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Higher Education Alert

May 11, 2026

Eighth Circuit reinforces limits on private Title IX claims and the legal effect of federal guidance

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Private Title IX plaintiffs challenging athletics policies face a higher bar: disparate-impact allegations alone are not enough without plausible facts showing intentional discrimination.



What's the impact?

- Executive Orders, OCR investigations, and federal enforcement posture may drive compliance and regulatory risk, but they do not create privately enforceable rights or supply a standalone basis for injunctive relief.
- Colleges and universities should separate litigation exposure from enforcement exposure—planning for potential administrative scrutiny while recognizing that private suits will turn on statutory causes of action and the intent requirement.

The US Court of Appeals for the Eighth Circuit in a recent decision affirmed the denial of a preliminary injunction in a Title IX challenge to Minnesota's transgender athlete participation policy. The decision underscores a critical limitation on private Title IX enforcement: the statute's

implied private right of action reaches only intentional discrimination and does not encompass disparate-impact claims.

Equally significant, the Court declined to treat Executive Branch directives, agency investigations, or federal enforcement positions as altering that analysis. For colleges and universities, the decision sharpens an increasingly important distinction between binding law enforceable through private litigation and broader policy positions advanced through executive action and administrative enforcement. See *Female Athletes United v. Ellison*, 172 F.4th 1019 (8th Cir. 2026).

Background

The Minnesota State High School League (League) has long required that student participation in athletics align with a student's gender identity, consistent with state and federal law. Under this framework, a transgender student-athlete, Doe, competed on a varsity girls' softball team beginning in 2023 and became a significant contributor by the 2024 season, earning All-State honors.

That policy came under renewed scrutiny in early 2025, when President Donald Trump issued an Executive Order directing federal agencies to intensify Title IX enforcement against institutions that permit transgender girls to compete in women's athletics. Shortly thereafter, the US Department of Education opened an investigation into the League's participation rules.

The legal landscape quickly became contested. The Minnesota Attorney General issued a formal opinion concluding that the Executive Order did not have the force of law and did not displace Minnesota's Human Rights Act, which requires equal access to educational programs regardless of gender identity. Federal officials took the opposite position, asserting that the League's policy conflicted with Title IX.

Caught between these competing state and federal directives, the League continued to apply its existing rule and permitted Doe to compete during the 2025 season.

Female Athletes United (FAU) subsequently filed suit under Title IX against state officials and school entities, alleging that the policy deprived its members of equal athletic opportunity. FAU sought preliminary injunctive relief barring transgender athletes from participating in girls' sports, relying on alleged competitive disadvantages and lost athletic opportunities.

The district court denied relief, concluding that FAU's claims were unlikely to succeed because they rested on a disparate-impact theory not actionable under Title IX's private right of action. The Eighth Circuit affirmed.

Analysis

On appeal, FAU argued that the district court adopted an unduly narrow interpretation of Title IX and failed to give sufficient weight to the federal government’s enforcement position, including the Executive Order and subsequent OCR investigation.

The Eighth Circuit rejected that argument. Framing the case as a threshold question concerning the scope of Title IX’s implied private right of action, the Court held that FAU’s allegations were not cognizable because they challenged the effects of the League’s policy—not intentional discrimination by the defendants.

Although FAU characterized its claims as “ineffective accommodation” and “unequal treatment,” the Court concluded that the alleged harms—competitive disadvantage, reduced opportunities, and related impacts—amounted to disparate-impact allegations. Under existing Title IX doctrine, those claims are not privately enforceable.

That conclusion proved dispositive. Because FAU failed to plausibly allege intentional discrimination “on the basis of sex,” it could not establish a likelihood of success on the merits sufficient to justify preliminary injunctive relief.

Importantly, the Court did not alter its analysis based on the federal government’s policy directives or enforcement activity. While acknowledging the Executive Order and OCR investigation as evidence of an active federal enforcement posture, the Court treated those materials as distinct from binding statutory authority. In the Court’s view, executive action and agency guidance could not expand Title IX’s private right of action, create privately enforceable rights, or independently justify injunctive relief against state actors administering policies consistent with state law.

Notably, the Court did not resolve the underlying policy dispute concerning transgender participation in athletics, nor did it attempt to reconcile the competing federal and state interpretations of Title IX obligations. Instead, the Court treated the limits of private enforcement under Title IX as fixed: absent plausible allegations of intentional discrimination, the statute does not authorize judicial intervention.

Takeaways

The decision reinforces a foundational principle with broader significance beyond the immediate athletics context: federal executive guidance, enforcement priorities, and agency statements do not themselves carry the force of law and cannot independently support private injunctive relief.

For colleges and universities, that principle carries several important implications.

First, plaintiffs cannot rely on Executive Orders, agency investigations, or federal enforcement positions as a substitute for statutory authority in private Title IX litigation. Even where federal agencies articulate aggressive enforcement priorities, those positions do not alter the substantive requirements governing private causes of action.

Second, the decision underscores that tension between federal executive interpretations and state statutory frameworks does not, standing alone, create a judicially enforceable basis to enjoin state action. Absent a viable statutory claim under Title IX itself, executive guidance cannot operate as an independent source of rights or remedies.

Third, the ruling clarifies the limits of using federal enforcement activity as litigation leverage. Although agency investigations and federal directives may increase regulatory scrutiny and compliance risk, they do not lower the doctrinal threshold for obtaining preliminary relief in federal court.

In short, the Eighth Circuit drew a clear distinction between policy direction and legal authority, reaffirming that private Title IX litigation must remain grounded in statutory text and recognized rights of action—not evolving executive interpretations or enforcement priorities.

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