

LEGAL UPDATES

PUBLISHED: JULY 1, 2026

Services

Higher Education
Title IX

Industry

Education

Professionals

DEREK T. TEETER
KANSAS CITY:
816.983.8331
DEREK.TEETER@
HUSCHBLACKWELL.COM

MICHAEL T. RAUPP
KANSAS CITY:
816.983.8324
MICHAEL.RAUPP@
HUSCHBLACKWELL.COM

JASON J. MONTGOMERY
KANSAS CITY:
816.983.8291
JASON.MONTGOMERY@
HUSCHBLACKWELL.COM

Supreme Court Holds That Title IX and the Equal Protection Clause Permit Biological-Sex-Based Restrictions on Women's Sports Participation

In a significant 6-3 decision for colleges, universities, and K-12 schools nationwide, the Supreme Court of the United States held in *West Virginia v. B.P.J.* and *Little v. Hecox* that Title IX does not require schools to permit transgender women to compete on women's sports teams, and that state laws restricting women's sports participation to biological females do not violate the Equal Protection Clause of the Fourteenth Amendment. In an opinion by Justice Kavanaugh, the Court resolved both cases together and reversed the rulings of the U.S. Courts of Appeals for both the Fourth and Ninth Circuits, and upheld the West Virginia and Idaho laws at issue.

Background

The cases arose from challenges to Idaho and West Virginia laws barring transgender women and girls from participating on female-designated athletic teams at public secondary schools and postsecondary institutions.

Idaho enacted its Fairness in Women's Sports Act in 2020. The law classifies athletic team eligibility based on biological sex and authorizes sex-verification procedures for challenged athletes. Lindsay Hecox, a transgender woman who sought to try out for the women's track and cross-country teams at Boise State University, filed suit arguing the law violated her rights under the Fourteenth Amendment's Equal Protection Clause. The Ninth Circuit agreed with Hecox and blocked the law, concluding that it categorically excluded transgender women and subjected female athletes to invasive verification procedures. The

court concluded that these provisions constituted impermissible sex-based discrimination that failed intermediate scrutiny.

West Virginia enacted its Save Women's Sports Act in 2021, similarly requiring that girls' and boys' sports teams at public schools and colleges be designated based on biological sex. Heather Jackson filed suit on behalf of her child, B.P.J., a transgender girl who had received puberty-blocking medication and hormone therapy and sought to compete on the girls' cross-country and track teams. The Fourth Circuit held that the law violated Title IX because it discriminated against B.P.J. on the basis of sex.

The Supreme Court granted *certiorari* in both cases in July 2025 and heard arguments on January 13, 2026. The Trump administration participated as amicus curiae in support of the state laws, consistent with Executive Order 14201, "Keeping Men Out of Women's Sports," issued in February 2025, which directed the Department of Education to enforce Title IX against schools that permit transgender girls to participate in girls' sports.

The Supreme Court's Holdings

Title IX: "Sex" Means Biological Sex

The Court held that the term "sex" in Title IX refers to biological sex^[1] as understood at the time of the statute's enactment and does not encompass gender identity or transgender status.

Central to the Court's analysis were the text of Title IX, the Javits Amendment of 1974, and the implementing regulations promulgated by the then-Department of Health, Education, and Welfare in 1975. The Javits Amendment directed HEW to issue regulations that "shall include with respect to" "athletic activities reasonable provisions considering the nature of particular sports." Pursuant to that directive, HEW promulgated regulations requiring schools to provide "equal athletic opportunity for members of both sexes" and authorizing "separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport." Those regulations have remained in place for over fifty years.

The Court held that the term "sex" in Title IX, the Javits Amendment, and the implementing regulations "cannot plausibly be interpreted to refer to anything other than biological sex." The ordinary meaning of "sex" at the time of enactment in the early 1970s was biological sex, not gender identity, particularly in the sports context. The majority further observed that the regulations permitted separate sports teams precisely because of the inherent physical differences between biological men and biological women. As to the challengers' argument that the regulations are not "reasonable" under the Javits Amendment if they authorize excluding all biological males from women's teams, the Court concluded that separate sports teams for biological males and biological

females are reasonable given the inherent physical differences between the sexes and the safety and competitive fairness concerns that can arise when females are forced to compete against males.

The Court also rejected the challengers' reliance on *Bostock v. Clayton County*, which held that Title VII's prohibition on employment discrimination "because of . . . sex" extends to discrimination based on transgender status. The Court distinguished *Bostock* on the ground that Title VII concerns employment, whereas Title IX as relevant here focuses on sports—what the Court saw as two "vastly different" factual and statutory contexts. Unlike Title VII, which generally requires that employees be treated without regard to sex, Title IX authorizes separate men's and women's sports teams, and the only question is whether schools may limit those teams to biological females.

Equal Protection: The Court Upholds Biological-Sex-Based Athletic Classifications Under Intermediate Scrutiny

On the constitutional claims, the Court held that the West Virginia and Idaho laws do not violate the Equal Protection Clause of the Fourteenth Amendment. Applying intermediate scrutiny to the laws' sex-based classifications, the Court concluded that limiting women's and girls' sports teams to biological females is substantially related to the states' important interests in safety and competitive fairness.

Relying on its recent decision in *United States v. Skrmetti*, the Court reasoned that the laws at issue do not classify based on gender identity or transgender status, but rather on the basis of biological sex. The Court therefore assessed the sex-based classification under intermediate scrutiny, the standard applicable to governmental sex-based distinctions. The Court expressly declined to resolve whether rational basis review or intermediate scrutiny would apply to a transgender or gender-identity classification but concluded that the classification at issue "readily satisfies rational basis review or intermediate scrutiny" in either event.

Under intermediate scrutiny, a sex-based classification must be substantially related to an important governmental objective. The Court found that the states' interests in safety and competitive fairness are important interests for purposes of equal protection analysis. The Court further concluded that the biological-sex-based classification is substantially related to those interests, given well-documented physiological differences between male and female athletes that affect athletic performance.

The Court acknowledged the challengers' and the dissent's arguments that transgender women who have undergone hormone therapy or received puberty-blocking treatment may not retain meaningful athletic advantages over biological females. However, the majority concluded that intermediate scrutiny does not require a perfect fit between a law's means and its ends. States, therefore, are not required to craft individualized exceptions for each athlete whose circumstances may differ from the

statistical norm. It is sufficient that the sex-based classification is substantially related to the governmental interest when assessed at the level of the policy as a whole.

The Court also addressed the challengers' underlying medical and scientific premise that biological males who take puberty blockers or hormones do not retain physical advantages over biological females. The majority found this premise to be the subject of ongoing medical and scientific debate, noting that 27 states and leading athletic organizations—including the IOC—have concluded that biological males retain physical advantages even after such treatments. The Court emphasized that even if the challengers' premise were true, it would not alter the equal protection conclusion, and that courts should be cautious about invalidating laws in areas of medical and scientific uncertainty, deferring instead to legislative judgments.

The majority opinion also expressly declined to resolve whether states that permit transgender athletes to compete on teams consistent with their gender identity are themselves in compliance with Title IX or the Equal Protection Clause, leaving that question open for future potential litigation.

The Dissenting Opinions

Justices Sotomayor, Kagan, and Jackson filed opinions concurring in the judgment in part and dissenting in part. Notably, all three agreed with the majority that B.P.J.'s Title IX claim fails—accepting, as B.P.J. herself had conceded, that “sex” in Title IX means biological sex in the sports context, so that the regulations authorizing sex-separated teams permitted West Virginia's policy.

The dissents' principal objection focused on the equal protection holding. Justice Sotomayor argued that an unresolved and potentially outcome-determinative factual question—whether transgender girls who have never undergone male puberty and who have received hormone therapy actually retain meaningful athletic advantages over biological females—should have been remanded for further factfinding rather than decided by the Court on a summary record. In her view, intermediate scrutiny requires the State to show that its sex-based classification furthers its interests as applied, not merely in the abstract. In her view, the majority's willingness to uphold the categorical exclusion without resolving that factual dispute effectively reduces the constitutional standard to something closer to rational basis review. She cautioned that this “diminished view of equal protection” applied in the sports context “could extend to other contexts tomorrow,” including settings where the relationship between biological sex and the State's asserted interests is less direct.

Justice Jackson also wrote separately to argue that the majority went further than necessary in declaring that “sex” in Title IX means only biological sex, when the same result could have rested on B.P.J.'s own concession—leaving the broader question of Title IX's scope open for future cases.

What This Means to You

This decision has immediate and broad implications for colleges, universities, K-12 institutions, and athletic organizations that receive federal financial assistance. The ruling will have meaningful consequences for transgender students and the campus communities that care about their well-being and inclusion, and institutions should approach the required policy changes with both legal rigor and human sensitivity.

Institutions should consider the following action items:

1. **Review and update athletic participation policies.** Institutions should promptly review their existing policies governing transgender athlete participation in light of this ruling. Schools in states that have enacted biological-sex-based sports participation laws—approximately 27 states at the time of the decision—should ensure their policies comply with those laws, which the Court has now confirmed are permissible under both Title IX and the Equal Protection Clause. Institutions in states without such laws face a more complex landscape (see below).
2. **Assess federal enforcement exposure—permissive policies and the expanding enforcement landscape.** Although the Court expressly declined to resolve whether permissive state policies themselves violate Title IX, the opinion contains language that will inevitably encourage such litigation. The Court characterized competitive sports as “generally zero sum,” observing that “allowing a biological male athlete to compete on a girls’ team necessarily displaces or disadvantages a female athlete—replacing her on the roster, knocking her out of the starting lineup, reducing her playing time, depriving her of a medal, and the like,” and that “[t]hat hard reality of sports cannot be ignored or swept under the rug.” That framing implies that permitting transgender participation necessarily denies equal opportunity to some biological women—precisely the argument the administration is pressing in lower courts to establish that permissive policies themselves violate Title IX.

The Trump administration has taken the position that allowing transgender women to compete in women’s sports constitutes sex discrimination against biological women, and it is actively enforcing that theory. OCR found in January 2026 that San José State University’s policies “deny women equal educational opportunities and benefits” and has referred states that declined compliant resolution agreements—including Maine and Minnesota—to the Department of Justice for litigation. Enforcement has been further concentrated in DOJ through a June 16, 2026, interagency agreement under which DOJ’s Civil Rights Division has assumed the investigative functions of OCR’s enforcement work.

Institutions should also be alert to the broad potential reach of this ruling beyond the athletic context. The Court’s holding that “sex” in Title IX means biological sex—based on the ordinary

meaning of the term at the time of the statute's enactment in 1972—potentially carries direct implications for the full range of sex-separated settings in which institutions have made accommodations for transgender individuals, including bathrooms, restrooms, locker rooms, housing assignments, and comparable facilities and programs. The administration has already signaled broad enforcement intent across these contexts, and institutions with permissive policies beyond athletics should be review those practices considering this decision and the administrations ongoing enforcement efforts.

- 3. Assess alignment with NCAA policy and conference rules.** The NCAA proactively updated its transgender student-athlete participation policy in February 2025—before this decision—restricting competition in women's sports to student-athletes assigned female at birth. The Court's ruling now provides firm legal grounding for that policy under both Title IX and the Equal Protection Clause. Institutions should be aware, however, that the NCAA's current policy still permits students assigned male at birth to practice with women's teams, a distinction that may face continued federal scrutiny in light of the Court's biological-sex construction of Title IX. Conference-level rules may also vary, and institutions bear independent responsibility for certifying student-athlete eligibility consistent with both the NCAA framework and applicable state and federal law. Institutions should confirm that their eligibility processes, scholarship designations, and internal governance documents are fully aligned with this landscape.
- 4. Assess state and local laws that mandate access and accommodations for transgender students.** While such laws will be challenged with increasing frequency in the current environment, unless and until they are struck down, they remain the law in some states and municipalities. In such jurisdictions, the risk analysis is even more complex.
- 5. Conduct a comprehensive policy review.** As discussed in item 2 above, this ruling potentially implicates a broader range of institutional policies governing sex-separated settings—not only athletic participation, but also bathrooms, locker rooms, housing, and comparable facilities and programs. Institutions should review all such policies with counsel, accounting for both the Title IX framework as now construed and any other legal obligations that may govern particular contexts, including Title VII in the employment setting, applicable state anti-discrimination law, and relevant contractual or accreditation commitments, which vary by jurisdiction and institution. Institutions should communicate clearly with their campus communities about the nature of any policy changes and the legal obligations that require them.
- 6. Continue to support affected students.** Institutions should also continue to support all their students in legally permissible ways, particularly transgender students who may be

affected by this complex and shifting legal landscape. For example, they should ensure that counseling and student affairs resources remain informed, accessible, and responsive to transgender students navigating these developments. In addition, they should ensure that any policy changes are implemented consistently with the institutions' duty of care toward all students.

7. **Document compliance steps.** In light of the ongoing enforcement environment, encompassing both OCR investigations and DOJ enforcement actions—institutions also should document the steps they are taking to comply with applicable requirements. This documentation may be important in any future OCR inquiry, DOJ investigation, or litigation.

Contact Us

For more information about the implications of this ruling for your institution, please contact Derek Teeter, Michael Raupp, Jason Montgomery, or a Husch Blackwell attorney.

[1] Throughout this alert, we use the term “biological sex” consistent with the Court’s own usage, which treats the term as referring to a binary male/female classification as assigned at birth. We adopt this terminology to reflect the Court’s legal framework as accurately as possible.