

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

STEPHANIE LYNNE BROWN ,

Plaintiff,

v.

WASHINGTON INTERSCHOLASTIC
ACTIVITIES ASSOCIATION et al.,

Defendants.

CASE NO. 3:26-cv-05616-DGE

ORDER ON EMERGENCY
MOTION FOR INJUNCTION
PENDING APPEAL (DKT. NO. 63)

Before the Court is Plaintiffs' emergency motion for an injunction pending appeal. (Dkt. No. 63.) For the reasons that follow, Plaintiffs' motion is DENIED.

On August 24, 2026, the Court denied Plaintiffs' motion for preliminary injunction. (Dkt. No. 58.) Plaintiffs appealed that order to the Ninth Circuit on August 25, 2026. (Dkt. No. 60.) On August 26, Plaintiffs filed the instant motion. (Dkt. No. 63.) That same day, the Court ordered Defendants to respond (Dkt. No. 64); Defendants filed their response briefs on August 28. (Dkt. Nos. 65, 66, 68.)

1 The Court refers to Dkt. No. 58 for a full recitation of the facts underlying Plaintiffs'
2 motion.

3 ““While an appeal is pending from an interlocutory order or final judgment that grants,
4 continues, modifies, refuses, dissolves, or refuses to dissolve or modify an injunction,’ . . . the
5 district court may ‘suspend, modify, restore, or grant an injunction’ during the pendency of the
6 appeal.” *Tobin v. Rollins*, Case No. 2:25-cv-02259-CSK, 2026 WL 1965921, at *2 (E.D. Cal.
7 July 7, 2026) (quoting Fed. R. Civ. P. 62(d)). Rule 62(d) “grants the district court no broader
8 power than it has always inherently possessed to preserve the status quo during the pendency of
9 an appeal; it does not restore jurisdiction to the district court to adjudicate anew the merits of the
10 case.” *Nat. Res. Def. Council, Inc. v. Sw. Marine, Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001)
11 (quotations omitted). Federal Rule of Appellate Procedure 8 requires that a party must first
12 move for an injunction pending appeal in the district court before moving the appellate court.
13 Fed. R. App. P. 8(a)(1)(C).

14 “The standard for evaluating an injunction pending appeal is similar to that employed by
15 district courts in deciding whether to grant a preliminary injunction.” *Feldman v. Ariz. Sec’y of*
16 *State’s Off.*, 843 F.3d 366, 367 (9th Cir. 2016) (en banc). Accordingly, Plaintiffs must show: (1)
17 a likelihood of success on the merits; (2) a likelihood of irreparable harm to the moving party in
18 the absence of preliminary relief; (3) that the balance of equities tips in favor of the moving
19 party; and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*,
20 555 U.S. 7, 20 (2008). The first factor “is a threshold inquiry and is the most important
21 factor.” *Env’t Prot. Info. Ctr. v. Carlson*, 968 F.3d 985, 989 (9th Cir. 2020). However, parties
22 do not need to meet the “high bar for reconsideration to secure an injunction pending appeal.”
23 *NetChoice v. Bonta*, 761 F. Supp. 3d 1232, 1235 (N.D. Cal. 2025). “[T]he fact that a court
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1 previously found that a preliminary injunction was not warranted should carry significant weight,
2 so the circumstances must be of unusual magnitude to justify a district court granting an
3 injunction pending appeal after denying a preliminary injunction.” *Id.* at 1236.

4 In their motion, Plaintiffs argue Defendants’ transgender-inclusive policies force Brown
5 to “condition K.M.K.’s access to public education benefits—here, athletics—on forfeiting her
6 right to direct her daughter’s care and upbringing and to make consequential decisions about
7 [K.M.K.’s] physical safety.” (Dkt. No. 63 at 4.) They argue Defendants’ policies support an
8 inference of both intentional discrimination and reflect a deliberate indifference toward an
9 obvious risk of injury to girls in violation of Title IX. (*Id.* at 6.) Finally, they argue the District’s
10 “official misconduct” by failing to properly address K.M.K.’s allegations of sexual assault has
11 created a hostile environment in its own right. (*Id.* at 8–9.) Plaintiffs “move for an injunction
12 pending appeal to avoid the irreparable harm that will occur without interim protection[]” and
13 seek the same relief they requested in their motion for preliminary injunction. (*Id.* at 2; Dkt. No.
14 63-1 at 4–5.) In their responses, Defendants collectively argue that Plaintiffs have presented no
15 new evidence or argument that warrant granting an injunction. (Dkt. Nos. 65 at 1; 66 at 1–2; 68
16 at 2.) The Court agrees.

17 Plaintiffs raise the argument that Defendants (and the Court) erroneously relied on Ninth
18 Circuit precedent that has been overruled in considering Brown’s Fourteenth Amendment
19 parental rights claim. (Dkt. No. 63 at 2–3.) Specifically, Plaintiffs argue *Mirabelli v. Bonta*, 607
20 U.S. 492 (2026) (per curiam) and *Mahmoud v. Taylor*, 606 U.S. 522 (2025), overturned *Parents*
21 *for Privacy v. Barr*, 949 F.3d 1210 (9th Cir. 2020), which held in part that parents lack the due
22 process right to direct school administration generally. (*See id.* at 3); *Barr*, 949 F.3d at 1231.
23 However, as OSPI points out, neither *Mirabelli* nor *Mahmoud* “purported to disturb *Barr*’s
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1 recognition of nearly a century of precedent limiting the substantive due process rights of parents
2 to direct school administration more generally[.]” and further, both cases “support the doctrinal
3 distinction *Barr* placed on parents’ religious upbringing and substantive due process upbringing
4 claims[.]” (Dkt. No. 65 at 3.)

5 For Plaintiffs’ theory to be true, the decisions of the Supreme Court “must have undercut
6 the theory or reasoning underlying the prior circuit precedent in such a way that the cases are
7 clearly irreconcilable.” *Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (en banc). “It is
8 not enough for there to be ‘some tension’ between the cases or for the intervening authority to
9 ‘cast doubt’ on this Court’s prior authority.” *Tingley v. Ferguson*, 47 F.4th 1055, 1075 (9th Cir.
10 2022) (quoting *Lair v. Bullock*, 697 F.3d 1200, 1207 (9th Cir. 2012)), *abrogated on other*
11 *grounds by Chiles v. Salazar*, 607 U.S. ----, 146 S. Ct. 1010 (2026). That has not happened here.
12 *Mirabelli* applied narrowly to the context of parents’ notice of their *own* child’s gender dysphoria
13 at school; it protected a “right not to be shut out of decisions about their child’s mental health[.]”
14 but did not extend to a right to notice about *other* children. 607 U.S. at 497. And although
15 *Mahmoud* recognized a parental opt-out right in the context of LGBTQ+ storybooks on First
16 Amendment grounds, that right permitted parents to “have their children opt out of a particular
17 educational requirement” rather than “the right to micromanage the public school curriculum[.]”
18 606 U.S. at 568. In short, Plaintiffs have not met the “high standard” of the clearly irreconcilable
19 requirement to show that *Barr* has been overruled. *Avilez v. Garland*, 69 F.4th 525, 533 (9th Cir.
20 2023) (citation and quotation marks omitted). And because this Court can apply Ninth Circuit
21 precedent “consistently with that of the higher authority, [it] must do so.” *Id.* (citation and
22 quotation marks omitted).

1 In general, the Court relies on its analysis in its order denying Plaintiffs' motion for
2 preliminary injunction to deny Plaintiff's motion for an injunction pending appeal. (*See* Dkt. No.
3 58.) Plaintiffs have not shown a likelihood of success on the merits of their claims, nor have
4 they shown they will suffer irreparable harm in the absence of relief. (*Id.*) And in fact, in its
5 response to Plaintiffs' motion, the District explains that K.M.K. has applied—and been approved
6 for—a transfer to Puyallup High School on an expedited timeline. (Dkt. Nos. 68 at 2–3; 69 at 2.)
7 This weakens Plaintiffs' claims of irreparable harm because one of their requested remedies has
8 been granted outside the scope of this litigation.

9 In conclusion, the Court finds Plaintiffs have not met the standard for granting an
10 injunction pending appeal. Plaintiffs' motion (Dkt. No. 63) is therefore DENIED.

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12 Dated this 31st day of August, 2026.

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David G. Estudillo
United States District Judge

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