



Association of
Title IX Administrators

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Rapid Response: What Does the Supreme Court's B.P.J. Decision Mean for Title IX and Transgender Athletes?

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Today's Presenters



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West Virginia v. B.P.J.

- **Holding:** Title IX and the Equal Protection Clause permit a state law or school policy to restrict **women's** athletic teams to students based on **biological sex**, without violating Title IX or the Equal Protection Clause
- **Title IX** analysis (a 9-0 decision)
 - “Sex” under Title IX refers to biological sex
 - Title IX permits schools to maintain separate athletic teams for males/females; 1975 regulations expressly authorize sex-separated athletics
 - Nothing in Title IX statute or regulations requires exceptions for gender identity and/or hormonal differences
 - **Bostock** does not apply to school sports context

West Virginia v. B.P.J. (Cont.)

- **Equal Protection Clause** analysis (a 6-3 decision)
 - The West Virginia and Idaho statutes classify students based on sex
 - Classifications based on sex are subject to **intermediate scrutiny**
 - Are the laws substantially related to important government interests?
 - **Holding:** Statutes intend to ensure safety, opportunities, and competitive fairness, satisfying intermediate scrutiny
 - **Dissent:** Statutes don't account for students who have undergone hormonal treatment

Legal Upshot

- Court does not answer the question of whether Title IX **requires** athletic teams to be segregated based on **biological sex**
- Eligibility policies will turn entirely on state law/athletic conference policies
 - Laws/policies prohibiting discrimination on gender identity
 - Laws/policies prohibiting transgender student-athlete participation
- Applies to both higher education and K-12
- Holding that “sex” in Title IX means “biological sex” opens the door to more litigation in non-athletic contexts
 - Bathrooms/locker rooms
 - Department of Justice Executive Order enforcement will turn on preemption analysis

Practical Takeaways

- Know your state laws
 - Laws regarding athletics participation
 - Non-discrimination on the basis of gender identity
- Patchwork of state-by-state approaches (and possibly community-by-community)
- No foreseeable change to NCAA and other athletic conference policies (for now)
- Impacts on interstate competition
- Existing Title IX appellate rulings that prohibit discrimination based on sex-stereotyping may still pertain, but only time will tell

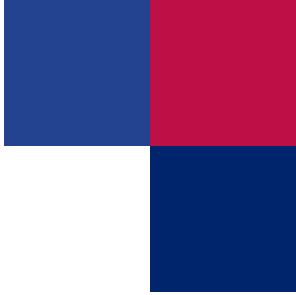


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