

MODEL POLICY #46

K-12 ATHLETICS; SEPARATING K-12 ATHLETICS BY BIOLOGICAL SEX

Why adopt this policy?

School districts should adopt a policy requiring K–12 athletic participation to be based on biological sex to ensure fair competition, protect student safety, and comply with legal standards. In June of 2026, the United States Supreme Court ruled that states and schools may separate sports teams by biological sex under both Title IX and the Equal Protection Clause of the Fourteenth Amendment. *West Virginia, et al., v. B.P.J.*, 609 U.S. ____ (2026).

As of July 2026, over 27 states have enacted laws or regulations requiring the schools in those states to separate girls' and women's sports by biological sex. If a state does not have such a law, individual districts may pass a policy to separate sports by biological sex. By adopting this policy, schools demonstrate a clear commitment to safeguarding student-athletes and preserving the integrity of competitive sports.

Note: This model policy contains bracketed text for school boards to select the procedure that is most appropriate for their district.

Policy

Definitions

For the purposes of this policy:

"Sex" shall refer to an individual's immutable biological classification as either male or female. "Sex" is not a synonym for and does not include the concept of "gender identity."

"Female" means a person belonging, at conception, to the sex that produces the large reproductive cell.

"Male" means a person belonging, at conception, to the sex that produces the small reproductive cell.

"Women" or "woman" and "girls" or "girl" shall mean adult and juvenile human females, respectively.

"Men" or "man" and "boys" or "boy" shall mean adult and juvenile human males, respectively.

"Men's or boys' team" means an athletic team designated for students whose biological sex is male. A birth certificate may be used as evidence of biological sex.

"Women's or girls' team" means an athletic team designated for students whose biological sex is female. A birth certificate may be used as evidence of biological sex.

For purposes of this policy, the term "parent" includes a legal guardian or other person who is legally responsible for the welfare of the child.

Scope

Under Title IX, schools may operate or sponsor separate teams for members of each sex where selection for such teams is based on competitive skill or the activity involved is a contact sport. Our District has separate teams based on biological sex. This policy applies to all District-organized athletics within the District schools.

Designation of Teams

Each District-organized athletic team or sport must be expressly designated as one of the following based on the biological sex of team members:

1. Men, boys, or male;
2. Women, girls, or female; or
3. Coed or mixed, including both males and females.

Men's, Boys', or Male Teams

- A. Unless subsection (b) applies, only student-athletes whose biological sex is male shall both compete on and practice with the men's, boys', or male teams.
- B. If the District offers a team for one sex, but not a team for the other sex and athletic opportunities for members of the that sex have previously been limited, then members of the excluded sex may try out for the available team, unless it is a contact sport. Contact sports include (but are not limited to) boxing, wrestling, rugby, ice hockey, football, basketball, and any other sport in which the primary activity involves bodily contact.

Women's, Girls', or Female Teams

Only student-athletes whose biological sex is female shall both compete on and practice with the women's, girls', or female teams.

Compliance

[At the time of registration, either the parent or the student-athlete who is eighteen (18) years of age or older must affirm that the team he or she is registering for matches the original sex marker on his or her birth certificate.]

[OR: At the time of registration, the parent or the student-athlete who is eighteen (18) years of age or older must submit documentation establishing biological sex, which may include the student-athlete's original birth certificate. The original sex listed will determine team eligibility.]

[OR: The first season a student-athlete completes registration for the sport, he or she will be required to present documentation establishing biological sex, which may include the student-athlete's original birth certificate. The original sex listed will determine team eligibility. If the student-athlete registers for a team of the same sex in the future, he or she will not be required to present documentation re-establishing biological sex.]

If a student-athlete's birth certificate or other government-issued document has been amended or reissued to reflect a sex designation different from the student-athlete's biological sex, that amended or reissued document shall not be used to determine eligibility under this policy.

A parent or student-athlete who is eighteen (18) years of age or older must disclose the existence of any amended or reissued birth certificate or other government-issued document that changes the student's sex designation. Knowingly submitting, relying upon, or failing to disclose such an amended or reissued document for the purpose

of obtaining eligibility inconsistent with this policy may result in the student-athlete's immediate removal from the team and ineligibility to participate in District-organized athletics in the future. A student-athlete determined to be ineligible shall not participate on the team for which the student is ineligible.

Concerns about eligibility may be raised through the Dispute Resolution process by a parent or by the student-athlete.

Dispute Resolution

Any parent of a District student-athlete, or student-athlete, may submit a complaint regarding eligibility under this policy.

Filing a complaint

The complaint must include:

- A. The name of the student-athlete whose participation is at issue, date, and signature of the complainant;
- B. What particular sport(s) the student-athlete would like to be participating in or are at issue;
- C. The specifics as to why participation should or should not be allowed, including any relevant documentation reasonably necessary to determine eligibility under this policy.

Review and Recommendation

Within five (5) school days of receiving a complaint, or as soon thereafter as reasonably practicable, the Athletic Director shall review the complaint and meet with the student-athlete, parent(s), the complainant (if not the parent or student-athlete), and any relevant coaches. The Athletic Director shall consider all of the following:

- A. The birth certificate of the student-athlete whose participation is at issue;
- B. The relevant medical history of the student-athlete at issue;
- C. The safety of the other student-athletes on or trying out for the team;
- D. The privacy of the other student-athletes on or trying out for the team;
- E. Any additional information gathered during the meetings and review.

Pending a final determination, the Athletic Director may issue interim eligibility determinations to preserve competitive fairness and ensure compliance with this policy.

Timeline and Final Decision

Within five (5) school days of receiving a complaint, or as soon thereafter as reasonably practicable, the Athletic Director shall make an initial eligibility determination. The Athletic Director's determination may be appealed to the school board by submitting a written appeal within five (5) school days of the determination. The school board shall issue the District's final determination as soon as reasonably practicable.

If an athletic season, tournament, playoff, or other competition is ongoing or imminent, the District shall make reasonable efforts to issue a final determination on an expedited basis.

Confidentiality

The District shall make reasonable efforts to protect the privacy of student education records throughout the eligibility review process consistent with applicable law.



Legal Analysis – National

The Supreme Court of the United States has ruled that schools may determine eligibility for girls' and women's sports teams based on biological sex under both Title IX and the Equal Protection Clause of the Fourteenth Amendment. ***West Virginia, et al. v. B.P.J.*, 609 U.S. _____ (2026)**. Under Title IX, schools are permitted to maintain women's and girls' sports for biological females because the term "sex" means biological sex, and there are biological differences between the sexes. *Id.* The Court unanimously concluded that Title IX permits schools to separate athletic teams based on biological sex. The Court also found that separating sports teams by biological sex was permissible under the Equal Protection Clause of the Fourteenth Amendment. *Id.*

Title IX is a federal law that prohibits sex discrimination in education programs or activities receiving federal financial assistance. **20 U.S.C. § 1681**. The implementing regulations of Title IX govern athletics. **34 C.F.R. § 106.41**. Schools may have separate teams for members of each sex. **34 C.F.R. § 106.41(b)**. If schools have a sports team for boys (members of one sex), but not for girls (members of the other sex and members of that sex have been previously limited), then girls may try out for the boys' team, unless the team is for a contact sport. **34 C.F.R. § 106.41(b)**.

The definitions used in this policy for "sex," "female," "male," "girls," and "boys" are modeled after the same definitions used in Executive Order 14168.*

Consult state law to determine whether additional requirements apply.

Even if your state does not have a law or regulation mandating sports be separated by biological sex, your school district may still elect to adopt this policy. "The question before the Court is: Under Title IX and the Equal Protection Clause of the Fourteenth Amendment, may *schools* maintain women's and girls' sports for biological females? In other words, may *schools* determine eligibility for women's and girls' sports based on biological sex? The answer is yes." (Emphasis added.) ***West Virginia, et al. v. B.P.J.*, 609 U.S. _____ (2026)**.



This should not be construed as legal advice. Wisconsin Institute for Law & Liberty (WILL) is a 501(c)(3) nonprofit organization that is providing model policies as a resource for anyone to review and use.

* The executive branch has also weighed in on this issue. **Executive Order 14201** states that the Attorney General must take appropriate action to "affirmatively protect all-female athletic opportunities and all-female locker rooms and thereby provide the equal opportunity guaranteed by Title IX of the Education Amendments of 1972." This includes prioritizing "Title IX enforcement actions against educational institutions... that deny female students an equal opportunity to participate in sports and athletic events by requiring them, in the women's category, to compete with or against or to appear unclothed before males." School districts should know that the Office for Civil Rights under the Department of Education has opened investigations into school districts that allow biological boys to participate on girls' sports teams, share locker rooms with women and girls, and share bathrooms with women and girls. See, e.g., *U.S. Department of Education, U.S. Department of Education Opens Three New Investigations into Michigan School Districts for Alleged Title IX Violations*, June 18, 2026, available at: <https://www.ed.gov/about/news/press-release/us-department-of-education-opens-three-new-investigations-michigan-school-districts-alleged-title-ix-violations>; *U.S. Department of Education, U.S. Department of Education Opens Investigations into Maryland State Department of Education and Three Maryland School Districts for Alleged Title IX Violations*, June 23, 2026, available at: <https://www.ed.gov/about/news/press-release/us-department-of-education-opens-investigations-maryland-state-department-of-education-and-three-maryland-school-districts-alleged-title-ix>; *U.S. Department of Education, U.S. Department of Education Initiates Title IX Investigation into Wisconsin School District Over Alleged Use of Women's Restrooms by Biological Men*, March 5, 2026, available at: <https://www.ed.gov/about/news/press-release/us-department-of-education-initiates-title-ix-investigation-wisconsin-school-district-over-alleged-use-of-womens-restrooms-biological-men>.