

PLANNING, POLICY AND GOVERNMENTAL AFFAIRS
AUGUST 12-13, 2026

SUBJECT

Temporary Proposed Rule 08-0601-2601 Resolution of Athletic Participation Disputes

BACKGROUND

In 2020, the Idaho Legislature enacted House Bill 500, the Fairness in Women's Sports Act, which added a new Chapter 62 to Title 33, Idaho Code. The Act became effective July 1, 2020, but a federal district court entered a preliminary injunction prohibiting its enforcement, and the Ninth Circuit affirmed that injunction. On June 30, 2026, the United States Supreme Court reversed the Ninth Circuit and remanded the case, holding that Idaho did not violate the Equal Protection Clause by limiting women's and girls' teams to biological females. In the consolidated decision, the Court also held that Title IX permits schools to maintain separate men's and women's athletic teams based on biological sex. The decision cleared the way for enforcement of the Act.

Idaho Code § 33-6203 requires interscholastic, intercollegiate, intramural, and club athletic teams or sports sponsored by a public primary or secondary school, a public institution of higher education, or an institution whose students or teams compete against a public school or institution to be designated, based on biological sex, as: (1) male, men's, or boys'; (2) female, women's, or girls'; or (3) coed or mixed. Teams designated for females, women, or girls may not be open to students of the male sex. When a student's biological sex is disputed, the statute establishes a verification process involving documentation from the student's personal health care provider and provides that the State Board of Education "shall promulgate rules . . . regarding the receipt and timely resolution of such disputes."

PROPOSAL

The temporary proposed rule Docket 08-0601-2601 creates a new chapter of rule, IDAPA 08.06.01. While this chapter will be used to address rulemaking in association with HB 500 (2020), it also provides a location for future rules that apply to more than one aspect of Idaho's K-20 education system.

The Board's authority to promulgate rule for Idaho Code § 33-6203 is limited to outlining the process institutions and schools will use to address disputes about a student's biological sex. The temporary proposed rule presented to the Board establishes a single process for K-12 schools and higher education, while allowing appropriate flexibility for institutions, districts, and schools to implement the rule in a manner aligned to their context. Institutions and schools will be expected to identify a "designated administrator" to manage the dispute intake, notices, review of documentation required by statute, and resolution. Consistent with Idaho Code § 33-6203, which limits the Board's rulemaking authority to "the receipt and timely resolution of such disputes," the rule addresses the dispute-resolution process and does not establish or determine, student eligibility for athletic participation.

As a temporary proposed rule, this action provides immediate guidance for implementation while allowing refinement during the rulemaking process.

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IMPACT

Approval of the temporary proposed rule will allow the rule to take effect on August 12, 2026, which will provide schools and institutions with clear guidance for the 2026–2027 school year.

This action will also initiate the proposed rulemaking process, allowing for public comment and further refinement before adoption as a final rule. The pending rule will be brought to the Board for consideration in November.

BOARD STAFF COMMENTS AND RECOMMENDATIONS

To ensure there is an established dispute process for institutions and schools to utilize during the 2026-2027 school year, Board staff developed temporary proposed rule Docket 08-0601-2601 to align with HB 500a (2020), with feedback from legal counsel and stakeholders. Board staff plans to develop and release implementation guidance and recommendations.

While the temporary rule will be in place for the 2026-2027 school year, Board staff is committed to ensuring stakeholders and the public can provide feedback regarding the rule as it simultaneously moves forward through the proposed and pending rule process.

Board staff recommends approval.

ATTACHMENTS

Attachment 1 – 08-0601-2601 Notice of Temporary Proposed Rulemaking
Attachment 2 – 08-0601-2601 Temporary Proposed Rule Redline

BOARD ACTION

I move to approve the temporary proposed rule, Docket No. 08-0601-2601, pertaining to resolution of athletic participation disputes.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

APPLICABLE STATUTE, RULE OR POLICY

Idaho Code §33-6201 to §33-6206
IDAPA 08.06.01 Rules Governing

REFERENCE

March 2020	The Idaho Legislature passed HB 500a, the Fairness in Women's Sports Act.
April 2020	The Hecox v. Little lawsuit was filed. Shortly after, the courts placed an injunction to prevent HB 500a (2020) from taking effect while the lawsuit moved through the courts.
June 2026	The U.S. Supreme Court released a ruling upholding HB 500a. Changes to statute took effect.

Notice of Temporary and Proposed Rule

IDAPA 08 – STATE BOARD OF EDUCATION

08.06.01 – RULES GOVERNING THE K-12 AND POSTSECONDARY EDUCATION SYSTEM

DOCKET NO. 08-0601-2601 (*OARC will assign*)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

GOVERNOR'S STATEMENT:

An earlier effective date prior to legislative review is required in accordance with the provisions of Idaho Code Section 67-5226(2)(b) to comply with amendments to governing law that became effective June 30, 2026, due to the United States Supreme Court decision to uphold the Idaho Fairness in Women's Sports Act.

EFFECTIVE DATE: The effective date of the temporary rule is August 12, 2026.

AUTHORITY: In compliance with Idaho Code Sections 67-5226 notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Idaho Code Sections [33-105](#), [33-107](#), [33-116](#), [33-1612](#), and [33-6203](#).

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking may be scheduled if deemed necessary by the agency based on stakeholder feedback or other considerations. Public hearing(s) will also be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 23, 2026.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking establishes procedures for schools, local education agencies, and public institutions of higher education to receive, review, document, and resolve disputes regarding a student's biological sex for purposes of athletic participation pursuant to Idaho Code Section 33-6203. The rule establishes requirements for dispute submissions, designation of responsible administrators, notices, documentation review, written resolutions, and confidentiality to support consistent statewide implementation of the Fairness in Women's Sports Act. The temporary rule is being adopted following the June 30, 2026, United States Supreme Court decision upholding Idaho's Fairness in Women's Sports Act and is intended to provide a uniform administrative process while the permanent rulemaking process is completed.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: **NA**

NEGOTIATED RULEMAKING: Pursuant to Idaho Code Section 67-5220(2) negotiated rulemaking was not conducted because the June 30, 2026, decision upholding the Fairness in Women's Sports Act created an immediate need to establish procedures required by Idaho Code Section 33-6203(3). Conducting negotiated rulemaking was not feasible prior to consideration of the temporary and proposed rule. Stakeholder input will be solicited during the public comment process.

INCORPORATION BY REFERENCE: Pursuant to Idaho Code Section 67-5229(2)(a) the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: **NA**

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Nicholas Wagner at rules@edu.idaho.gov, 208-488-7586.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2026.

DATED this 12th day of August 2026.

Nicholas Wagner
Administrative Rules Coordinator, Idaho State Board of Education
650 W State St., PO Box 83720, Boise, ID 83720-0037
Phone: (208)488-7586; Fax: (208)334-2632

08.06.01 – RULES GOVERNING THE K-12 AND POSTSECONDARY EDUCATION SYSTEM

000. LEGAL AUTHORITY.

Article IX, Section 2 of the Idaho Constitution and Sections 33-105, 33-107, 33-116, 33-1612, and 33-6203 Idaho Code. ()

001. SCOPE.

Uniform and thorough standards by the State Board of Education to address issues and processes that impact more than one entity under the Board's governance in support of the implementation of a coherent K-20 public education system. ()

002. DEFINITIONS.

01. Institution of higher education. Referred to as an institution in this rule, is defined as any accredited public university or community college in Idaho, or any public professional-technical school operated by the state of Idaho or any political subdivision thereof. ()

02. Local Education Agency (LEA). An Idaho public school district or charter school pursuant to Section 33-5203(8), Idaho Code. ()

003. -- 009. (RESERVED)

010. RESOLUTION OF ATHLETIC PARTICIPATION DISPUTES

01. Scope. These rules establish procedures for the receipt and timely resolution of disputes regarding a student's biological sex under Section 33-6203, Idaho Code. ()

02. Designated Administrator. Each institution and school shall identify a designated administrator responsible for resolving disputes under Section 33-6203, Idaho Code. Each institution, school, and LEA shall publish the name and contact information for the designated administrator on its website. ()

a. A local education agency (LEA) with more than one school may identify a single designated administrator for all schools under its governance. ()

b. Each institution, school, or LEA shall identify an alternate for the designated administrator in cases of a reasonable conflict of interest or lack of availability to address a dispute. For purposes of this chapter, if an alternate is identified, all references to the "designated administrator" shall apply to the alternate only for the duration of the dispute. ()

c. The designated administrator shall process athletic disputes including: ()

i. Receipt of disputes. ()

ii. Providing required notices. ()

iii. Receiving documentation to verify the student's biological sex as required by Section 33-6203, Idaho Code. ()

iv. Maintaining confidential records. ()

v. Issuing a written resolution. ()

03. Content of Dispute. A written dispute shall be submitted electronically or via certified mail to the designated administrator. ()

a. The written dispute submission shall include: ()

i. The name and contact information of the student who is deprived of an athletic opportunity or suffers a direct or indirect harm (dispute initiator). If the dispute initiator is a minor, the name and contact information of the student's parent or legal guardian shall be provided and the student's parent or legal guardian shall then constitute the dispute initiator. ()

ii. The name of the student whose biological sex is in question and identification of that student's applicable interscholastic, intercollegiate, intramural, or club athletic teams or sports. ()

iii. A statement describing the factual basis for the dispute. ()

04. Review and Notices. As soon as is practicable and no later than five (5) business days of receipt of a dispute, the designated administrator shall conduct an initial review and issue the applicable notices as outlined in 010.04.a. and 010.04.b. below. ()

a. Notice to Dispute Initiator. ()

i. If the dispute does not include the required information as outlined in Section 010.03.a, the designated administrator shall notify the dispute initiator that the dispute is declined due to failure to provide information required by rule. Dispute submissions may not be amended or supplemented, but a new submission may be prepared and re-submitted for review. ()

ii. If the institution or school has documentation verifying the student's biological sex as required by Section 33-6203(3), Idaho Code, on file, the designated administrator may decline further investigation and include notification that the matter is closed in the acknowledgment of receipt. ()

iii. If the dispute is eligible for review, the designated administrator shall provide the dispute initiator with an acknowledgement of receipt. ()

b. Notice to Student Whose Biological Sex is in Question. ()

i. If the dispute is declined pursuant to 010.04.a.i or 010.04.a.ii, no notification is required to the student or the minor student's parent or legal guardian. ()

ii. If the dispute is eligible for review, the designated administrator shall provide the student or the minor student's parent or legal guardian with a notification of dispute. ()

(1) If the institution or school does not have documentation verifying the student's biological sex as required by Section 33-6203(3), Idaho Code, on file, the notification of dispute shall include a statement of documentation required by Section 33-6203(3), Idaho Code, to be submitted pursuant to Section 010.05. The dispute shall be addressed per Section 010.06. ()

05. Documentation. The designated administrator shall accept documentation verifying the student's biological sex as required by Section 33-6203(3), Idaho Code. ()

a. If the institution or school has documentation verifying the student's biological sex as required by Section 33-6203, Idaho Code, on file, such as an athletic physical form, the designated administrator shall use said documentation. ()

b. If the institution or school does not have documentation verifying the student's biological sex as required by Section 33-6203, Idaho Code, on file, the student or the minor student's parent or legal guardian shall submit documentation from the student's personal health care provider in the manner required in Section 33-6203(3), Idaho Code, or shall arrange for the submission of such documentation directly from the student's personal health care provider to the designated administrator. ()

c. The designated administrator shall not require or request documentation different from or in addition to that required by Section 33-6203(3), Idaho Code. ()

06. Review and Resolution. As soon as is practicable and no later than five (5) business days of receipt of documentation verifying the student's biological sex as required by Section 33-6203(3), Idaho Code, the designated administrator shall review the dispute and the submitted documentation, and issue a written resolution. ()

a. The designated administrator shall issue a written resolution to the student whose biological sex is in question or the minor student's parent or legal guardian. The written resolution shall confirm that the designated administrator has received documentation verifying the student's biological sex as required by Section 33-6203(3), Idaho Code, and shall indicate the student's biological sex as stated in the documentation. ()

b. The designated administrator shall notify the dispute initiator that the matter has been closed.()

07. Confidentiality. Records created or received pursuant to these rules shall be maintained in accordance with applicable law. ()

a. The identity of the dispute initiator shall be limited to individuals whose participation is reasonably necessary to resolve the dispute. ()

b. The identity of the student whose biological sex is in question, the documentation verifying the student's biological sex as required by Section 33-6203(3), and the written resolution shall be limited to individuals whose participation is reasonably necessary to resolve the dispute and individuals whose participation is reasonably necessary to determine eligibility for participation in applicable interscholastic, intercollegiate, intramural, or club athletic teams or sports consistent with Section 33-6203, Idaho Code. ()

c. The documentation verifying the student's biological sex as required by Section 33-6203(3), Idaho Code, shall be maintained separately from general student educational records. ()

d. Disclosure of documentation shall occur only as authorized or required by law. ()

e. If a student transfers institutions or schools, the student may request a copy of the written resolution. The release shall be limited to the written resolution documentation. ()

011. – 999. (RESERVED)