit 5.

punitive, individualized services offered as appropriate and reasonably available...and are designed to restore or preserve [K.M.K.'s] access to her education.

30. Examples of supportive measures are detailed in *Regulation 3205R: Sexual Harassment of Students Prohibited*⁷ where it states:

If an investigation is needed to determine what occurred, the district will take interim measures to protect the complainant before the final outcome of the district's investigation (e.g., allowing the complainant to change academic or extracurricular activities or break times to avoid contact with the alleged harasser).

...

Supportive measures may include:

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

31. As outlined in Regulation 3205R, supportive measures are *interim* measures before the final outcome of the District's investigation. In typical practice, supportive measures would be detailed in a support plan. The support plan would outline the steps the school and/or District will take to ensure the reporting party has access to the education environment. This could include keeping the parties separated within the school environment (including a plan for students who would otherwise be in the same class), monitoring common areas of the school

⁷ Exhibit 2 at p. 2.

1 such as the lunchroom or hallways, and any other necessary details. Supportive measures may
2 also include school counseling in some circumstances.

3 32. At no point in discussing supportive measures would the District offer to or agree
4 to violate state law.

5 33. The District received a March 27, 2026, request from K.M.K., through counsel,
6 to implement specific supportive measures. Some of the requested supportive measures were
7 within the ability of the District to provide, and others were not.

8 34. The District responded on April 3, 2026, to each of the requested measures:

9 a. K.M.K.'s request for a room reassignment for spring state testing, due to
10 K.M.K.'s concern that one of the involved coaches may be the assigned proctor in her
11 originally assigned room, was **granted**.

12 b. K.M.K.'s request to compete on the Puyallup High School girls' wrestling
13 team, while remaining a student at Rogers High School, was **not granted** as violative of
14 Washington Interscholastic Activities Association (WIAA) rules, which do not allow an
15 athlete to compete at a school they do not attend.

16 c. K.M.K.'s request that she would not be required to compete against any
17 transgender girls, without penalty, was **partially granted**. K.M.K. was offered the ability
18 to forfeit matches without adverse consequence imposed by the District, consistent with
19 WIAA⁸ and OSPI⁹ rules, state law,¹⁰ and District policy,¹¹ all of which allow students to
20 participate in sports aligned with their gender identity, but the District has no ability to
21

22
23 ⁸ WIAA Handbook, rule 18.15.0-18.15.5. <https://www.wiaa.com/wiaa-handbook/>

24 ⁹ Washington Office of Superintendent of Public Instruction (OSPI) Handout: Sex Equity in Athletics.
25 [https://ospi.k12.wa.us/sites/default/files/2023-08/title-ix-three-part-test-handout-
26 pdf.pdf#:~:text=In%20Washington%2C%20however%2C%20the%20law%20is%20clear.,participating%20on%20boys'%20teams%20and%20girls'%20teams.](https://ospi.k12.wa.us/sites/default/files/2023-08/title-ix-three-part-test-handout-pdf.pdf#:~:text=In%20Washington%2C%20however%2C%20the%20law%20is%20clear.,participating%20on%20boys'%20teams%20and%20girls'%20teams.)

¹⁰ WAC 392-190-025.

¹¹ Policy 3211: Gender-Inclusive Schools.

1 alter WIAA rules regarding forfeits, nor to disclose another student's gender identity
2 information.

3 d. K.M.K.'s request for notice to herself and Brown before any transgender
4 girl participates on K.M.K.'s wrestling team or an opposing team in K.M.K.'s weight
5 category, or is authorized or known to share a restroom, locker room, or other intimate
6 space with K.M.K. was **not granted**, due to the District's compliance with federal law
7 (FERPA), WIAA rules, and District policies regarding confidentiality of a student's
8 gender identity information.

9 e. K.M.K.'s request for a process to receive excused absences or early
10 dismissal for anxiety related to the alleged assault and alleged report was **granted**, to the
11 extent such process was already available under District Policy 3122 and Regulation
12 3122R: Excused and Unexcused Absences.

13 f. K.M.K.'s request for a January 28, 2026, absence to be removed from
14 detention records was **granted**, to the extent the absence had already been classified as
15 excused and removed from detention records, following Brown's communication to the
16 school providing a reason for the absence.

17 35. The District did not receive any communication from K.M.K., Brown, or their
18 counsel from March 27, 2026, to June 29, 2026, regarding any additional supportive measures.

19 **BOARD POLICIES PROHIBITING HARASSMENT, INTIMIDATION, AND**
20 **BULLYING (HIB)**

21 36. Puyallup School District's Board Policies, Policy 3207 and Regulation 3207R, set
22 forth the framework for both reporting and investigating reports of harassment, intimidation, and
23 bullying (HIB) of students. Form 3207F provides a formal HIB Reporting Form.

24 37. **Attached as Exhibit 6** is a true and correct copy of *Policy 3207: Prohibition of*
25 *Harassment, Intimidation and Bullying of Students*.

38. **Attached as Exhibit 7** is a true and correct copy of *Regulation 3207R: Prohibition of Harassment, Intimidation, and Bullying of Students*.

39. **Attached as Exhibit 8** is a true and correct copy of *Form 3207F: HIB Reporting Form*.

40. The District has not directly received any report that K.M.K. has been subject to bullying, intimidation, or harassment, while attending Rogers High School. I am not aware of any staff that have witnessed, observed, or overheard any bullying, intimidation, or harassment of K.M.K.

41. I first learned that Ms. Brown is an employee of Puyallup School District through her Declaration accompanying Plaintiffs' Motion for Preliminary Injunction.

42. All Puyallup School District professional school personnel are mandated reporters according to RCW 26.44.030. I am not aware of Ms. Brown making any mandatory report regarding the allegations at issue in this case.

43. All Puyallup School District employees are trained annually on the District's Board Policies and Regulations. I am not aware of Ms. Brown submitting any HIB report on behalf of K.M.K.

44. Neither Ms. Brown nor K.M.K. submitted a Sexual Harassment Complaint Form¹² as provided by Board Policy 3205 regarding sexual harassment.

SUPPORTIVE MEASURES: SECOND REQUEST

45. The District received a second request, through K.M.K.'s counsel, for implementation of additional supportive measures on June 29, 2026, and the District was given a deadline of July 7, 2026 to respond to the requests. Those requests include:

- a. Approval of transfer for K.M.K. from Rogers High School to Puyallup High School beginning in the 2026-2027 school year;

¹² A blank version of the form is Exhibit 4.

1 b. Transportation for K.M.K. provided by Puyallup School District to bring
2 K.M.K to and from Puyallup High School at no cost to K.M.K.'s family, beginning in
3 the 2026-2027 school year;

4 c. Expedited review and approval of these requests to enable K.M.K. to
5 begin at Puyallup High School in the coming fall semester, and to enable any varsity
6 ineligibility determination to be appealed and resolved before soccer turnouts;

7 d. The District's agreement that "this" constitutes a hardship, to exempt
8 K.M.K. from any varsity ineligibility with the WIAA.

9 46. None of the June 29, 2026, requests are consistent with supportive measures as
10 contemplated by Regulation 3205R.¹³ The purpose of interim supportive measures during an
11 investigation are to "restore or preserve access to the District's education program or activity
12 without unreasonably burdening the other party."¹⁴ Sponsoring a school transfer, and providing
13 transportation to support a school transfer, does not make sense as a supportive measure when
14 K.M.K. has alleged sexual harassment by a student who does not attend Rogers High School
15 with K.M.K.

16 47. Moreover, providing transportation for K.M.K. to attend a high school outside of
17 her residential assignment area would significantly burden the District financially. The cost to
18 the District to provide transportation for K.M.K. to and from her home and Puyallup High School
19 would be approximately \$13,000 - \$15,000 per year. The District does not have any way to
20 recoup such costs because, for example, there is no federal grant money available for such
21 purposes.

22
23
24
25 ¹³ Exhibit 2.

26 ¹⁴ Exhibit 2 at p. 2.

INDEX OF EXHIBITS

DESCRIPTION	Exhibit
Policy 3205 Sexual Harassment of Students Prohibited	1
Regulation 3205R Sexual Harassment of Students Prohibited	2
Regulation 3205R B Sex Discrimination and Sex-Based Harassment of Students Prohibited	3
Form 3205F Sexual Harassment Complaint Form	4
Feb. 20, 2026 Puyallup School District Investigation Notice and attachments to Plaintiffs <i>Redacted for K.M.K. 's privacy</i>	5
Policy 3207 Prohibition of Harassment, Intimidation and Bullying of Students	6
Regulation 3207R Prohibition of Harassment, Intimidation, and Bullying of Students	7
Form 3207F HIB Reporting Form	8

PROOF OF SERVICE

I hereby certify that I filed the foregoing and its exhibits with the Court using the CM/ECF system, and caused to be delivered to the below parties or their counsel of record a copy of this document and its exhibits addressed as follows:

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1 I certify under penalty of perjury under the laws of the state of Washington that the
2 foregoing is true and correct.

3 DATED this 31st day of July, 2026, at Federal Way, Washington.

4 
5 _____
6 JESSIE ENGLISH, Paralegal
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No. 26-5488

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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

Plaintiff-Appellant,

v.

WASHINGTON INTERSCHOLASTIC ACTIVITIES ASSOCIATION, ET AL.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Western District of Washington
Case No. 3:26-cv-05616-DGE
Hon. David G. Estudillo, District Judge

**DECLARATION OF JAMES MEYERHOFF
IN SUPPORT OF RESPONSE TO PLAINTIFF-APPELLANT'S
EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL**

KAYLYNN WHAT
KELLEY J. SWEENEY
Attorneys for Puyallup School District and
Gordon Brobbey
SIMMONS SWEENEY FREIMUND
SMITH TARDIF, PLLC
1223 COMMERCIAL STREET
BELLINGHAM, WA 98225
360-752-2000

I, James Meyerhoff, declare as follows:

1. I am the Director of Instructional Leadership for Athletics, Health & Fitness for the Puyallup School District (the “District”). I am also the State Tournament Director for 3A boys wrestling and the South Puget Sound League 4A wrestling commissioner.

2. Student athletes are required to provide a physical exam form to their school, completed by their physician. A blank copy of the Medical Eligibility form recommended by the WIAA is attached as **Exhibit 1**. Some physicians have their own form that they provide with similar information.

3. The Medical Eligibility Form and almost all physical exam forms that we receive only provide information as to whether the student is medically eligible for all sports with or without restrictions, or whether their eligibility is limited to only certain sports. The form does not include any physician indication of the student’s biological sex, nor does it require any genital exam.

4. The information I have, as the District’s Athletic Director, regarding student athletes in my District is limited to whether they are male or female in a field titled “Legal gender” in their digital file. I have no indication within the files for any particular student as to whether they are cisgender or transgender. I do not have access to information about the gender of wrestlers in other districts.

5. Students are not required to identify whether they are transgender to participate in sports.

6. Wrestling matches are typically determined in one of three ways. Saturday tournaments are set up by individual schools where wrestlers are able to compete in up to six matches per day. The host invites other schools to participate in these tournaments that usually take place on a Saturday. Tournament Directors set up the bracket for these matches, which is often randomized based on weight class. Eight to thirty or more schools will usually compete in a Saturday tournament. Some larger tournaments may extend to two days.

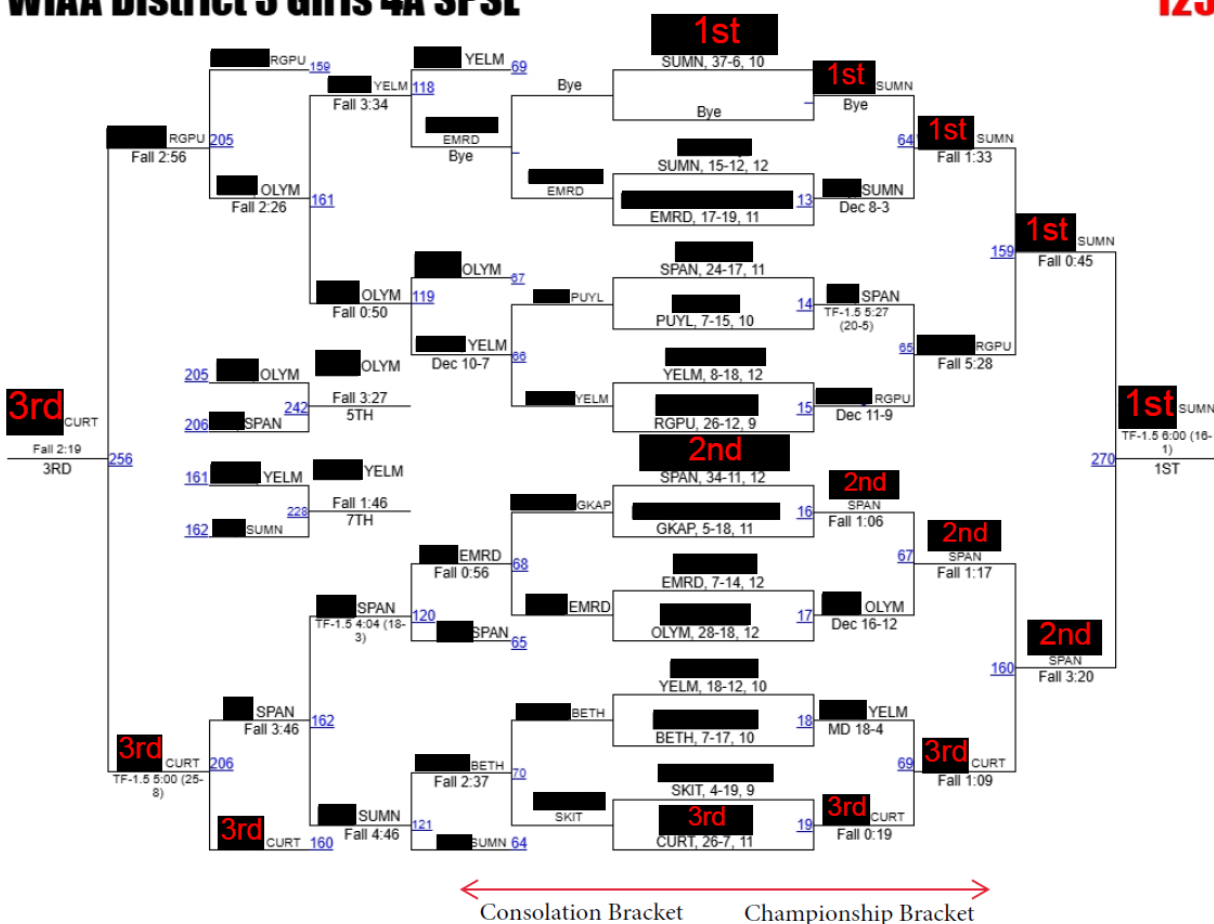
7. League membership is determined by the size of the school district, pursuant to WIAA criteria. Puyallup School District is a large school district and is within the 4A classification. It is part of the South Puget Sound League, which is made up of twelve schools. The 4A South Puget Sound League (“SPSL”) creates a schedule of dual matches, which are determined by the league commissioner and approved by the athletic directors each year. In the SPSL 4A schedule, each school will participate against the other eleven teams over six dates. A dual match consists of two schools competing against each other at each of the fourteen weight classes. There are varsity and sub-varsity levels for each dual meet.

8. For league tournaments in the post-season, the coaches are responsible for seeding brackets. Seeding is determined by the wrestler’s wins and losses during

the regular season. Seeding is not randomized, rather, wrestlers are matched against each other to intentionally provide the best wrestlers – the athletes with the best records – with the highest seeds. To oversimplify this, that largely means that the best wrestler in the league (#1) is usually matched against the least-best wrestler in the league (#16). The top place winners of the league tournament advance to compete further in the postseason, i.e. state wrestling championships. Allocations to the state tournament are determined by WIAA calculations based on the number of teams in each league by classification.

9. Forfeits are governed by the National Federation of High Schools (NFHS) Wrestling rule book. Section 5-13 of the NFHS rule book states “It shall be considered a forfeit when the opponent, for any reason, fails to appear for a match.”

10. If a wrestler forfeits, that means they lose that match. In a tournament, the winner of a match will continue competing for first or second place within the championship bracket. The loser of a match will go from the championship bracket to the consolation bracket to continue to compete, until they reach three losses or they reach the end of the tournament with the third through seventh placing matches. The image inset below is an example of a tournament championship and consolation bracket, with children’s names redacted for privacy:

WIAA District 3 Girls 4A SPSL**125**

11. Injuries may result in forfeits. If a wrestler is unintentionally injured in the course of a match and must forfeit, they take the loss. If a wrestler is intentionally injured by their competitor, and the injury results in a penalty against the competitor, the competitor takes the loss. If the intentionally injured wrestler is unable to compete in their next match, however, they take the loss.

12. There is no way to permit K.M.K. to forfeit matches without penalty. This would be in violation of the NFHS rules. It would also displace another wrestler

who did not forfeit, because it would change how the tournaments are conducted, giving K.M.K. a competitive advantage that she had not earned, at the expense of another wrestler who had earned their competitive advantage.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

DATED at Puyallup, Washington, this 11th day of September 2026.

s/James Meyerhoff

James Meyerhoff

Exhibit 1

The Medical Eligibility Form is the only form that should be submitted to a school or sports organization.

■ PREPARTICIPATION PHYSICAL EVALUATION

MEDICAL ELIGIBILITY FORM

Name: _____ Date of birth: _____

- ☐ Medically eligible for all sports without restriction
- ☐ Medically eligible for all sports without restriction with recommendations for further evaluation or treatment of

- ☐ Medically eligible for certain sports

- ☐ Not medically eligible pending further evaluation
- ☐ Not medically eligible for any sports

Recommendations: _____

I have examined the student named on this form and completed the preparticipation physical evaluation. The athlete does not have apparent clinical contraindications to practice and can participate in the sport(s) as outlined on this form. A copy of the physical examination findings are on record in my office and can be made available to the school at the request of the parents. If conditions arise after the athlete has been cleared for participation, the physician may rescind the medical eligibility until the problem is resolved and the potential consequences are completely explained to the athlete (and parents or guardians).

Name of health care professional (print or type): _____ Date of Exam: _____

Address: _____ Phone: _____

Signature of health care professional: _____, MD, DO, ARNP, PA, ND

SHARED EMERGENCY INFORMATION

Allergies: _____

Medications: _____

Other information: _____

Emergency contacts: _____

The Honorable David G. Estudillo

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

K.M.K, by and through her mother,
guardian, and next friend, STEPHANIE
LYNNE BROWN; STEPHANIE LYNNE
BROWN,

Plaintiffs,

v.

WASHINGTON INTERSCHOLASTIC
ACTIVITIES ASSOCIATION;
WASHINGTON OFFICE OF
SUPERINTENDENT OF PUBLIC
INSTRUCTION; WASHINGTON
SUPERINTENDENT OF PUBLIC
INSTRUCTION CHRIS REYKDAL in his
official and individual capacities;
PUYALLUP SCHOOL DISTRICT;
PUYALLUP SCHOOL DISTRICT TITLE
IX COORDINATOR DR. GORDON
BROBBEY in his official and individual
capacities; ROGERS HIGH SCHOOL
PRINCIPAL JASON SMITH in his official
and individual capacities; and EMERALD
RIDGE HIGH SCHOOL COACH JOHN
MORRISON in his official and individual
capacities,

Defendants.

No. 3:26-cv-05616-DGE

DECLARATION OF JOHN MORRISON
IN SUPPORT OF OPPOSITION TO
MOTION FOR PRELIMINARY
INJUNCTION

I, John Morrison, declare as follows:

1. I am over the age of 18, and am otherwise competent to testify as to all
matters herein, and make the following statements based on my own personal knowledge.

2. I am a Career and Technical Education (CTE) teacher in health and human

1 services at Emerald Ridge High School in the Puyallup School District. My subjects are
2 Anatomy and Physiology, and Nutrition and Fitness. I am also the girls head wrestling
3 coach.

4 3. Wrestling is a contact sport that happens quickly. During practice and in
5 competition, it is commonplace for hands to inadvertently touch private areas on athletes'
6 bodies. Athletes who participate in the sport are aware this sometimes occurs. Routine
7 observers of wrestling matches are also aware this sometimes occurs.

8 4. The event that is at issue in this case was the first competition of the season
9 for the transgender athlete, who was a freshman.

10 5. I was not present on campus at the time of the incident. However, I have
11 watched the video footage of it. The wrestler appeared to be trying to perform a move
12 called a Jake leg where the athlete lifts the opponent's leg. We teach athletes to grab at the
13 knee. However, in a match, athletes do not always execute the technique properly.

14 6. In addition, as the competition day progresses, athletes can grow tired and
15 their technique sometimes becomes less accurate as a result.

16 I declare under penalty of perjury under the laws of the State of Washington that the
17 foregoing is true and correct to the best of my knowledge.

18 DATED this 31/07
19 day of July, 2026, at Puyallup, Washington.

20 John Morrison
21 John Morrison (Jul 31, 2026 13:35:35 PDT)
22 John Morrison
23
24
25
26
27

CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED: July 31, 2026

/s/ Shannon M. Ragonesi

Shannon M. Ragonesi, WSBA #31951

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The Honorable David G. Estudillo

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

K.M.K, by and through her mother,
guardian, and next friend,
STEPHANIE LYNNE BROWN;
STEPHANIE LYNNE BROWN,

Plaintiffs,

v.

WASHINGTON INTERSCHOLASTIC
ACTIVITIES ASSOCIATION;
WASHINGTON OFFICE OF
SUPERINTENDENT OF PUBLIC
INSTRUCTION;
WASHINGTON SUPERINTENDENT
OF PUBLIC INSTRUCTION CHRIS
REYKDAL in his official and individual
capacities;
PUYALLUP SCHOOL DISTRICT;
PUYALLUP SCHOOL DISTRICT
TITLE IX COORDINATOR DR.
GORDON BROBBEY in his official and
individual capacities;
ROGERS HIGH SCHOOL
PRINCIPAL JASON SMITH in his
official and individual capacities; and
EMERALD RIDGE HIGH SCHOOL
COACH JOHN MORRISON in his
official and individual capacities,

Defendants.

NO. 3:26-cv-05616-DGE

**DECLARATION OF
KAYLYNN WHAT IN SUPPORT OF
PUYALLUP SCHOOL DISTRICT
AND BROBBEY'S RESPONSE TO
PLAINTIFFS' EMERGENCY
MOTION FOR INJUNCTION
PENDING APPEAL**

DECLARATION OF KAYLYNN WHAT IN
SUPPORT OF PUYALLUP SD AND
BROBBEY'S RESPONSE TO PLAINTIFFS'
EMERGENCY MOTION FOR INJUNCTION
PENDING APPEAL - 1
NO. 3:26-cv-05616-DGE

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1 I, KAYLYNN WHAT, declare under penalty of perjury under the laws of the State of
2 Washington, that the following is true and correct:

- 3 1. I am an attorney for Defendants Puyallup School District and Dr. Gordon Brobbey in the
4 above-captioned matter and make this declaration in that capacity.
- 5 2. Attached as **Exhibit 1** is an email correspondence chain between my office and Plaintiffs'
6 counsel regarding K.M.K.'s HIB Complaint. As evidenced by this correspondence, the
7 parties have been in communication regarding K.M.K.'s allegations related to ongoing
8 harassment, intimidation, or bullying at Rogers High School. The District has explained to
9 K.M.K.'s counsel that the allegations in the Complaint are insufficient to investigate, and
10 more information is needed. The parties have agreed that, rather than an intake interview
11 with a District Superintendent, K.M.K. may submit the information related to her
12 allegations in written form.
- 13 3. Attached as **Exhibit 2** is an email correspondence chain between my office and Plaintiffs'
14 counsel regarding K.M.K.'s transfer request. This correspondence, which was preceded by
15 a phone call between the parties on August 21, 2026, shows that the parties have continued
16 to discuss transfer options for K.M.K., including considering whether there are any pre-
17 existing bus routes to accommodate K.M.K.'s transfer. There are no such bus routes, but
18 K.M.K. has agreed to purchase a parking pass and arrange for her own transportation.
- 19 4. The District received a transfer request on August 27, 2026, and expedited its approval.
20 Attached as **Exhibit 3** is the Intra-District Waiver Approval showing the request has been
21 approved and K.M.K. will attend Puyallup High School for the 2026/2027 school year.

22 ///

23 ///

24 ///

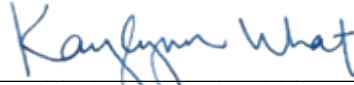
25 ///

26
DECLARATION OF KAYLYNN WHAT IN
SUPPORT OF PUYALLUP SD AND
BROBBEY'S RESPONSE TO PLAINTIFFS'
EMERGENCY MOTION FOR INJUNCTION
PENDING APPEAL - 2
NO. 3:26-cv-05616-DGE

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1 I declare under penalty of perjury under the laws of the United States of America the
2 foregoing is true and correct.

3 DATED this 28th day of August 2026, at Seattle, Washington.

4 

5 KAYLYNN WHAT, WSBA # 43442
6 *Attorney for Puyallup School District and*
7 *Dr. Gordon Brobbey*
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DECLARATION OF KAYLYNN WHAT IN
SUPPORT OF PUYALLUP SD AND
BROBBEY'S RESPONSE TO PLAINTIFFS'
EMERGENCY MOTION FOR INJUNCTION
PENDING APPEAL - 3
NO. 3:26-cv-05616-DGE

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PROOF OF SERVICE

I hereby certify that I filed the foregoing with the Court using the CM/ECF system, and caused to be delivered to the below parties or their counsel of record a copy of this document addressed as follows:

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DECLARATION OF KAYLYNN WHAT IN
SUPPORT OF PUYALLUP SD AND
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EMERGENCY MOTION FOR INJUNCTION
PENDING APPEAL - 4
NO. 3:26-cv-05616-DGE

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DECLARATION OF KAYLYNN WHAT IN
SUPPORT OF PUYALLUP SD AND
BROBBEY'S RESPONSE TO PLAINTIFFS'
EMERGENCY MOTION FOR INJUNCTION
PENDING APPEAL - 5
NO. 3:26-cv-05616-DGE

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1 I certify under penalty of perjury under the laws of the state of Washington that the
2 foregoing is true and correct.

3 DATED this 28th day of August 2026, at Chehalis, Washington.

4 s/ Sara Luurs
5 SARA LUURS, Paralegal
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DECLARATION OF KAYLYNN WHAT IN
SUPPORT OF PUYALLUP SD AND
BROBBEY'S RESPONSE TO PLAINTIFFS'
EMERGENCY MOTION FOR INJUNCTION
PENDING APPEAL - 6
NO. 3:26-cv-05616-DGE

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6
7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
9 **TACOMA DIVISION**

10 K.M.K., by and through her mother
11 and legal guardian, STEPHANIE
12 LYNNE BROWN; STEPHANIE
13 LYNNE BROWN,

14 *Plaintiffs,*

15 v.

16 WASHINGTON INTERSCHOLASTIC
17 ACTIVITIES ASSOCIATION, et al.,

18 *Defendants.*

Case No. 3:26-cv-05616-DGE

The Honorable David G. Estudillo

19 **[PROPOSED] ORDER**
20 **GRANTING PLAINTIFFS'**
21 **MOTION FOR PRELIMINARY**
22 **INJUNCTION**

23 Before the Court is Plaintiffs' motion for preliminary injunction. Having
24 considered the motion, response and reply briefs, evidence of record, and arguments
25 of counsel, the Court concludes that the motion should be **GRANTED**.

26 **BACKGROUND**

Defendants Office of Superintendent of Public Schools (OSPI) and Puyallup
School District are subject to Title IX's requirements as direct recipients of federal
educational funding.

1 Defendant Washington Interscholastic Activities Association (WIAA) is
2 subject to Title IX's requirements because it exercises controlling authority over
3 federal funding recipients' athletic programs, including through delegations of
4 authority from the District and other member school districts.

5 Policies adopted by WIAA, OSPI, and the District allow biological males who
6 identify as female to compete in girls' sports, including girls' wrestling and soccer.
7 Defendants Superintendent Reykdal; Dr. Gordon Brobbey, Puyallup School
8 District's Title IX Coordinator; Rogers High School Principal Jason Smith; and
9 Emerald Ridge High School Coach John Morrison participate in enforcing these
10 policies.

11 Under their current policies, WIAA, OSPI, the District, and the other
12 Defendants will allow Plaintiff K.M.K. to be matched against biological males in
13 girls' sports, and they will not provide Plaintiff Ms. Brown with reasonable notice
14 and an opportunity to opt her daughter out of such competition without penalty.

15 For three reasons, Plaintiffs are likely to succeed on their claims that
16 Defendants' policies violate the Constitution, unlawfully exclude K.M.K. from
17 interscholastic athletics, deny her its benefits, and discriminate against her in
18 them.

19 First, Ms. Brown is likely to succeed under 42 U.S.C. § 1983 in showing that
20 these policies violate her fundamental parental rights. Whether an adolescent
21 daughter should compete in a contact sport like wrestling against biologically male
22 athletes is a consequential decision that belongs to parents, not the government.
23 *Mirabelli v. Bonta*, 607 U.S. 492, 497 (2026) (per curiam). "[A]llowing biological
24 males to play on women's and girls' sports teams can put women and girls at
25 significant risk of injuries," so giving notice of that risk is paramount—especially for
26

1 the “particularly severe” safety risk “in contact sports” like wrestling. *W. Virginia v.*
2 *B.P.J.*, No. 24–38, 2026 WL 1868739, at *8 (U.S. June 30, 2026).

3 Second, the policies likely violate Title IX. 42 U.S.C. § 1681(a). Since 1975,
4 Title IX regulations have recognized that athletic programs must provide equal
5 “participation” and “benefits” to both sexes, cannot otherwise “discriminat[e]” based
6 on sex, 34 C.F.R. § 106.41(a), and must provide “equal opportunity” to both sexes,
7 *id.* § 106.41(c). This requires accounting for “the inherent physical differences
8 between biological women and biological men.” *B.P.J.*, 2026 WL 1868739, at *8.
9 Recognizing those inherent differences, allowing biological males into girls’
10 wrestling and soccer diminishes girls’ athletics opportunities without diminishing
11 boys’ opportunities and thus violates Title IX.

12 Third, K.M.K. is likely to succeed in showing that she suffers a hostile
13 environment from officials and peers at Rogers High School that discriminates
14 against K.M.K., that deprives K.M.K. of the benefits of educational opportunities,
15 and that excludes her from educational opportunities, all in violation of Title IX. *See*
16 *Brown v. Arizona*, 82 F.4th 863, 874 (9th Cir. 2023). The District did not adequately
17 respond to Ms. Brown’s report that K.M.K. suffered sex-based harassment during a
18 District-sponsored WIAA event—specifically, that K.M.K. was assaulted by a
19 biological male wrestling opponent at a girls’ wrestling tournament. The District
20 also refuses to adequately respond to sex-based harassment from officials and peers
21 or to protect K.M.K. going forward.

22 Plaintiffs face irreparable harm, and the balance of equities and the public
23 interest favor granting Plaintiffs’ motion.
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ORDER

For these reasons and the reasons stated in this Court's accompanying opinion, **IT IS ORDERED** that:

I. Unless Ms. Brown first receives notice and the right to opt out without academic or athletic penalty to K.M.K., Superintendent Reykdal, WIAA, and the District are prohibited from

- a. matching K.M.K. against a biological male in girls' wrestling or,
- b. in girls' soccer, allowing any biological male to participate with K.M.K.

An impermissible academic or athletic penalty includes posting a loss or forfeit for K.M.K. or her team as a forfeit or loss in that competition or a future competition, or requiring K.M.K. to sit out any competition, including any WIAA soccer game or wrestling match.

II. Defendants OSPI, WIAA, and the District are prohibited from allowing any biological male to compete with or against K.M.K. in girls' wrestling, girls' soccer, or other contact sports or sports involving competitive athletic skill that are designated for girls or women.

III. WIAA and the District must provide K.M.K. access to their educational programs and activities, including girls' wrestling and soccer, in an environment free of harassment, hostility, or other discrimination. Accordingly:

- a. The District must approve K.M.K.'s transfer from Rogers High School to Puyallup High School and provide suitable, no-cost transportation for K.M.K. to and from Plaintiffs' residence.
- b. The District must facilitate K.M.K.'s participation in girls' soccer and girls' wrestling at Puyallup High School, without athletic eligibility penalty, such as by submitting or supporting an application for waiver

1 that would exempt K.M.K. from WIAA's varsity-eligibility rules for
2 transferring students. *See* Puyallup School District Policy 2151R.

3 c. WIAA must grant K.M.K. a hardship waiver as described in its current
4 policies or otherwise approve her immediate varsity eligibility. *See*
5 WIAA Policy Handbook 2025-2026, 18.12.2.9.

6 To prevent irreparable harm that would otherwise begin at the start of the
7 girls' soccer season on August 24, 2026 and the start of the 2026-2027 school year on
8 September 2, 2026, Defendants must comply with this order before August 24, 2026.

9 This order shall remain in effect during the pendency of this case or until
10 further order of this Court.

11
12 APPROVED AND SO ORDERED:

13 Dated this ____ day of _____, 2026.

14
15 _____
16 David G. Estudillo
17 United States District Judge
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Presented by:

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AZ Bar No. 030505
s/ Henry W. Frampton, IV
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Counsel for Plaintiffs
**Admitted Pro Hac Vice*

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7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
9 **TACOMA DIVISION**

10 K.M.K., by and through her mother
11 and legal guardian, STEPHANIE
12 LYNNE BROWN; STEPHANIE
13 LYNNE BROWN,

14 *Plaintiffs,*

15 v.

16 WASHINGTON INTERSCHOLASTIC
17 ACTIVITIES ASSOCIATION, et al.,

18 *Defendants.*

Case No. 3:26-cv-05616-DGE

The Honorable David G. Estudillo

19 **[PROPOSED] ORDER**
20 **GRANTING PLAINTIFFS'**
21 **MOTION FOR INJUNCTION**
22 **PENDING APPEAL**

23 Before the Court is Plaintiffs' motion for injunction pending appeal. Having
24 considered the motion, response and reply briefs, evidence of record, and arguments
25 of counsel, the Court concludes that the motion should be **GRANTED**.

26 **BACKGROUND**

Defendants Office of Superintendent of Public Schools (OSPI) and Puyallup
School District are subject to Title IX's requirements as direct recipients of federal
educational funding.

1 Defendant Washington Interscholastic Activities Association (WIAA) is
2 subject to Title IX's requirements because it exercises controlling authority over
3 federal funding recipients' athletic programs, including through delegations of
4 authority from the District and other member school districts.

5 Policies adopted by WIAA, OSPI, and the District allow biological males who
6 identify as female to compete in girls' sports, including girls' wrestling and soccer.
7 Defendants Superintendent Reykdal; Dr. Gordon Brobbey, Puyallup School
8 District's Title IX Coordinator; Rogers High School Principal Jason Smith; and
9 Emerald Ridge High School Coach John Morrison participate in enforcing these
10 policies.

11 Under their current policies, WIAA, OSPI, the District, and the other
12 Defendants will allow Plaintiff K.M.K. to be matched against biological males in
13 girls' sports, and they will not provide Plaintiff Ms. Brown with reasonable notice
14 and an opportunity to opt her daughter out of such competition without penalty.

15 For three reasons, Plaintiffs are likely to succeed on their claims that
16 Defendants' policies violate the Constitution, unlawfully exclude K.M.K. from
17 interscholastic athletics, deny her its benefits, and discriminate against her in
18 them.

19 First, Ms. Brown is likely to succeed under 42 U.S.C. § 1983 in showing that
20 these policies violate her fundamental parental rights. Whether an adolescent
21 daughter should compete in a contact sport like wrestling against biologically male
22 athletes is a consequential decision that belongs to parents, not the government.
23 *Mirabelli v. Bonta*, 607 U.S. 492, 497 (2026) (per curiam). "[A]llowing biological
24 males to play on women's and girls' sports teams can put women and girls at
25 significant risk of injuries," so giving notice of that risk is paramount—especially for
26

1 the “particularly severe” safety risk “in contact sports” like wrestling. *W. Virginia v.*
2 *B.P.J.*, No. 24–38, 2026 WL 1868739, at *8 (U.S. June 30, 2026).

3 Second, the policies likely violate Title IX. 42 U.S.C. § 1681(a). Since 1975,
4 Title IX regulations have recognized that athletic programs must provide equal
5 “participation” and “benefits” to both sexes, cannot otherwise “discriminat[e]” based
6 on sex, 34 C.F.R. § 106.41(a), and must provide “equal opportunity” to both sexes,
7 *id.* § 106.41(c). This requires accounting for “the inherent physical differences
8 between biological women and biological men.” *B.P.J.*, 2026 WL 1868739, at *8.
9 Recognizing those inherent differences, allowing biological males into girls’
10 wrestling and soccer diminishes girls’ athletics opportunities without diminishing
11 boys’ opportunities and thus violates Title IX.

12 Third, K.M.K. is likely to succeed in showing that she suffers a hostile
13 environment from officials and peers at Rogers High School that discriminates
14 against K.M.K., that deprives K.M.K. of the benefits of educational opportunities,
15 and that excludes her from educational opportunities, all in violation of Title IX. *See*
16 *Brown v. Arizona*, 82 F.4th 863, 874 (9th Cir. 2023). The District did not adequately
17 respond to Ms. Brown’s report that K.M.K. suffered sex-based harassment during a
18 District-sponsored WIAA event—specifically, that K.M.K. was assaulted by a
19 biological male wrestling opponent at a girls’ wrestling tournament. The District
20 also refuses to adequately respond to sex-based harassment from officials and peers
21 or to protect K.M.K. going forward.

22 Plaintiffs face irreparable harm, and the balance of equities and the public
23 interest favor granting Plaintiffs’ motion.

ORDER

For these reasons and the reasons stated in this Court's accompanying opinion, **IT IS ORDERED** that:

I. Unless Ms. Brown first receives notice and the right to opt out without academic or athletic penalty to K.M.K., Superintendent Reykdal, WIAA, and the District are prohibited from

a. matching K.M.K. against a biological male in girls' wrestling or,

b. in girls' soccer, allowing any biological male to participate with K.M.K.

An impermissible academic or athletic penalty includes posting a loss or forfeit for K.M.K. or her team as a forfeit or loss in that competition or a future competition, or requiring K.M.K. to sit out any competition, including any WIAA soccer game or wrestling match.

II. Defendants OSPI, WIAA, and the District are prohibited from allowing any biological male to compete with or against K.M.K. in girls' wrestling, girls' soccer, or other contact sports or sports involving competitive athletic skill that are designated for girls or women.

III. WIAA and the District must provide K.M.K. access to their educational programs and activities, including girls' wrestling and soccer, in an environment free of harassment, hostility, or other discrimination. Accordingly:

a. The District must approve K.M.K.'s transfer from Rogers High School to Puyallup High School and provide suitable, no-cost transportation for K.M.K. to and from Plaintiffs' residence, or otherwise separate her from the hostile school environment.

b. The District must facilitate K.M.K.'s participation in girls' soccer and girls' wrestling at Puyallup High School, without athletic eligibility

1 penalty, such as by submitting or supporting an application for waiver
2 that would exempt K.M.K. from WIAA's varsity-eligibility rules for
3 transferring students. *See* Puyallup School District Policy 2151R.

4 c. WIAA must grant K.M.K. a hardship waiver as described in its current
5 policies or otherwise approve her immediate varsity eligibility. *See*
6 WIAA Policy Handbook 2025-2026, 18.12.2.9.

7 To prevent irreparable harm that would otherwise begin at the start of the
8 girls' soccer season on August 24, 2026 and the start of the 2026-2027 school year on
9 September 2, 2026, Defendants must comply with this order by September 4, 2026.

10 This order shall remain in effect during the pendency of this case or until
11 further order of this Court.

12
13 APPROVED AND SO ORDERED:

14 Dated this ____ day of _____, 2026.

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16 _____
17 David G. Estudillo
18 United States District Judge
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