COSSBA
CONSORTIUM OF STATE SCHOOL BOARDS ASSOCIATIONS

Court Report

Education Law News You Can Use

April 21, 2026

Eighth Circuit (AR, IA, MN, MO, NE, ND, SD) Rejects Title IX Challenge to Transgender Athlete Participation, Limits Private Suits to Intentional Discrimination

A nonprofit organization advocating for women's sports sued Minnesota officials and several school districts after a transgender high school softball player competed on a girls' varsity team under a state high school league bylaw allowing participation consistent with gender identity. The organization alleged that allowing the student—who had played a key role in her team's success—harmed female athletes by reducing competitive opportunities, limiting recognition, and creating safety concerns. It sought a preliminary injunction barring transgender girls from competing in girls' sports.

The U.S. Court of Appeals for the Eighth Circuit affirmed the denial of that injunction, holding that Title IX does not provide a private right of action for claims based on disparate impact. The court concluded that private plaintiffs may only bring Title IX claims alleging intentional sex discrimination. Because the organization's claims focused on the alleged negative effects of the policy on female athletes, rather than alleging that officials adopted or enforced the policy because of those effects, the claims sounded in disparate impact and could not proceed. The court emphasized that the bylaw itself was facially neutral, applying to all students based on gender identity, and the complaint repeatedly framed the alleged harm in terms of "discriminatory impact" and similar effects. The court rejected arguments that intent could be inferred, noting the absence of allegations that officials acted with a purpose to disadvantage female athletes or ignored specific complaints demonstrating harm. It also declined to treat federal agency guidance or executive branch positions on Title IX as sufficient to establish deliberate indifference, reasoning that those interpretations do not carry the force of settled law.

Eighth Circuit (AR, IA, MN, MO, NE, ND, SD) Vacates Injunctions Blocking Iowa Law on Library Materials, Early-Grade Instruction, and Parental Notification Requirements

Iowa enacted Senate File 496, a law that (1) requires public schools to remove library books containing descriptions or depictions of defined "sex acts," (2) bars instruction on gender identity and sexual orientation for students in kindergarten through sixth grade, and (3) requires school officials to notify parents if a student requests an accommodation related to gender identity. Multiple groups, including publishers, educators, students, and advocacy organizations, challenged the law on First Amendment and due process grounds, and a federal district court partially enjoined enforcement. On appeal, the U.S. Court of Appeals for the Eighth Circuit, in companion decisions, vacated those preliminary injunctions and allowed the law to take effect while litigation proceeds.

Compiled By:

BOSE McKINNEY & EVANS LLP
ATTORNEYS AT LAW

BOSE publicaffairs group

Celebrating 25 Years of *Powerful Persuasion*

As to the library restrictions, the court held that public school libraries function as part of the school's curriculum and therefore constitute school-sponsored speech subject to the deferential standard of *Hazelwood*. Applying that framework, the court concluded the statute's prohibition on materials depicting defined sex acts is reasonably related to legitimate pedagogical concerns, such as ensuring age-appropriate content, and thus does not likely violate the First Amendment. The court also rejected claims that students possess a constitutional right to access particular books in school libraries, emphasizing that removal from a school library does not foreclose access elsewhere.

Turning to the instructional ban, the court found plaintiffs failed to show that the law's unconstitutional applications substantially outweighed its legitimate ones — a requirement for facial challenges under recent Supreme Court precedent. The court relied in part on the canon of constitutional avoidance, accepting the State's narrower interpretation that the law applies to required curriculum rather than sweeping in all extracurricular or incidental references. Finally, the court upheld the parental notification provision, concluding that the requirement to report student requests for gender-identity-related accommodations is not unconstitutionally vague. The court reasoned that although the statute does not define "accommodation," the term carries a commonly understood meaning sufficient to provide notice and limit arbitrary enforcement, particularly in the school context where less precision is required.

U.S. Department of Education Finds Kansas School District Violated FERPA and Title IX Over Gender Identity Practices

The U.S. Department of Education's Student Privacy Policy Office (SPPO) and Office for Civil Rights (OCR) concluded that four Kansas school districts maintained policies governing student gender identity that conflicted with federal law. The investigation focused on policies in several public-school districts that allowed students to use different names and pronouns at school and, in some cases, limited disclosure of that information to parents. SPPO found that the districts' practices likely interfered with parents' rights under the Family Educational Rights and Privacy Act (FERPA) by restricting access to records related to a student's gender identity, even when parents requested those records. OCR separately determined that multiple districts violated Title IX by permitting students to access restrooms, locker rooms, and other sex-segregated facilities based on gender identity rather than biological sex. Two districts also acknowledged that students had participated in athletics and accessed facilities consistent with gender identity, which OCR concluded raised compliance concerns under Title IX's prohibition on sex-based discrimination.

Based on these findings, the Department issued proposed resolution agreements requiring the districts to revise their policies. The proposed remedies include restricting participation in athletics and access to facilities based on sex, as well as ensuring that any records related to a student's gender identity are accessible to parents. If the districts decline to enter into agreements, the Department indicated it may pursue enforcement actions, including proceedings that could result in the loss of federal funding.

Fourth Circuit (MD, NC, SC, VA, WV) Finds Middle School Student's Confession Voluntary Despite School Questioning

A 13-year-old Virginia Beach middle school student sued school officials and a school resource officer after he was questioned about possessing and sharing a sexually explicit photo of a classmate and later charged in juvenile court. An assistant principal removed the student from class, questioned him in the school guidance office, and asked him to write statements about the incident before a school resource officer became involved. The student eventually admitted to possessing and sharing the image and later challenged the confession as coerced in violation of the Fifth Amendment.

The U.S. Court of Appeals for the Fourth Circuit affirmed summary judgment for the school officials, holding that the student's confession was voluntary under the totality of the circumstances. The court emphasized that the questioning occurred during the school day, lasted a relatively short time, and took place in a familiar school setting led primarily by a school administrator. It also found no evidence of threats, deprivation, or coercive tactics, noting that the assistant principal's statements about honesty

and conflicting accounts did not amount to unconstitutional pressure. Although the student was young and questioned without a parent present, the court concluded that those factors alone did not render the confession involuntary absent evidence that the student's will was overborne. Because the record showed the student made a free and deliberate choice to admit his conduct, the court rejected the Fifth Amendment claim and upheld the dismissal of the case.

Indiana School District Pays $195K to Settle Counselor's Free Speech Challenge to Student Gender Policy

A longtime high school counselor in an Indiana school district filed suit after the district terminated her employment for speaking with a reporter about an internal "gender support" policy. The policy required staff to use students' preferred names and pronouns and, in some circumstances, refrain from notifying parents about a student's social transition. The counselor, who objected on religious grounds and had raised concerns internally, later confirmed details of the policy to a journalist, including concerns about lack of parental transparency. After public backlash followed the reporting, the district terminated her employment in 2021. The counselor sued the district in federal court, alleging violations of her constitutional rights, including free speech and religious freedom. While the district prevailed on several claims during the litigation, at least one claim remained pending heading into trial. The parties ultimately reached a settlement under which the district agreed to pay approximately $195,000.

U.S. Supreme Court Petitions to Watch:

- *Foote v. Ludlow School Committee* – Whether a public school violates parents' constitutional rights when, without parental knowledge or consent, the school encourages a student to transition to a new "gender" or participates in that process. ***Petition denied.***
- *Anoka Hennepin Education Minnesota (AFT Local 7007) v. Huizenga* – Whether local taxpayers have standing to sue a teachers' union over a collective bargaining provision with no net effect on school district funds.
- *Petersen v. Doe* – Whether Arizona's Save Women's Sports Act, which excludes biological males from girls' and women's sports teams, violates the Equal Protection Clause.
- *Littlejohn v. School Board of Leon County* – Whether a court may dismiss a parental-rights substantive due process claim challenging a public school's handling of a student's gender identity on the ground that the alleged conduct did not "shock the conscience," even where the claim alleges infringement of a fundamental right.
- *Crowther v. Board of Regents of the University System of Georgia* – Whether Title IX provides employees of federally funded educational institutions a private right of action to sue for sex discrimination in employment.
- *Hedgepeth v. Britton* – Whether and in what circumstances public employers may discipline employees based on their expression of controversial views while off the job.
- *C.S., by Her Next Friend Stroub v. McCrumb* **(the "Come and Take It" Hat case)** – Whether, under Tinker, school officials may rely on later-developed concerns about potential disruption (e.g., anticipated emotional harm to students) to defend a decision to restrict student expression, even when those concerns were not articulated at the time of the discipline.

U.S. Supreme Court Cases to Watch:

- *West Virginia v. B.P.J, by next friend and mother, Heather Jackson* – Whether Title IX or the Equal Protection Clause prevents a state from designating school sports teams based on biological sex determined at birth. ***(Argued Jan. 13, 2026).***
- *Little v. Hecox* – Whether laws that seek to protect women's and girls' sports by limiting participation based on sex violate the Equal Protection Clause. ***(Argued Jan. 13, 2026).***