Title IX and Transgender Students: Bathrooms, Athletics, and More

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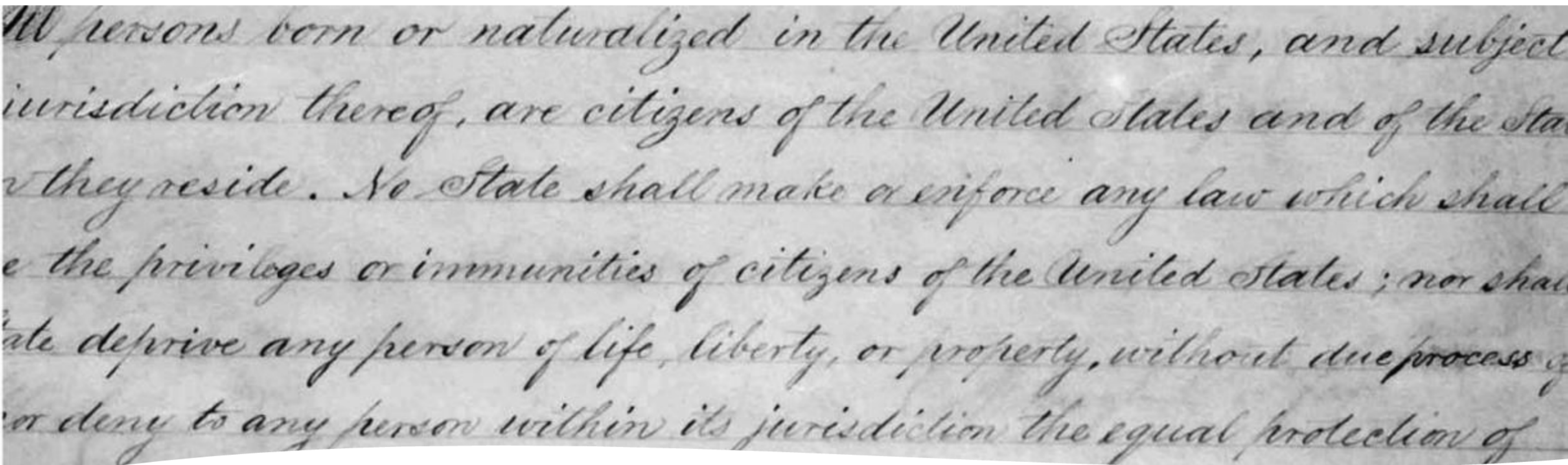
Title IX of the Education Amendments of 1972

No person shall, on the basis of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance. 20 U.S.C. § 1681(a).

In order to hold that sex discrimination violates Title IX, the court must find:

- The student was excluded from participation in an education program on the basis of sex;
- That the educational institution was receiving federal financial assistance at the time; and
- That improper discrimination caused the student harm.


ll persons born or naturalized in the United States, and subject
jurisdiction thereof, are citizens of the United States and of the Sta
they reside. No State shall make or enforce any law which shall
the privileges or immunities of citizens of the United States; nor shal
ate deprive any person of life, liberty, or property, without due process
or deny to any person within its jurisdiction the equal protection of

The Equal Protection Clause

The Equal Protection Clause of the Fourteenth Amendment provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

- Sex-based discrimination is reviewed using a standard called “intermediate scrutiny.”
- To satisfy intermediate scrutiny, a sex-based policy must:
  - Advance an important government interest and
  - Be substantially related to that objective.

Bostock v. Clayton County, Georgia
140 S. Ct. 1731 (2020)

The United States Supreme Court rules that Title VII's prohibition of discrimination based on sex also prohibits discrimination based on sexual orientation or gender identity.

- Employers may not discriminate against an individual because of their sexual orientation or gender identity.
- Discrimination based on sexual orientation or gender identity necessarily entails discrimination based on sex.
- So, discrimination on the basis of gender identity or sexual orientation is sex discrimination under Title VII.

Executive Order No. 13988

On January 20, 2021 President Biden signed an Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation.

- Extended *Bostock* holding that discrimination because of sex covers discrimination on the basis of gender identity and sexual orientation to Title IX, the Fair Housing Act and the Immigration and Nationality Act.
- Based on principals reflected in the Constitution and the policy that every person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love.
    - Specifically, “children should be able to learn without worrying about whether they will be denied access to the restroom, locker room, or school sports.”
- Identified discrimination based on sexual orientation or gender identity a violation of Title IX.

Guidance in Response to the Executive Order

U.S. Department of Justice – Civil Rights Division: issued a Memorandum applying *Bostock* to Title IX.

- Before reaching this conclusion the Division reviewed caselaw, including the dissents in *Bostock, Grimm* and *Adams*, statutory text, and legislative history and found nothing persuasive that could justify a departure from *Bostock's* textual analysis and the Supreme Court's longstanding directive to interpret Title IX's text broadly.

Equal Employment Opportunity Commission: issued a Technical Assistance Document that explains how employers should apply the *Bostock* decision.

- Employers may not deny an employee equal access to a bathroom, locker room, or shower that corresponds to the employee's gender identity.

U.S. Department of Education: issued a Notice of Interpretation explaining that it will enforce Title IX's prohibition on sex-based discrimination to include sexual orientation and gender identity based discrimination.

- *Bostock* applies to Title IX because Title VII and Title IX have textual similarities, additional case law recognizes that the reasoning of *Bostock* applies to Title IX and that differential treatment of students based on gender identity or sexual orientation may cause harm, and because the U.S. Department of Justice's Civil Rights Division has concluded that the *Bostock* analysis applies to Title IX.
- To implement this interpretation, OCR will now fully enforce Title IX to prohibit discrimination based on sexual orientation or gender identity.

Lawsuit Challenging enforcement of the Guidance: Tennessee v. U.S. Department of Education

Multiple states, including Arizona, brought action in Tennessee District Court against the EEOC, US Department of Justice and the US Department of Education challenging the legality of their guidance that laws prohibiting sex discrimination also prohibit discrimination on the basis of gender identity or sexual orientation.

- Tennessee District Court granted the states' motion which enjoined the enforcement of the guidance from the three agencies.
- Court concluded that the guidance was not valid because it did not comply with the Administrative Procedures Act which requires an agency to go through a notice and comment period when it issues guidance that expands the legal authority of a case.
- The holding is a result of a procedural deficiency; it is not a decision on the merits of the guidance or interpretation.

Discrimination on the Basis of Transgender Status

The United States Supreme Court has held that discrimination on the basis of being transgender IS discrimination on the basis of sex. (*Bostock*)

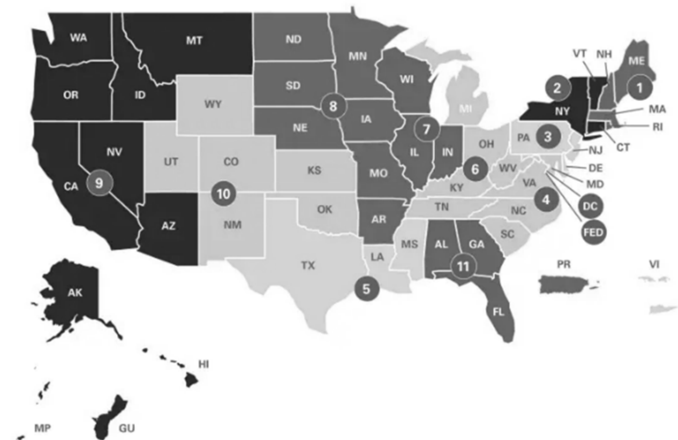
The Ninth Circuit has held that, like sex, the status of being transgender is itself a suspect classification. (*Karonski v. Trump*)

Bathrooms & Locker Rooms

Transgender Students' Use of Gender-Segregated Facilities

There is a split in the federal circuit courts

- The Federal Court system is divided into regions, called Circuits.
  - There are 12 circuits and Arizona is in the Ninth Circuit
- Below Circuit Courts of Appeal, the District courts in each circuit must follow the authority from the Court of Appeals in that circuit.
  - Authority from other circuits is not binding and cannot be relied on if it conflicts with the law in the particular circuit.
- Only the Supreme Court is authority for all circuits and the United States Supreme Court has not ruled on the issue of transgender students and bathrooms.



Prior to December 2022, every circuit court that had addressed this issue had sided with transgender students

Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ., 858 F.3d 1034 (7th Cir. 2017): Held that transgender students may bring sex-discrimination claims under Title IX based upon a theory of sex-stereotyping.

Doe by & through Doe v. Boyertown Area Sch. Dist., 897 F.3d 518 (3d Cir. 2018): Court denied motion for a preliminary injunction, finding that cisgender students were not likely to succeed on the merits of their due process claim. Requiring transgender students to use single user or birth-sex-aligned facilities would be discriminatory.

Parents for Privacy v. Barr, 949 F.3d 1210 (9th Cir. 2020): Policy allowing transgender students to use bathrooms, showers, and locker rooms that match their gender identity did not violate rights of cisgender students.

Grimm v. Gloucester County School Bd, 976 F.3d 399 (4th Cir. 2020): Policy excluding transgender students from using bathroom that corresponds with their gender identity violates Title IX and Equal Protection.

Parents for Privacy v. Barr (9th Cir. 2020)

School District adopts policy allowing transgender students to use bathrooms and locker rooms that match their gender identity.

Cisgender students and their parents brought action for injunctive relief against school district, alleging that the policy violated the due process clause, Title IX and the First Amendment's Free Exercise Clause.

- **Fourteenth Amendment <u>right to privacy</u>:** The court held that the right to privacy does not extend to avoiding all risk of intimate exposure to or by a transgender person.
  - In support of this conclusion the court noted that students who did not want to share facilities with a transgender student were offered alternative options and privacy protections, it did not matter that these alternatives appear inferior or less convenient.
- **Fourteenth Amendment <u>right to direct the education and upbringing of one's children</u>**: The court explained that the right of a parent to make decisions concerning the care, custody and control of their children did not extend to provide parents the fundamental right to determine bathroom policies of public schools.

Parents for Privacy v. Barr (9th Cir. 2020)

- **Title IX:** Plaintiffs claimed policy produced unwelcome sexual harassment and created a hostile environment on the basis of sex.
  - The court ruled against the students stating that the alleged harassment was not so severe, pervasive, or objectively offensive to rise to the level of a Title IX violation. Specifically, Plaintiff did not allege the transgender students were making any inappropriate remarks, threatening them, deliberately flaunting nudity or physically touching them.
    - "The presence of transgender people in an intimate setting does not, by itself, create a sexually harassing environment that is severe or pervasive."

Parents for Privacy v. Barr (9th Cir. 2020)

- **Free Exercise Clause**: The first amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Plaintiffs claimed the policy forced them to be exposed to an environment that conflicts with and prevents them from fully practicing their religious beliefs.
  - The court held that the policy did not violate the Free Exercise Clause because the policy is neutral, generally applicable and rationally related to a legitimate government interest.

Overall takeaway: Cisgender students do not have the right to exclude transgender students from using the bathroom based on their gender identity or to be guaranteed bathrooms segregated by biological sex/sex at birth.

Grimm v. Gloucester County Sch. Bd. (4th Cir. 2020)

Male transgender student brought discrimination claims against school for preventing him from using the bathroom aligned with his gender identity.

- Court held that school board policy to separate bathrooms based on biological sex violated the Equal Protection Clause and Title IX.
- **Equal Protection Claim**: held that policy separating students based on biological sex did not pass intermediate scrutiny since the policy was not substantially related to its important interest in protecting student privacy because a transgender child uses the bathroom by going into a private stall.
  - In addition, the school installed privacy screens in between urinals and did not present any evidence that transgender students would be less likely to mind their business in a bathroom than other students.
- **Title IX Claim:** The Court concluded that because the school could not exclude the student from a bathroom without considering the student's biological sex, the policy discriminated against the student because of his sex.

Grimm v. Gloucester County Sch. Bd. (4th Cir. 2020)

- THE SUPREME COURT DENIED THE PETITION FOR CERTIORARI

Adams v. Sch. Bd. Of Johns County (11th Cir. 2022) – creates a split in the circuits

- In November 2022, the 11th Circuit broke with all other circuits that had ruled on this issue and ruled against a transgender student challenging the policy that prohibited students from using the bathroom that matched their gender identity. Any student could use a gender-neutral bathroom or one that corresponded to their biological sex (as determined by birth certificates).

Adams v. Sch. Bd. Of Johns County (11th Cir. 2022)

Transgender student brought a claim against the school alleging that the policy violated Title IX and the Equal Protection Clause.

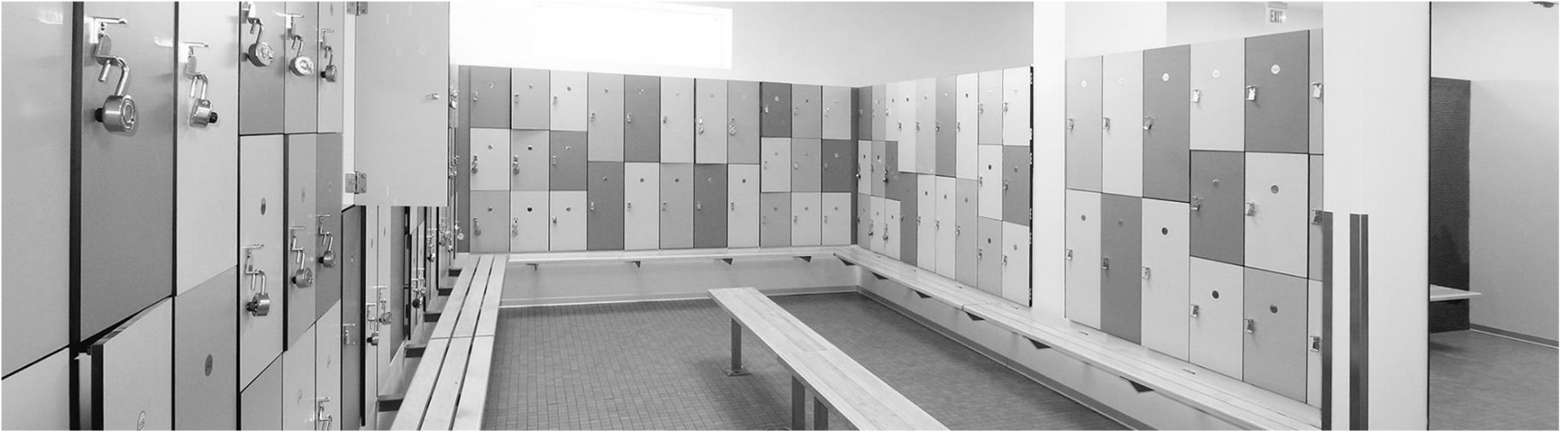
- **Equal Protection:** Court stated that the policy passed intermediate scrutiny - it did not violate Equal Protection because the policy advanced the governmental objective of protecting students' privacy in school bathrooms and does so in a manner that is substantially related to that objective.
- **Title IX:** Court ruled that policy did not violate Title IX because Title IX's implementing regulations expressly allow schools to provide separate bathrooms on the basis of sex.
  - Addressed by the 9th Circuit in *Barr:* "just because Title IX authorizes sex-segregated facilities does not mean that they are required, let alone that they must be segregated based only on biological sex and cannot accommodate gender identity."

Kastl v. Maricopa County Community College District, 2009 WL 990760, 247 Ed. Law Rep. 31 (9th Cir. 2009)

- MCCCD had banned Kastl, a transgender woman, from using the women's bathroom, citing safety concerns.
- The 9th circuit affirmed the lower court's ruling in MCCCD's favor, finding that while Kastl did state a claim for sex discrimination, she did not provide sufficient evidence to show that the ban was based on gender stereotypes rather than the safety concerns that the College put forth.
- Would likely be decided the other way today:
  - 9th circuit has held that transgender itself is a quasi-suspect class.
  - If the *Kastl* case were reviewed today, I believe the college would have to prove that the ban was **substantially related to the important interest in safety**, requiring evidence to support the safety concern.

Arizona Senate Bill 1040

- Bill vetoed June 9, 2023.
- Bill would have prohibited students from using a restroom or changing facility designated for the opposite sex.



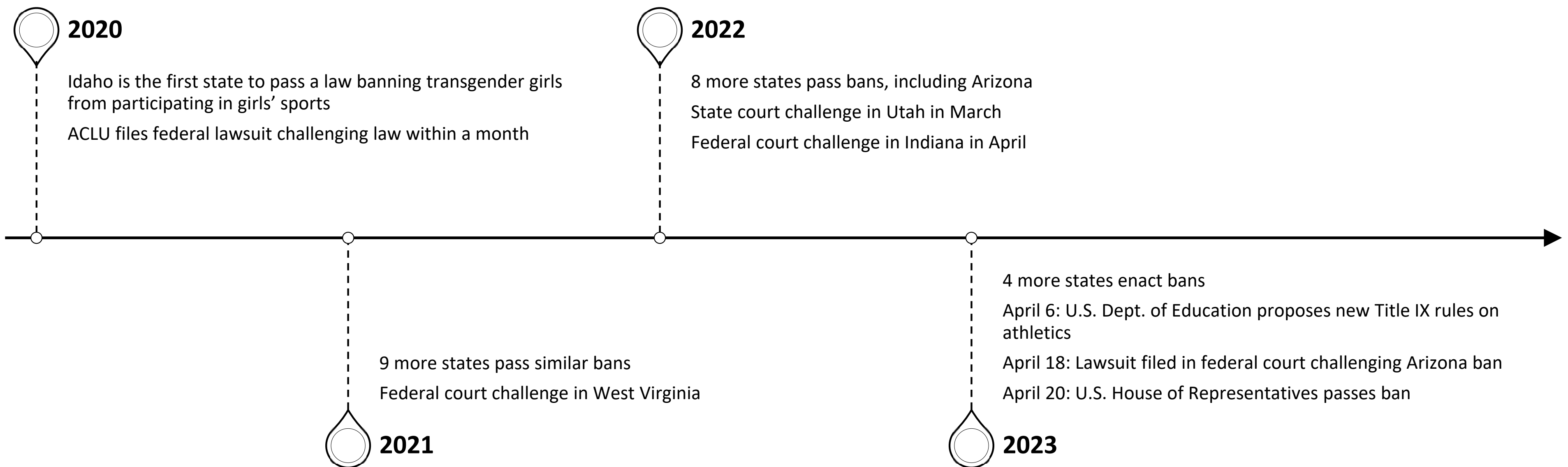
What about locker rooms?

- The analysis for locker rooms is the same as the analysis for bathrooms.
- Practical advice for school:
  - One option is to make sure all students have private space in which to change.
  - Another option is to make "dressing out" for PE optional.
  - Always provide an option for any student who is uncomfortable – whether transgender or cisgender – to change in a private location.

Athletics

Transgender Students'
Participation in School Sports

Restrictions on Transgender Youth Participation in Sports: Timeline



Restrictions on Transgender Youth Participation in Sports: Timeline

As of August 2023, 22 states have passed laws barring transgender girls from participating in girls' sports

- 17 states apply those bans to K-12
- Remaining states start bans in grades 5, 6, or 7
- 20 of these 22 states extend ban to college sports

Hecox v. Little (D. Idaho)

- Idaho first state to ban transgender girls from playing on girls' teams
  - Similar to AZ law, but also includes provision with process to "verify" a student's "biological sex"
- 2 plaintiff students: transgender girl who will try out for track team at Boise State & cisgender girl in high school who is seen as "masculine" and is worried about being subjected to verification process
- District Court applies heightened (intermediate) scrutiny and finds that Idaho law is likely to violate Equal Protection Clause—imposes preliminary injunction
  - Among other things, notes that transgender women could not "displace" cisgender women in sports "to a substantial extent"
  - "[N]ot clear that transgender women who suppress their testosterone have significant physiological advantages over cisgender women"
  - Gender "verification" process creates additional barriers for female athletes that do not exist for males

Hecox v. Little (9th Cir.)

- 9th Circuit affirmed the injunction on Aug. 17, 2023
  - Affirmed that intermediate scrutiny applied because law discriminates on basis of transgender status and sex
  - Subjects only women and girls to "intrusive sex verification" (one judge dissents from this part of opinion)
  - Categorical ban against all transgender women and girls, regardless of puberty and hormone status, is overbroad
  - No evidence that transgender women were displacing cisgender women in athletic opportunities
  - Notes that more recent guidance from IOC and NCAA and new Title IX regs "attempt to balance transgender inclusion with competitive fairness"
- Could petition for cert from SCOTUS
- Otherwise, returns to district court for litigation on the merits

B.P. J. v. W. Va. Bd. Of Educ. (S.D. W. Va./4th Cir.)

- B.P.J. is rising sixth-grader. She is a transgender girl who is being treated for gender dysphoria and has not gone through (and will not go through) male puberty.
- West Virginia ban on transgender athletes' participating in girls' sports is similar to Idaho's but without "verification" provision (equivalent to AZ)
- District court granted preliminary injunction
  - Analysis is similar to District of Idaho in *Hecox*
- Ultimately grants summary judgment to defendants, finding that law did not violate Equal Protection or Title IX
  - Though B.P.J. was taking hormone blockers, the general fact that transgender girls will have more testosterone than cisgender girls without treatment means that the statute's definition of biological sex meets intermediate scrutiny
- During appeal, 4th Circuit stays the district court's order (2-1, without explanation), meaning the injunction remains in place pending appeal
- SCOTUS denies application to vacate (without explanation)
  - Alito and Thomas dissent, citing the Title IX and Equal Protection claims as "an important issue that the Court is likely to be required to address in the near future"

A.M. by E.M. v. Indianapolis Public Schools and Superintendent (S.D. Ind.)

- Indiana statute is similar to West Virginia's
- A.M. is rising fifth grader who is a transgender girl—lives as a girl, birth certificate was legally changed, will not experience male puberty
- A.M. challenges Indiana law because it will bar her from playing softball
- District court granted preliminary injunction
  - Law punishes student based on gender non-conformance
  - Singles out transgender females in its prohibitions
- While appeal was pending, A.M. withdrew from her school and transferred to a charter school, and parties agreed to dismiss the case

A Different Sort of Challenge: *Soule v. Conn. Assoc. of Schools* (D. Conn./2d Cir.)

- Lawsuit challenged policy <u>allowing</u> transgender girls to compete with cisgender girls in athletics
- Theory was that allowing "male-bodied athletes" ("individuals with an XY genotype") to compete in girls' track denied the plaintiffs fair opportunity to compete, in violation of Title IX
- District Court dismisses lawsuit as moot: the two identified transgender athletes had both graduated, and plaintiffs didn't establish that they would compete against others
- Without deciding Title IX issue, District Court notes, "Courts across the country have consistently held that Title IX requires schools to treat transgender students consistent with their gender identity."
- Court of Appeals affirms dismissal, holding that plaintiffs lacked standing because they had not been denied opportunity to compete

Arizona SB1165 (A.R.S. § 15-120.02)

- Designate teams/sports as “male,” “female,” or “coed” based on “biological sex” of participating students
  - “Biological sex” not defined in statute but legislative history indicates that it means gender assigned at birth
- Teams/sports designated for “females” “may not be open to students of the male sex.”
- No restriction on participation on “male” or “coed” teams
- Creates private causes of action for students or schools

AIA Rule

- 2018
  - AIA revises rules to permit transgender student athletes to compete on teams consistent with gender identities.
  - Students must notify the school and the AIA, and must provide certain documentation to AIA, including letter of support from school administrator, letter of support from health care provider, and description of student's "gender story."
- 2023
  - "If made in compliance with A.R.S. 15-120.02, a school may make a request on behalf of a student utilizing the procedure described below…"

Legal Challenge in Arizona (*Doe v. Horne*)

- Plaintiffs are transgender girls at Kyrene Middle School (public) & The Gregory School (private)
  - Both have lived life as girls, legally changed name, passport says female
  - Both diagnosed with gender dysphoria
  - With hormone therapy, neither will experience male puberty
- Equal Protection: Court applied intermediate scrutiny for discrimination based on sex
  - Classification must serve important governmental objectives and must be substantially related to achievement of those objectives
  - Burden on defendants to establish constitutionality

Legal Challenge in Arizona (*Doe v. Horne*)

- Government objective is important: providing fair and equal playing opportunities for girls and protections to ensure safety of girls playing sports
- AZ law not substantially related to those legitimate goals
  - No evidence of unfair competition or safety risk where transgender girls have not experienced male puberty
  - Act is overbroad, reaching sports for students who are still prepuberty
  - Act treats transgender boys differently from transgender girls
- Court finds AZ law wouldn't even survive rational basis review
- Same analysis means discrimination in AZ statute violates Title IX

Doe v. Horne: Takeaways & Questions

- Injunction only applies to the two plaintiffs—what does that mean for other students/school districts?
  - Court explicitly approves of AIA's rule from 2018
- Plaintiffs also made Section 504 claim—not discussed in injunction
- Court's rationale focused heavily on the law's application to children who are prepuberty
  - Could AIA or individual schools decide to factor puberty/hormone therapy into athletic team placement?
- Appeal filed in the 9th Circuit
  - Court of Appeals has denied motion to stay the preliminary injunction
  - Recent decision in *Hecox* suggests injunction will be affirmed

Proposed Title IX Rule on Transgender Athletes

- Would prohibit categorical bans on transgender students' participation in athletics based on gender identity
- "If a recipient adopts or applies sex-related criteria that would limit or deny a student's eligibility to participate on a male or female team consistent with their gender identity, such criteria must, for each sport, level of competition, and grade or education level:
    - (i) be substantially related to the achievement of an important educational objective, and
    - (ii) minimize harms to students whose opportunity to participate on a male or female team consistent with their gender identity would be limited or denied."

Proposed Title IX Rule on Transgender Athletes

- Would enshrine heightened scrutiny
- DOE expects that it would be “particularly difficult” to justify excluding transgender girls from girls’ teams during and immediately after elementary school
    - Focus for younger ages is on teamwork, skills, and fitness
- Even in high school, distinguish between competitive teams and “no-cut” teams
- Different sports may require different approaches
- “Minimizing harm” entails a sort of “least restrictive alternative” approach

Stay Tuned!

- Ongoing litigation in *Hecox*
- Ongoing litigation in *Doe v. Horne*
- Final Title IX rule from USDOE
- When will SCOTUS get involved?

Names & Pronouns

Use of Transgender Students' Preferred Names and Pronouns at School and in School Records

Names and Pronouns

- OCR guidance and proposed rule require schools to use students' preferred names and pronouns
- SAIS number and gender is assigned based on the birth certificate and in Arizona, the birth certificate is difficult to change (for now!)
- All other school records can be changed to reflect preferred pronouns and names
- Whose preference matters – student's or parent's?

Parental Rights & Names/Pronouns

- Arizona law (A.R.S. § 36-337(A)(3)) requires Arizonans to get a "sex change operation" to be permitted to change the gender marker on their birth certificate (to align with their gender identity).
- *Roe v. Herrington*, currently pending in Federal District Court, seeks to change that.
  - Plaintiffs argue the law violates equal protection and due process.
  - Court just (8/10/23) granted an order certifying this as a class action.
- Passport is much easier to change.

Use of Preferred Names and Pronouns

- ARS 1-602: Parents Bill of Rights
  - Parents have the right to direct the upbringing of the minor child and to direct the moral or religious training of the minor child.
  - Any attempt to encourage or coerce a minor child to withhold information from the child's parent is grounds for discipline of an employee of this state, any political subdivision of this state, any other governmental entity or any other institution, except for law enforcement personnel.
- No obligation to disclose information to parents, no right to withhold it.

Arizona Senate Bill 1001

- Under this bill, teachers and staff would be prohibited from knowingly referring to a student by a name or gender that is not in line with their biological sex and/or the school records.
- To update the school records the school would be required to obtain written permission from the student's parent.
- Bill vetoed May 2023

Kluge v. Brownsburg Cmty. Sch. Corp. (7th Cir. 2023)

- School adopted a policy that allowed students to update their gender pronouns and name in the school system if they had the permission of a parent and healthcare provider.
  - Teachers and staff were required to refer to students according to the name and information in the school system.
- Kluge (teacher) refused to do so for religious reasons.
- Proposed to refer to all of his students by their last names.
- The school agreed but later received complaints alleging that Kluge was emotionally harming his transgender students by singling them out. Kluge was terminated.

Kluge v. Brownsburg Cmty. Sch. Corp. (7th Cir. 2023)

- The court found that **"a practice that indisputably caused emotional harm to students and disruptions to the learning environment is an undue hardship to a school as a matter of law."**
- Thus, under Title VII, the school was permitted to terminate Kluge's employment.
- ***Note** – post *Groff v. DeJoy*, the standard of the "undue hardship" has changed.

Ricard v. USD 475 Geary County (D. Kan. May 9, 2022)

- The district's policy required staff to refer to students by their preferred name and pronouns and prevented disclosure to parents unless the student requested it.
- Teacher used preferred names but avoided pronouns all together.
- Teacher believed using legal names in communication with parents but preferred names in class was dishonest and violated her religious beliefs.

Ricard v. USD 475 Geary County (D. Kan. May 9, 2022)

- The Court granted a preliminary injunction on the parental communication policy only.
    - Teacher was forced to choose between complying with the district's policy or facing discipline for abiding by her religious beliefs.
    - Policy already had a lot of secular exceptions, so it also needed to make a religious exception.
- FERPA empowers parents to receive information about their minor students.
- Also, parents have a constitutional right to control the upbringing of their children.
- After injunction was issued, the parties settled out of court.

Preferred Names and Pronouns: Takeaways

- School employees should refer to students by preferred names and pronouns to avoid violating Title IX
  - Can use only last names
  - Can avoid pronouns all together
  - Can’t single out trans kids
- Records that don’t go to the state can be updated based on student preference
- Parent preference outweighs student preference, but schools have no obligation to seek it out
- If “outing” a student will put them in danger, then there may be a mandatory reporting issue

Section 504 of the Rehab Act

Potential Disability Claims for Transgender Students

ADA & Section 504

- Both ADA and Section 504 define disability as:
  - Having a physical or mental impairment that
  - Substantially limits one or more major life activities
- Includes people who are “regarded as” or have a “record of” having a disability
- “Major life activity” is very broad
  - Includes things like walking, seeing, hearing, thinking, learning, etc.

Section 504 in Schools

- Requires Free & Appropriate Public Education (FAPE)
- 504 Plan provides student with disability what is necessary for them to have equitable opportunity to participate in educational environment
- OCR does not use “reasonable accommodation” standard from ADA, but some courts have implied a similar standard for 504

Gender Dysphoria

- Statutory definition of “disability” excludes “transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, **gender identity disorders not resulting from physical impairments**, or other sexual behavior disorders”
- In 2017, federal judge in Philadelphia finds for the first time that gender dysphoria is distinct from “gender identity disorders” and may be covered as disability under ADA (*Blatt v. Cabela’s Retail*)
- About a dozen other district judges have followed suit (*E.g., Doe v. Mass. Dep’t of Correction* (D. Mass. 2018); *Parker v. Strawser Constr.* (S.D. Ohio 2018); *Griffith v. El Paso Cnty.* (D. Colo. 2023))
- 9th Circuit describes gender dysphoria as “serious medical condition that causes clinically significant distress…that impairs or severely limits an individual’s ability to function in a meaningful way” (not in the ADA context) (*Edmo v. Corizon, Inc.* (9th Cir. 2019))
- DOJ (under Obama, Trump, and Biden) has issued statements supporting protection of gender dysphoria under ADA

Williams v. Kincaid (4th Cir., Aug. 2022)

- District Court dismissed for failure to state a claim
- Court of Appeals reversed and remanded
  - Gender dysphoria not a "gender identity disorder" within ADA's exclusions because without hormone therapy Williams experienced physical distress
    - "[S]uffered by many (but certainly not all) transgender people"
  - ADA is construed as broadly as text permits, and complaints must be construed liberally in assessing motion for failure to state a claim
  - Suggests (but doesn't rule on) concerns regarding discriminatory animus in ADA exclusions
- SCOTUS denied cert, with Alito and Thomas dissenting
  - In lengthy dissent, Alito suggests potential implications for bathrooms, dorms, and women's athletics, among other things

504 Plans for Gender Dysphoria

- Assuming gender dysphoria may be a protected disability, what might a 504 plan look like under Section 504?
  - Court decisions on ADA haven't yet reached reasonable accommodation
- 504 Plan could conceivably cover use of names/pronouns, use of bathrooms/locker rooms, and participation in athletics
- Analysis could consider use of such accommodations in the past, both at the school and possibly at similar schools

The End*

*for now