



School Law FYI

Supreme Court Allows States to Prohibit Transgender Girls from Participating on Girls' Sports Teams

HEATHER CURNUTT, BRIAN P. GOODMAN, LIBBIE OSABEN | 07.16.26

In a 6-3 decision in *West Virginia v. B.P.J.*, 609 U.S. ____ (2026), the U.S. Supreme Court held that states can prohibit transgender girls from playing on girls' sports teams.

BACKGROUND

The plaintiffs were two transgender female students.^{[\[1\]](#)} B.P.J. challenged West Virginia's Save Women's Sports Act (2021), and Lindsey Hecox challenged Idaho's Fairness in Women's Sports Act (2020). Both state laws prohibited transgender female students from participating on female teams. B.P.J. has identified as female since at least third grade, took puberty blockers to prevent male puberty, and began taking hormones in sixth grade. Hecox began taking hormones after going through male puberty. Both students sought to participate in sports on female teams.

THE DECISION

The plaintiffs challenged the state laws as contrary to Title IX and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. All nine Supreme Court justices held that the state laws did not violate Title IX. Title IX's implementing regulations expressly permit schools to maintain "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." 34 C.F.R. § 106.41(b). The majority decision concluded that "[t]he ordinary meaning of the term 'sex' at the time of [Title IX's] enactment in the early 1970s was biological sex [meaning sex assigned at birth] and not gender identity, particularly in the sports context." Therefore, the Court concluded that states may limit women's and girls' sports teams to athletes assigned the sex of female at birth without violating Title IX.

The majority and the dissent disagreed on the application of the Equal Protection Clause. The majority held that the states' sex-based classification was substantially related to interests in safety and competitive fairness. The majority rejected the plaintiffs' argument that safety and competitive fairness did not justify excluding from girls' teams transgender girls like B.P.J., who have taken puberty blockers or hormones. Specifically, the majority held that states are not required to conduct an individual-by-individual comparison of the physical and athletic capabilities of transgender female student athletes. In contrast, the dissent would have remanded the case for factual findings to determine whether B.P.J. actually had an inherent athletic advantage.

While this decision allows states to prohibit transgender girls from playing on girls' sports teams, it does not require that states – or schools – do so. The Court acknowledged that whether schools may allow transgender girls to participate on girls' sports teams is the subject of litigation in lower courts and stated that nothing in this decision was intended to decide that question. The Court also noted that nothing in this decision should be interpreted to address or limit participation by students assigned female at birth on male or co-ed sports teams.

Therefore, this decision leaves it up to states to determine how to address transgender students' participation in sports.

WIAA POLICY

Wisconsin law is silent on transgender student participation in sports. As a result, the Supreme Court's decision has no impact on any existing Wisconsin law. However, the Wisconsin Interscholastic Athletic Association (WIAA)'s policy, which governs all schools when they participate in WIAA sports, states that a student-athlete "whose Sex Assigned at Birth is male" may not compete in a WIAA Girl's Sport but may practice in a WIAA Girl's Sport. A student-athlete "whose Sex Assigned at Birth is female who has begun hormone therapy (e.g. testosterone)" may not compete in a WIAA Girl's Sport but may continue practicing in a WIAA Girl's Sport.

Title IX prohibits discrimination on the basis of sex in education programs. The *B.P.J.* decision is explicitly limited to participation in sports. A separate federal law, Title VII, prohibits discrimination on the basis of sex (and other categories) in employment. Six years ago, in *Bostock v. Clayton County*, 590 U.S. 644 (2020), the Supreme Court held that Title VII prohibits firing an employee based on sexual orientation or gender identity. In *B.P.J.*, the Court distinguished its analysis of Title IX from its analysis of Title VII: "In the workplace, Title VII generally requires that men and women be treated without regard to their sex. In the sports context, by contrast, Title IX authorizes separate men's and women's sports teams."

Although the Title IX regulation about athletics is separate from the Title IX regulation regarding "toilet, locker room and shower facilities," the *B.P.J.* decision may result in new efforts to challenge the Seventh Circuit's *Whitaker* decision on transgender students' use of school bathrooms. In *Whitaker v. Kenosha Unified School District*, 858 F.2d 1034 (7th Cir. 2017), the Seventh Circuit Court of Appeals, the federal court of appeals with jurisdiction over

Wisconsin school districts, issued a preliminary injunction and held that a transgender boy^[2] was likely to succeed on his claims that a school district policy prohibiting the student from using the boys' restroom violated Title IX and the Equal Protection Clause. In 2023, the Seventh Circuit declined to revisit that holding, noting that "[l]itigation over transgender rights is occurring all over the country, and we assume that at some point the Supreme Court will step in with more guidance than it has furnished so far. Until then, we will stay the course and follow *Whitaker*." *A.C. v. Metropolitan School District of Martinsville*, 75 F.4th 760, 764 (7th Cir. 2023).^[3]

CONCLUSION

At least in the short-term, the *B.P.J.* decision will likely increase the amount of litigation regarding school policies affecting transgender and gender non-conforming students. Some such cases are already underway in the lower courts and at least one case is currently pending at the Seventh Circuit Court of Appeals. School officials should continue to monitor this rapidly developing area of the law. If you have any questions about *B.P.J.* or additional legal developments affecting schools related to transgender students, please contact a member of the [Boardman Clark School Law Practice Group](#).

^[1] Transgender females are individuals who were assigned the sex of male at birth but now identify as female.

^[2] Transgender males are individuals who were assigned the sex of female at birth but now identify as male.

^[3] For School Law FYI, discussing these Seventh Circuit decisions, see [Seventh Circuit Upholds Transgender Student's Right To Use Boys' Bathroom At School](#) (Jun. 1, 2017) and [Seventh Circuit Upholds Transgender Students' Right To Use Bathroom Consistent With Gender Identity](#) (Jan. 30, 2024).

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Primary Authors



Heather Curnutt
(608) 286 7237



Brian P. Goodman
(608) 283-1722



Libbie Osaben
(608) 286 7187

School Law Practice Group Members

Heather Curnutt
(608) 286 7237

William L. Fahey
(608) 286-7234

Matthew W. Bell
(608) 286-7239

Michael C. Wieber
(608) 283-1797

Brian P. Goodman
(608) 283-1722

Rick Verstegen
(608) 286-7233

Christopher T. Schmidt
(608) 286-7157

Jennifer C. Johnson
(608) 286-7151

Libbie Osaben
(608) 286 7187

David P. Weller
(608) 286-7235

Daniel T. Fahey
(608) 286-7216

Douglas E. Witte
(608) 283-7529

Rhonda R. Hazen
(608) 283-1724

Eric B. Hagen
(608) 286-7225