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SCHOOL DISTRICT, AMANDA
CHANN, and LEANN IACUONE

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

SAVE GIRLS' SPORTS, an
unincorporated California association;
T.S., a minor by and through her father
and natural guardian, RYAN
STARLING, individually, and on
behalf of all others similarly situated;
and K.S., a minor by and through her
father and mother and natural
guardians, DANIEL SLAVIN and
CYNTHIA SLAVIN, individually, and
on behalf of all others similarly
situated;

Plaintiffs,

vs.

TONY THURMOND, in his official
capacity as State Superintendent of
Public Instruction; ROB BONTA, in his
official capacity as State Attorney
General; RIVERSIDE UNIFIED
SCHOOL DISTRICT; LEANN
IACUONE, Principal of Martin Luther
King High School, in her personal and
official capacity; and AMANDA
CHANN, Assistant Principal and
Athletic Director of Martin Luther King
High School, in her personal and
official capacity,

Defendants.

CASE NO. 5:24-cv-02480-SSS (SPx)

**DEFENDANTS RIVERSIDE
UNIFIED SCHOOL DISTRICT,
LEANN IACUONE, AND AMANDA
CHANN'S MOTION TO DISMISS
COMPLAINT FOR FAILURE TO
STATE A CLAIM AND/OR FOR A
MORE DEFINITE STATEMENT**

[F.R.C.P. Rule 12(b)(1), Rule 12(b)(6)
and Rule 12(e)]

The Hon. Sunshine Suzanne Sykes

Trial Date: None Set

*(Filed concurrently with 1) Declaration of
Milton E. Foster III in Support of Motion to
Dismiss; 2) Request for Judicial Notice; 3)
[Proposed] Order)*

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on March 28, 2025, at 2:00 p.m., or as soon thereafter as counsel may be heard via Zoom in the courtroom of the Honorable Sunshine Suzanne Sykes, located in the United States Courthouse, 3470 Twelfth Street, Riverside, CA 92501, Defendants Riverside Unified School District (“District”), Dr. Leann Iacuone (“Iacuone”), and Amanda Chann (“Chann”) (the District, Iacuone, and Chann collectively hereinafter “Defendants”) will and hereby do move this Court to dismiss Plaintiffs T.S., K.S., and Save Girls’ Sports’ (collectively “Plaintiffs”) Fourth, Fifth, Sixth, and Seventh Claims for Relief in Plaintiffs’ First Amended Complaint (“FAC”).

Defendants Iacuone and Chann are named as defendants to each of Plaintiffs’ seven claims for relief. The District is named as a defendant to Plaintiffs’ Fourth, Fifth, Sixth, and Seventh Claims for Relief. Defendants move for dismissal as follows:

1. As to the Fourth and Seventh Claims for Relief under 12(b)(6) due to Plaintiff’s failure to state a claim upon which relief can be granted due to Plaintiffs’ failure to allege facts sufficient to constitute Intentional Discrimination under Title IX or a violation of Education Code section 220.

2. As to the Fifth and Sixth Claims for Relief under 12(b)(1) as Plaintiffs have not alleged an injury in fact sufficient to confer constitutional standing.

3. In the alternative, as to Plaintiff’s Fifth and Sixth Claims for Relief, Defendants seek an order that Plaintiffs’ provide a more definite statement of their claims pursuant to FRCP 12(e) as it is unclear which allegations apply to which Defendants as Plaintiffs purport to challenge California Assembly Bill 1266.

This motion is made following the L.R. 7-3 conference of counsel which took place between February 21, 2025 and February 28, 2025 via email. Notably, during the process of conducting the L.R. 7-3 conference of counsel, Plaintiffs’ counsel

1 confirmed that Plaintiffs' claims arising under Title IX were not being pursued
2 against Dr. Iacuone and Ms. Chann in their individual capacities. Accordingly,
3 Defendants agreed to forego bringing a Motion to Dismiss Plaintiffs' Title IX claims
4 on the grounds that Dr. Iacuone and Ms. Chann are not suable entities for the
5 purposes of Title IX.

6 This Motion is based upon this Notice of Motion and the attached
7 Memorandum of Points and Authorities, filed concurrently herewith, all of the
8 pleadings, files, and records in this proceeding, any matters to which the Court may
9 properly judicially notice at the pleading stage, and any argument or evidence that
10 may be presented to or considered by the Court prior to its ruling.

11 DATED: February 28, 2025

FAGEN FRIEDMAN & FULFROST, LLP

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13
14 By:



Milton E. Foster III

Attorneys for RIVERSIDE UNIFIED SCHOOL
DISTRICT, AMANDA CHANN, and LEANN
IACUONE

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiffs T.S., K.S., and Save Girls' Sports' ("SGS") (T.S., K.S., and SGS collectively "Plaintiffs") First Amended Complaint ("FAC") should be dismissed under Federal Rule of Civil Procedure ("FRCP") Rule 12(b)(1) as to Plaintiffs' Fifth and Sixth Claims for Relief against the Riverside Unified School District ("District"), Dr. Leann Iacuone ("Iacuone"), and Amanda Chann ("Chann") (District, Iacuone, and Chann hereinafter "Defendants") as Plaintiffs have failed to allege any injury in fact. Further, Plaintiffs' Fourth and Seventh Claims for Relief should be dismissed pursuant to FRCP Rule 12(b)(6) for failure to state a claim for which relief can be granted as to Plaintiffs' Fourth and Seventh Claims for Relief.

Plaintiffs' Fourth, Fifth, and Sixth Claims for Relief each arise under 20 U.S.C. section 1681 et seq ("Title IX"). Plaintiffs' Fifth and Sixth claims rely upon the theory that M.L. displaced T.S. on the Martin Luther King High School ("King") girls' varsity cross country team. Plaintiffs however fail to allege facts sufficient to establish that T.S. suffered any injury in fact as a result of M.L.'s selection to the King girls' varsity cross country team. Plaintiffs' allegations that T.S. would receive a varsity spot if M.L. were not on the team is purely speculative and unsupported by Plaintiffs' facts as alleged.

Plaintiffs' Fourth Claim for Relief, Intentional Discrimination under Title IX, is particularly problematic. Plaintiffs have alleged no facts to support the conclusion that cross country coaches gave preferential treatment to M.L. based on M.L.'s gender identity or that T.S. and K.S. would have been treated differently but for their sex. Plaintiffs instead rely solely on conclusory statements which are insufficient to adequately plead Plaintiffs' Fourth Claim for Relief.

Plaintiffs' Seventh Claim for Relief for Discrimination on the Basis of Gender under Education Code section 220 is wholly unsupported. Unlike Title IX, Section 220 contains no distinction between sex and gender. Rather, Education Code

1 section 220 provides for equal participation based on gender. Plaintiffs allegations
2 amount can only be read to infer compliance with Education Code section 220.
3 Further, Plaintiff has failed to plead facts sufficient to state a claim pursuant to
4 Education Code section 220.

5 In the alternative, Plaintiffs' FAC requires a more definitive statement.
6 Plaintiffs have failed to clearly allege which defendants are subject to which
7 allegations in Plaintiffs' challenges to Assembly Bill 1266 found in Plaintiffs' Fifth
8 and Sixth Claims for Relief.

9 **II. SUMMARY OF RELEVANT FACTS**

10 **A. Dr. Leann Iacuone and Amanda Chann are Employed by the** 11 **District at King High School**

12 The District is a school district located in Riverside County, California. FAC
13 ¶ 25. The District is responsible for the adoption and implementation of District
14 policies, and is further responsible for ensuring enforcement of District policies.
15 *Ibid.* Martin Luther King High School ("King") is a high school maintained and
16 operated by the District. FAC ¶ 80.

17 Dr. Iacuone is the Principal at King and is responsible for implementing and
18 enforcing District policies on the King campus. FAC ¶ 26. Dr. Iacuone is provided
19 with discretion in the implementation of District policies on an individualized basis.
20 *Ibid.* Ms. Chann serves as both the Assistant Principal and Athletic Director at King
21 and is similarly given discretion to implement and enforce District policies. FAC ¶
22 27. Ms. Chann would run with M.L. when M.L. was able to attend cross country
23 team practices. FAC ¶ 129. Ms. Chann is alleged to have made the decision to
24 place M.L. on the girls' cross country team. FAC ¶ 125.

25 **B. Plaintiffs T.S. and K.S. Compete on the King Girls' Cross Country** 26 **Team**

27 Plaintiff T.S. is an eleventh grade student at King and competes as a member
28 of the King girls' cross country team. FAC ¶¶ 19, 86. T.S. has received multiple

1 accolades while competing as a member of the King girls' cross country team
2 related to her time improvements. FAC ¶ 87. T.S. was first designated as a member
3 of the King girls' cross country team in August 2024. FAC ¶ 90. However, the
4 varsity top 7 is updated prior to every meet based upon a variety of factors. FAC ¶
5 114.

6 Plaintiff K.S. is a ninth grade student at King and similarly competes as a
7 member of the King girls' cross country team. FAC ¶¶ 18, 82. Prior to entering
8 high school, K.S. accumulated various accolades in cross country, track and field,
9 volleyball, basketball, and soccer at the middle school level. FAC ¶¶ 83-85. K.S.
10 consistently ranked second or third on the King girls' cross country junior varsity
11 team. FAC ¶ 82.

12 The 2024 cross country season was K.S.'s first at King, and T.S.'s third
13 season. FAC ¶¶ 82, 86. T.S. and K.S. attended every practice during the 2024 cross
14 country season. FAC ¶¶ 91-92. T.S. has served in a leadership role as a girls' cross
15 country team captain since August 2024 and is responsible for demonstrating a
16 strong work ethic, upholding a high standard of responsibility, and fostering a
17 positive attitude to inspire and motivate the team. FAC ¶ 89.

18 C. **M.L. Earns Her Way Onto the King Girls' Varsity Cross Country**
19 **Team for the Prestigious Mt. SAC Invitational**

20 King maintains 4 separate cross country teams: a boys' varsity team, a girls'
21 varsity team, a boys' junior varsity team, and a girls' junior varsity team. FAC ¶ 96.
22 The girls' varsity team lineup is typically left to the coaching staff's discretion based
23 on the following criteria: (1) previous race times, (2) practice attendance, (3)
24 "“varsity-level effort” at practice during the week (or specifically a lack of it), (4)
25 attitude, (5) long-term team strategy by the coaching staff, (6) illness/injury, (7)
26 varsity “exposure,” and (8) other unforeseen issues. FAC ¶ 100. It is also left to the
27 coach's discretion to determine whether consequences shall be employed as a result
28 of multiple missed workouts. FAC ¶ 102. Any one of the above factors could

1 warrant selection for the varsity lineup. *See* FAC Ex. 1, at p. 7.

2 Because King’s cross country teams rank in the top 10 of the California
3 Interscholastic Federation Southern Section, Division 1, the girls’ team is regularly
4 invited to the annual Mt. SAC Cross Country Invitational (“Mt. SAC Invite”). FAC
5 ¶ 107. The Mt. SAC Invite is a premier cross-country event and was held on
6 October 25, 2024 and October 26, 2024. FAC ¶ 108. The varsity and junior varsity
7 teams compete the Mt. SAC Invite high school division course. Defendants’
8 Request for Judicial Notice, Ex. A, at p. 1.

9 M.L. transferred to King in June 2024 after being ranked as the top performer
10 on her prior school’s girls’ cross country team. FAC ¶¶ 120-121. Between August
11 2024 and October 2024, Plaintiffs allege that M.L. attended only 13 of the 74
12 scheduled cross country practices. FAC ¶ 127. M.L. is alleged to have attended the
13 last 50-60 minutes of the approximately two and a half hour practices. FAC ¶ 128.

14 On October 19, 2024, M.L. competed as a member of the King girls’ cross
15 country team for the first time in the 2024 cross country season. FAC ¶ 116. M.L.
16 posted a time of 19:41 on that race day. *Ibid.* T.S. also competed on that race day
17 and posted a time of 20:42. FAC ¶ 117. On or about October 22, 2024, the girls’
18 varsity lineup for the Mt. SAC Invite was released. FAC ¶ 118. T.S. was not
19 included on the varsity lineup and was instead listed under the junior varsity lineup.
20 FAC ¶ 119. M.L. was listed as a member of the varsity lineup. FAC ¶ 123.

21 Following the release of the girls’ varsity cross country lineup for the Mt.
22 SAC Invite, T.S.’s mother met with Dr. Iacuone, Ms. Chann, and the cross country
23 head coach regarding M.L.’s inclusion in the varsity lineup for the Mt. SAC Invite.
24 FAC ¶ 141. After the meeting, T.S.’s mother complained of discrimination to the
25 District, acknowledging that M.L. had received accommodations allowing M.L. to
26 compete as a member of the cross country team while attempting to graduate one
27 year early. FAC ¶¶ 143-144. The accommodation provided to M.L. allowed M.L.
28 to not attend practices so that M.L. could attend a zero period class, a sixth period

1 class, and an outside night class. FAC ¶ 144.

2 **III. LEGAL ARGUMENT**

3 **A. Standard of Review**

4 **1. FRCP Rule 12(b)(1)**

5 Defendants bring this Motion to Dismiss under Rule 12(b)(1) for lack of
6 Article III standing. To satisfy Article III's standing requirements, plaintiffs "must
7 have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged
8 conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial
9 decision. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338, 136 S. Ct. 1540, 1547, 194 L.
10 Ed. 2d 635 (2016), as revised (May 24, 2016) (applying the standing test from *Lujan*
11 *v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).

12 A Rule 12(b)(1) motion can be either "facial" or "factual." *Safe Air for*
13 *Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). For a facial attack such as
14 this instant Motion, all allegations are accepted as true. *Fed'n of African Am.*
15 *Contractors v. City of Oakland*, 96 F.3d 1204, 1207 (9th Cir. 1996).

16 **2. FRCP Rule 12(b)(6)**

17 Defendants bring this Motion to Dismiss under Rule 12(b)(6) for "failure to
18 state a claim upon which relief can be granted." Fed.R.Civ.Proc. 12(b)(6). To
19 survive a motion to dismiss under this rule, a plaintiff must show that he or she has
20 alleged sufficient facts which, if true, would confer upon him or her the relief
21 sought. *Sacks v. Office of Foreign Assets Control*, 466 F.3d 764, 771 (9th Cir. 2006).
22 A complaint must provide "factual allegations" that "raise a right to relief above the
23 speculative level" to the "plausible" level. *Bell Atlantic Corp. v. Twombly*, 550 U.S.
24 544, 545 (2007).

25 For a claim to be "plausible," it is insufficient that the facts alleged are
26 "'consistent with' a defendants' liability" or that a violation is "conceivable."
27 *Ashcroft v. Iqbal*, 556 U.S. 662, 680 (2009) (quoting *Twombly*, 550 U.S. at 567).
28 "[W]here the well-pleaded facts do not permit the court to infer more than the mere

1 possibility of misconduct, the complaint has alleged-but it has not ‘show[n]’-‘that the
2 pleader is entitled to relief.’” *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)).

3 Interpreting *Iqbal* and *Twombly*, the Ninth Circuit employs a two-step
4 approach:

5 First, to be entitled to the presumption of truth, allegations in a complaint
6 or counterclaim may not simply recite the elements of a cause of action,
7 but must contain sufficient allegations of underlying facts to give fair
8 notice and to enable the opposing party to defend itself effectively.
9 Second, the factual allegations that are taken as true must plausibly
10 suggest an entitlement to relief, such that it is not unfair to require the
opposing party to be subjected to the expense of discovery and continued
litigation.

11 *Levitt v. Yelp! Inc.*, 765 F.3d 1123, 1135 (9th Cir. 2014) (quoting *Eclectic Props. E.*,
12 *LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 996 (9th Cir. 2014)). Additionally,
13 “[w]hen faced with two possible explanations, only one of which can be true and
14 only one of which results in liability, plaintiffs cannot offer allegations that are
15 merely consistent with their favored explanation but are also consistent with the
16 alternative explanation. Something more is needed, such as facts tending to exclude
17 the possibility that the alternative explanation is true, in order to render plaintiffs’
18 allegations plausible.” *In re Century Aluminum Co. Sec. Litig.*, 729 F.3d 1104, 1108
19 (9th Cir. 2013) (internal citations omitted).

20 “Taken together, *Iqbal* and *Twombly* require well-pleaded facts, not legal
21 conclusions.” *Whitaker v. Tesla Motors, Inc.*, 985 F.3d 1173, 1176 (9th Cir. 2021)
22 (citations omitted). And, civil rights litigants are not entitled to a more lenient
23 pleading standard. *Id.* at 1177. Additionally, “the Supreme Court has been clear
24 that discovery cannot cure a facially insufficient pleading.” *Id.* at 1177.

25 Accordingly, a complaint that does not provide the “when, where, in what or by
26 whom” to support conclusory allegations fails to state a claim. *Center for Bio-*
27 *Ethical Reform v. Napolitano*, 648 F.3d 365, 373 (6th Cir. 2011).

28 3. FRCP 12(e)

1 A motion for more definite statement pursuant to Rule 12(e) of the Federal
2 Rules of Civil Procedure is proper when a complaint is so indefinite that the
3 defendant cannot ascertain the nature of the claim being asserted. *See Sagan v.*
4 *Apple Computer, Inc.*, 874 F. Supp. 1072, 1077 (C.D. Cal. 1994). At a minimum, a
5 complaint must present sufficient detail to provide the defendant and the court a fair
6 idea of the legal grounds for recovery. *Self Directed Placement Corp. v. Control*
7 *Data Corp.*, 908 F.2d 462, 466 (9th Cir. 1990); *McHenry v. Renne*, 84 F.3d 1172,
8 1179-80 (9th Cir. 1996) (litigants and court must be able to determine who is being
9 sued and for what).

10 **B. Plaintiffs Fail to State Their Claims Under Title IX**

11 **1. Plaintiffs Have Failed to Establish Constitutional Standing as**
12 **to Plaintiffs Fifth and Sixth Claims for Relief**

13 Plaintiffs have failed to adequately plead any injury sufficient to confer
14 constitutional standing. To establish injury in fact, a plaintiff must show that he or
15 she suffered “an invasion of a legally protected interest” that is “concrete and
16 particularized” and “actual or imminent, not conjectural or hypothetical.” *Spokeo,*
17 *Inc.*, 578 U.S. at 339 (quoting *Lujan*, 504 U.S., at 560). “For an injury to be
18 ‘particularized,’ it ‘must affect the plaintiff in a personal and individual way.’ ” *Id.*
19 (quoting *Lujan*, 504 U.S., at 560). “A ‘concrete’ injury must be ‘de facto’; that is, it
20 must actually exist. *Id.* (citing Black’s Law Dictionary 479 (9th ed. 2009)).

21 Plaintiffs Fifth and Sixth Claims for Relief against Defendants rely on a
22 purely speculative theory that T.S. would have been selected for a spot on the King
23 girls’ varsity cross country team at the Mt. SAC Invite absent M.L.’s inclusion in
24 the pool of girls available for selection. Plaintiffs have not alleged facts sufficient to
25 demonstrate that T.S. was the first athlete left off of King’s girls’ varsity cross
26 country team for the Mt. SAC Invite. Plaintiffs do however allege that another
27 student, M.K., forfeited her varsity position due to M.L.’s inclusion in the varsity
28 lineup. Plaintiffs do not allege that that King’s girls’ varsity cross country team

1 competed with only 6 members at the Mt. SAC Invite. Had T.S. been King's next
2 athlete in line to compete in the varsity race, the only reasonable inference which
3 exists is that T.S. would have been the athlete selected to fill the vacated varsity
4 lineup position. Based upon Plaintiffs' allegations, it must be inferred that another
5 athlete other than T.S. was selected to fill the vacated spot on the girls' varsity
6 lineup, making that student athlete the next athlete that would have suffered alleged
7 harmed rather than T.S.

8 Assuming *arguendo* that M.L. was selected for the girls' varsity lineup for the
9 Mt. SAC Invite based upon her performance times alone¹, Plaintiffs have also not
10 alleged facts sufficient to demonstrate that T.S.'s running time was at least seventh
11 best among the biological females competing on the girls' cross country team.
12 Accordingly, T.S.'s alleged injury is not only speculative, it is unsupported by the
13 facts plead in Plaintiffs' FAC. Further, even had T.S. been the next athlete in line,
14 T.S. was able to post a time running the same Mt. SAC Invite course as all athletes
15 competing in the sweepstakes race. Any harm suffered by T.S. in having to run as a
16 member of the junior varsity team is thus *de minimis*.

17 As to Plaintiff K.S., Plaintiffs acknowledge that K.S. was consistently
18 between second and third placing on the girls' junior varsity team. Although
19 Plaintiffs have alleged substantial achievements by K.S. at the middle school level
20 (*see* FAC ¶¶ 83-85), K.S. has not demonstrated harm as a result of M.L.'s selection
21 to the varsity team for the Mt. SAC Invite. Because T.S. and K.S. have plead no
22 injury and there is no cognizable injury to Plaintiff SGS members, each Plaintiff has
23 failed to meet constitutional standing requirements as to Plaintiffs Fifth and Sixth
24

25 ¹ Plaintiffs allege that M.L. transferred from her prior school as the #1 ranking girl,
26 warranting an inference that M.L. satisfied the "varsity exposure" consideration.
27 Plaintiffs also acknowledge that M.L. was granted accommodations based upon her
28 academic goals, which falls squarely under the catch all "other unforeseen issues"
factor listed in the cross country team handbook.

1 Claims for Relief.

2 As plead, Plaintiffs have failed to allege any injury in fact and therefore
3 Plaintiffs' Fifth and Sixth Claims for Relief must be dismissed.

4 **2. Plaintiffs' Fourth Claim for Relief Fails to Plead Sufficient**
5 **Facts to Support a Finding of Title IX Intentional**
6 **Discrimination**

7 Plaintiffs' Fourth Claim for Relief against Defendants fail as Plaintiffs have
8 not plead plausible facts sufficient to support findings of violations of Title IX.
9 Intentional discrimination occurs when an individual is treated less favorable than
10 others because of their sex. *International Union v. Johnson Controls*, 499 U.S. 187,
11 200 (1991) (the "simple test" for discrimination is "whether the evidence shows
12 treatment of a person in a manner which but for that person's sex would have been
13 different"). Plaintiffs have failed to plead plausible facts sufficient to support
14 Plaintiffs' conclusion that, but for their sex, Plaintiffs would have received different
15 treatment.

16 Although Plaintiffs allege that M.L. was permitted to miss practice time and
17 received one on one coaching from Ms. Chann, Plaintiffs have not plead any facts
18 supporting a nexus between M.L.'s biological sex and the alleged preferential
19 treatment. Plaintiffs do however acknowledge that M.L. was attempting to graduate
20 early and was provided with accommodations to assist M.L. in her academic
21 pursuits. See FAC at ¶ 144. Such accommodations alone would fall under the
22 "other unforeseen issues" factor identified as part of the consideration for varsity
23 selection. Plaintiffs do not allege that either T.S., K.S., or any other SGS member
24 requested any similar academic accommodations, let alone that any such request
25 was denied. Tellingly, Plaintiffs have made no allegations as to whether the boys'
26 team was excused from adherence to the cross country team handbook. Plaintiffs
27 FAC thus fail to exclude the far more plausible conclusion that a school would
28 provide accommodations based upon a student's academic goals, which in turn is

1 fatal to Plaintiffs' Fourth Claim for Relief.

2 Plaintiffs' conclusory allegation that M.L. received preferential treatment due
3 to her biological sex is based upon speculation alone and does not satisfy the
4 pleading requirements. As plead, there is simply no inference that can be drawn
5 linking M.L.'s granted academic-driven accommodations to her biological sex.
6 Thus, Plaintiffs' have failed to sufficiently allege that T.S. and K.S. would have
7 received different treatment but for their sex. Plaintiff's Fourth Claim for Relief
8 must therefore be dismissed.

9 **C. Plaintiffs Fail to State a Claim for Violation of Education Code**
10 **Section 220**

11 **1. Defendants Conduct is Consistent with Education Code**
12 **Section 220**

13 Plaintiff's Seventh Claim for Relief alleges a violation of Education Code
14 section 220. Education Code section 220 provides in pertinent part that, "No person
15 shall be subjected to discrimination on the basis of ... gender, gender identity,
16 gender expression ... in any program or activity conducted by an educational
17 institution that receives, or benefits from, state financial assistance, or enrolls pupils
18 who receive state student financial aid."

19 Unlike Title IX, Education Code section 220, the statute under which
20 Plaintiffs brings their Seventh Claim for Relief, requires the District to permit M.L.
21 to participate on the girls' cross country team. Under the California Education
22 Code, prohibiting M.L. from competing on the girls' cross country team would itself
23 constitute a violation of the California Education Code section 220. Education Code
24 section 221.5(f) states, "A pupil shall be permitted to participate in sex-segregated
25 school programs and activities, including athletic teams and competitions, and use
26 facilities consistent with his or her gender identity, irrespective of the gender listed
27 on the pupil's records."

28 Plaintiffs' Seventh Claim for Relief appears to stand for the position that by

1 complying with Education Code section 221.5(f), Defendants have violated
2 Education Code section 220. Plaintiffs' position is at odds with the California
3 legislatures formulation of Chapter 2 of Division 1 of Title 1 of the California
4 Education Code. Had the legislature intended for the inclusion of transgender
5 students to be prohibited discrimination under Education Code section 220, it would
6 not have expressly required California school districts to engage in the very same
7 discrimination.

8 Accordingly, Plaintiffs' Seventh Claim for Relief should be dismissed on
9 these grounds alone.

10 **2. Plaintiffs' Allegations do not Support a Claim for Violation**
11 **of Education Code Section 220**

12 To prevail on an Education Code section 220 claim, Plaintiffs must show
13 that: (1) they suffered "severe, pervasive, and offensive harassment" that
14 "effectively deprived plaintiff of the right to equal access to educational benefits and
15 opportunities"; (2) the school district had "actual knowledge" of the harassment;
16 and (3) the school district acted with "deliberate indifference." *Donovan v. Poway*
17 *Unified Sch. Dist.*, 167 Cal. App. 4th 567, 579 (2008).

18 Deliberate indifference means that the defendant's response to the alleged
19 harassment or lack of response was clearly unreasonable in light of all the known
20 circumstances. *Donovan v. Poway Unified Sch. Dist.*, 167 Cal. App. 4th 567, 609,
21 (2008).) A response by the Defendant that is merely inept, erroneous, ineffective, or
22 negligent does not amount to deliberate indifference. *Id.* "[A] failure to act must be
23 a result of conduct that is more than negligent, and involves an element of
24 deliberateness." *C.C. v. Paradise High Sch.*, No. 216CV02210KJMDMC, 2019 WL
25 6130439, at 7 (E.D. Cal. Nov. 19, 2019), citing *Duvall v. Cty. of Kitsap*, 260 F.3d
26 1124, 1139 (9th Cir. 2001).

27 As currently pled, Plaintiff's FAC lacks sufficient factual basis to establish a
28 cause of action for a violation of Education Code section 220. Plaintiffs fail to

1 allege facts sufficient to establish that Defendants acted with deliberate indifference.
2 Rather, as stated above, Defendants acted in complete compliance with the
3 California Education Code. As such, Plaintiffs' Seventh Claim for Relief is subject
4 to dismissal.

5 **D. Plaintiffs' FAC Requires a More Definite Statement**

6 In the event that the Court does not sustain a motion to dismiss the Complaint,
7 the Court should sustain a motion for a more definite statement under FRCP Rule
8 12(e).

9 In general, a defendant must "admit or deny the allegations asserted against it
10 by an opposing party." FRCP Rule 8(b)(1)(B). "A denial must fairly respond to the
11 substance of the allegation." FRCP Rule 8(b)(2). A party may move for a more
12 definite statement where a complaint "is so vague or ambiguous that the party
13 cannot reasonably prepare a response." FRCP Rule 12(e). A court may sustain the
14 motion when the complaint "is so indefinite that the defendant cannot ascertain the
15 nature of the claim being asserted in order to frame a response. *Medrano v. Kern*
16 *County Sheriff's Officer*, 921 F.Supp.2d 1009, 1013 (E.D. Cal. 2013).

17 Here, Defendants are unable to admit or deny the allegations in Plaintiffs'
18 FAC because Defendants cannot reasonably determine which allegations are raised
19 against which Defendants, and by which Plaintiffs. Plaintiffs Fifth and Sixth Claims
20 for Relief raise challenges against California Assembly Bill 1266 and purports to
21 assert these challenges against every named defendant, including the District, Dr.
22 Iacuone, and Ms. Chann. The very nature of these claims makes it unclear whether
23 Defendants are required to respond to each allegation which would otherwise appear
24 to be raised against the remaining defendants in this litigation matter. Irrespective
25 of whether the Court dismisses Plaintiff's Fourth through Seventh Claims for Relief,
26 the Court should order a more definite statement so that Defendants may better
27 respond to Plaintiffs' FAC and understand the rights and defenses available to each
28 Defendant.

1 **IV. CONCLUSION**

2 For all of the foregoing reasons, Defendant respectfully requests that the
3 Court grant this Motion to Dismiss. If the Court does not sustain the motion to
4 dismiss, it should nevertheless sustain a motion for a more definite statement so that
5 Moving Defendants can be on notice of the allegations against them and defenses
6 available.

7 DATED: February 28, 2025

FAGEN FRIEDMAN & FULFROST, LLP

8
9
10 By:



Milton E. Foster III

11 Attorneys for RIVERSIDE UNIFIED SCHOOL
12 DISTRICT, AMANDA CHANN, and LEANN
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PROOF OF SERVICE

T.S. and K.S. v. Riverside Unified School District, et al.
Case No. 5:24-cv-02480-SSS (SPx)

STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Riverside, State of California. My business address is 4160 Temescal Canyon Road, Suite 610, Corona, CA 92883.

On February 28, 2025, I served true copies of the following document(s) described as **DEFENDANTS RIVERSIDE UNIFIED SCHOOL DISTRICT, LEANN IACUONE, AND AMANDA CHANN'S MOTION TO DISMISS COMPLAINT FOR FAILURE TO STATE A CLAIM AND/OR FOR A MORE DEFINITE STATEMENT** on the interested parties in this action as follows:

Robert Tyler
Julianne Fleischer
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Attorneys for Plaintiffs T.S. and K.S.

☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from e-mail address ls Spencer@f3law.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ **BY CM/ECF NOTICE OF ELECTRONIC FILING:** I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on February 28, 2025, at Corona, California.



Lisa Spencer