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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'S, LEANN IACUONE'S, AND AMANDA CHANN'S REPLY TO DEFENDANTS' MOTION TO DISMISS

The Hon. Sunshine Suzanne Sykes

Trial Date: None Set

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Save Girls' Sports' ("SGS"), T.S.'s, and K.S.'s (SGS, T.S., and K.S. collectively "Plaintiffs") Opposition to RIVERSIDE UNIFIED SCHOOL DISTRICT ("District"), Dr. LEANN IACUONE ("Iacuone"), and AMANDA CHANN ("Chann") (District, Iacoune, and Chann collectively herein "Defendants") Motion to Dismiss and/or for a More Definite Statement does not bolster Plaintiffs arguments that Plaintiffs pled sufficient facts to properly state Plaintiffs' Fourth and Seventh Claims for Relief found in Plaintiffs' First Amended Complaint ("Complaint" or "FAC"). Plaintiffs' Opposition to Defendants' Motion to Dismiss and/or for a More Definite Statement further fails to bolster Plaintiffs' argument that they have constitutional standing to bring Plaintiffs' Fifth and Sixth Claims for Relief. Accordingly, Plaintiffs' Fourth, Fifth, Sixth, and Seventh Claims for Relief should be dismissed with prejudice.

In the alternative, Defendants request the Court to order Plaintiffs to file a More Definite Statement pursuant to FRCP Rule 12(e). Plaintiffs' Opposition fails to overcome Defendants' argument raised in Defendants' Motion to Dismiss and/or for a More Definite Statement.

II. ARGUMENT

A. Plaintiffs Have Failed to Establish Standing for Their Title IX Effective Accommodation and Equal Treatment Claims

To satisfy Article III's standing requirements, Plaintiffs "must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338, 136 S. Ct. 1540, 1547, 194 L. Ed. 2d 635 (2016), as revised (May 24, 2016) (applying the standing test from *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). To establish injury in fact, a plaintiff must show that he or she suffered "an invasion of a legally protected

interest" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Spokeo, Inc.*, 578 U.S. at 339 (quoting *Lujan*, 504 U.S., at 560). "For an injury to be 'particularized,' it 'must affect the plaintiff in a personal and individual way.' " *Id.* (quoting *Lujan*, 504 U.S., at 560). "A 'concrete' injury must be 'de facto'; that is, it must actually exist. *Id.* (citing Black's Law Dictionary 479 (9th ed. 2009)).

Plaintiffs argue that Plaintiffs T.S. and K.S., as well as other female athletes, are harmed by merely being required to compete with M.L., a transgender female, allegedly in violation of Title IX. However, Title IX does not provide a blanket prohibition against transgender student athlete participation on sports teams consistent with her gender identity. *See B.P.J. by Jackson v. W. Virginia State Bd. of Educ.*, 98 F.4th 542, 564 (4th Cir.), cert. denied sub nom. *W. Virginia Secondary Sch. Activities Comm'n v. B.P. J. Next Friend Jackson*, 145 S. Ct. 568 (2024) (holding West Virginia law preventing transgender girls from playing on girls athletic teams violated Title IX as applied to transgender middle school girl). Rather, a prohibition against "an individual from playing on a sports team that does not conform to his or her gender identity 'punishes that individual for his or her gender non-conformance,' [citation], which violates the clear language of Title IX." *A.M. by E.M. v. Indianapolis Pub. Sch.*, 617 F. Supp. 3d 950, 966 (S.D. Ind. 2022), vacated, No. 1:22-CV-01075-JMS-MKK, 2023 WL 11852464 (S.D. Ind. Jan. 19, 2023) (vacated on grounds of mootness) (citations omitted).

Plaintiffs point to a list of harms to establish injury in fact. Such harms include displacement from the team, prestigious races, school cross country records, and the benefits and opportunities that come from competing and winning at the highest levels; loss of the experience of fair competition; loss of correct placements; loss of medals; loss of victories and the public recognition associated with victories; loss of opportunities to advance to higher-level competitions; loss of visibility to college recruiters; loss of privacy; and the loss of the "MLKHS Senior Girl" award

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for fastest run time on the girls' cross country team. These alleged harms result directly from Title IX's clear language which the District is required to comply with; it protects transgender students from a blanket prohibition on playing on a sports team that does not conform to his or her gender identity. Defendants cannot have harmed Plaintiffs by having acted in compliance with Title IX.

Further, many of the harms alleged by Plaintiffs are pled to have occurred generally to female athletes and are not particularized to any Plaintiff. Plaintiffs further argue that another student SGS member chose to forgo her varsity spot due to M.L.'s inclusion on the Varsity Top 7. However, a plaintiff, "cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 416 (2013). This alleged harm to an SGS member is a choice made by that student already named to the Varsity Top 7 and is not legally sufficient to establish standing for Plaintiff SGS.

The only harm particularly pled to any Plaintiff remains T.S.'s alleged loss of a varsity position. According to Plaintiffs Complaint, T.S. was initially identified on the Varsity Top 7 list for the Mt. SAC Invitational before Ms. Chann intervened, placing M.L. on the Varsity Top 7. However, as stated above, a varsity position was made available. High ranking members of the Junior Varsity girls' cross country team are immediate contenders for varsity positions in the event a varsity athlete is unavailable. *See* FAC ¶ 137. Plaintiffs' Complaint fails to identify T.S. as the athlete selected to fill the open varsity position vacated by the SGS member. Rather, it would appear based on the pleadings that another student athlete was selected to fill the vacant varsity position for the Mt. SAC Invitational. Based upon Plaintiffs' allegations, the student athlete who was substituted in the Varsity Top 7 would have been the athlete selected by Ms. Chann absent M.L.'s inclusion on the final Varsity Top 7. Therefore, that other student athlete would have been the athlete allegedly harmed by M.L.'s inclusion on the Varsity Top 7 prior to the SGS

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member dropping out of the race due to M.L.'s inclusion.

Plaintiffs further argue that it is speculation that T.S. would still have been able to post a time at the Mt. SAC Invitational without competing on the varsity team. Plaintiffs allege, "T.S. was relegated to the junior varsity team for one of the most important meets of the season for college recruitment." FAC ¶ 119. Based upon the allegations in the Complaint, Plaintiff T.S. was provided an opportunity to compete at the Mt. SAC Invitational, and likely did so. Plaintiffs have not pled any differences in the course run by Varsity and Junior Varsity teams or any other differences of the race outside of each race's designated level. Plaintiffs have also not pled any drop-off in difficulty of the course specific for the Junior Varsity level which may impact a comparison of times between Varsity and Junior Varsity competitors. Plaintiff T.S. therefore had an opportunity to have her time recorded and posted for consideration by any college scouts recruiting the Mt. SAC Invitational. Plaintiff T.S.'s placement on the Junior Varsity team is insufficient to establish a legally cognizable harm. Accordingly, T.S. has not lost any visibility to college recruiters or opportunities for recruitment generally merely by being placed on the Junior Varsity Team.

T.S.'s continued inclusion on the Junior Varsity girls' cross country team rather than promotion to the Varsity Top 7 lineup when a position became available must result in an understanding that T.S. was not the student harmed when the Varsity Top 7 list is alleged to have been modified by Ms. Chann. Further, the remaining harms alleged are not particularized to Plaintiff and flow from compliance with Title IX. Therefore Plaintiffs' Fifth and Sixth Claims for Relief must be dismissed.

B. Plaintiffs Have Failed to Plead Sufficient Facts to Support a Claim for Intentional Discrimination Pursuant to Title IX

In Plaintiffs' opposition, Plaintiffs contend that the facts in the FAC provide more than enough detail to show that Plaintiffs were treated less favorably than

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M.L., a transgender female, based on their sex assigned at birth. However, no facts pled by Plaintiffs support Plaintiffs' claim that M.L. received preferential treatment based upon M.L.'s birth sex beyond conclusory allegations that M.L. was treated more favorably than K.S., T.S., and other female athletes and therefore Defendants discriminated against Plaintiffs. Plaintiffs' allegations appear to be conclusory and thus do not establish a claim for intentional discrimination. *See Yusuf v. Vassar Coll.*, 827 F. Supp. 952, 957 (S.D.N.Y. 1993), aff'd in part, rev'd in part, 35 F.3d 709 (2d Cir. 1994) (dismissing Title IX claim "because the plaintiff's wholly conclusory assertions do not suffice to state a claim under § 1681").

In their reply, Plaintiffs argue that the academic accommodations received by M.L. do not fall under the "other unforeseen issues" factor identified as part of the consideration for varsity selection as it is not expressly plead by Plaintiffs. The "other unforeseen issues" factor acts as a catchall factor by its plain language. The academic accommodations provided to M.L. which allow M.L. to continue to compete in girls' cross country while also pursuing early graduation may be considered under the catchall factor, supporting M.L.'s selection to the varsity roster. That M.L. qualified for varsity selection based upon different enumerated factors from those T.S. qualified under does not support an inference that M.L. received more favorable treatment due to her biological sex.

Even should Plaintiffs' allegations be sufficient to support a claim for intentional discrimination at first glance, Plaintiffs' opposition fails to exclude the legitimate, nondiscriminatory reasons for M.L.'s alleged more favorable treatment pled by Plaintiffs which Plaintiffs' Complaint does not tend to exclude. *See Nguyen v. Regents of Univ. of California*, 823 F. App'x 497, 502 (9th Cir. 2020) (granting summary judgment on Title IX sexual orientation discrimination claim where plaintiff failed to demonstrate that legitimate, nondiscriminatory reasons for denial of tenure were pretextual). Plaintiffs argue that academic accommodations do not explain why M.L. was permitted to compete on the girls' cross country team, why

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M.L. was allowed to miss approximately 57 practices while attending only portions of other practices, why M.L. received one on one coaching, and why M.L. was permitted to secure a varsity position on the girls' cross country team. Plaintiffs ignore the plainly obvious primary purpose of academic institutions such as Martin Luther King High School: academics. Extracurricular activities such as cross country are secondary to academics by their very nature. It cannot reasonably be disputed that, in the context of an academic institution, academic accommodations would permit a student to miss practices and retain the ability to meaningfully participate in extracurricular activities.

Plaintiffs' Complaint, while attempting to claim discrimination on the basis of sex, actually provides an acceptable reason for why the alleged more favorable treatment was provided to M.L. Specifically, Plaintiffs allege that M.L. was provided academic accommodation allowing her to graduate a year early while retaining the ability to meaningfully compete in extracurricular activities. Plaintiff's Fourth Claim for Relief must therefore be dismissed.

C. Plaintiffs Have Failed to Plead a Claim Pursuant to Education Code § 220

1. Plaintiffs claim for a violation of Education Code section 220 fails to establish severe and pervasive harassment.

By way of recap, to establish a claim pursuant to Education Code section 220, Plaintiffs must show: (1) they suffered "severe, pervasive, and offensive harassment" that "effectively deprived plaintiff of the right to equal access to educational benefits and opportunities"; (2) the school district had "actual knowledge" of the harassment; and (3) the school district acted with "deliberate indifference." *Donovan v. Poway Unified Sch. Dist.,* 167 Cal. App. 4th 567, 579 (2008).

Plaintiffs have not sufficiently alleged facts to show that each Plaintiff suffered severe, pervasive, and offensive harassment that deprived them of equal

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access to educational opportunities. Plaintiffs argue that allowing M.L., a to compete on the girls' cross-country team constitutes such severe, pervasive, and offensive harassment. Put another way, Plaintiffs argue that by complying with Education Code section 221.5(f), Defendants violate Education Code section 220. This argument fails purely as a matter of policy.

Plaintiffs claim that it is a, "fact that the California legislature did not intend to create a system in which transgender students' rights are prioritized at the expense of female athletes' rights." While this is undoubtedly true, Plaintiffs position and argument would cause the District to decide to violate either Education Code section 220 or 221.5. Surely the legislature would not have intended to require California schools to be in constant violation of the state's own Education Code, regardless of similar but different Federal law. Further, contrary to Plaintiffs' position, Title IX does not provide a blanket prohibition prohibiting M.L.'s participation on sports teams consistent with her gender identity. *See B.P.J. by Jackson v. W. Virginia State Bd. of Educ.*, 98 F.4th 542, 564 (4th Cir.), cert. denied sub nom. *W. Virginia Secondary Sch. Activities Comm'n v. B.P. J. Next Friend Jackson*, 145 S. Ct. 568 (2024) (West Virginia law preventing transgender girls from playing on girls athletic teams violated Title IX as applied to transgender middle school girl).

Because Plaintiffs alleged "severe, pervasive, and offensive harassment that deprived them of equal access to educational opportunities," is in reality conduct required by the Education Code, Plaintiffs claimed violation of Education Code section 220 must fail.

2. Plaintiffs claim for a violation of Education Code section 220 fails to establish deliberate indifference by Defendants.

Not only have Plaintiffs failed to sufficiently allege that they suffered severe, pervasive, and offensive harassment that deprived them of equal access to educational opportunities, Plaintiffs have also failed to allege deliberate indifference

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on Defendants part. *Donovan v. Poway Unified Sch. Dist.,* 167 Cal. App. 4th 567, 579 (2008). In the Complaint, Plaintiffs have failed to allege any aspect of deliberate indifference. Plaintiffs opposition fails to address the fact that deliberate indifference is not alleged in the Complaint . Once again, Education Code section 221.5(f) requires school districts to permit students to participate in sex-segregated activities consistent with their gender identity. Further, as stated herein, Title IX does not provide a blanket prohibition against the inclusion of transgender athletes on sports teams which align with their sex assigned at birth. Defendants cannot have acted with deliberate indifference by acting in accordance with the law.

Plaintiffs' Seventh Claim for Relief for Violation of Education Code section 220 must therefore be dismissed.

D. Plaintiffs' FAC Requires a More Definite Statement

Under Federal Rule of Civil Procedure 12(e), "[a] party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response." Fed. R. Civ. P. 12(e). Courts have typically required a plaintiff to amend a shotgun pleading in three instances: (1) when the plaintiff fail to differentiate between the defendants such that it is impossible to determine which defendant is accused of what; (2) when every claim is combined into one count; and (3) when there are no specific factual allegations beyond the incorporation clause described in the counts of a multi-count complaint. *Almont Ambulatory Surgery Ctr., LLC v. UnitedHealth Grp., Inc.*, No. CV1403053MWFVBKX, 2015 WL 12777092, at *4 (C.D. Cal. Oct. 23, 2015).

Here, Defendants are unable to determine which defendants is accused of what. Plaintiffs make general allegations against "Defendants" regularly throughout Plaintiffs' complaint with no indication of which defendants Plaintiff are making allegations against. Defendants can only speculate as to which "Defendants" face which allegations. At other times, Plaintiffs make distinguishable references to

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Defendant Chann, Defendant Iacuone, District Defendants, State Defendants, et cetera. Plaintiffs Fifth and Sixth Claims for Relief challenging Assembly Bill 1266 is particularly susceptible. The District, Dr. Iacuone, and Ms. Chann can make no determination as to which allegations challenging Assembly Bill 1266 are directed at which defendant. Similarly, it remains unclear which Plaintiffs have brought which allegations against the various defendants or which harms have been suffered by which Plaintiffs. Plaintiff's Complaint therefore remains so vague that Defendants cannot reasonably prepare a response to the allegations found therein.

E. Leave to Amend Should be Denied

As stated in Plaintiffs' Opposition, leave to amend must be "freely given" unless it is clear that the proposed amendment is brought after undue and unexplained delay; is offered in bad faith; would be futile; or would be prejudicial to the other parties. See Fed. R. Civ. P. 15(a)(2); *Foman v. Davis*, 371 U.S. 178, 182 (1962). Contrary to Plaintiffs' assertion that none of the above-referenced factors apply, it would indeed be futile for Plaintiffs to amend their Fourth, Fifth, Sixth, and Seventh Claims for Relief.

As stated herein, Plaintiffs cannot demonstrate a harm to establish constitutional standing. The inclusion of M.L. on the girls' cross country roster is permitted under Title IX, and to prohibit M.L. from participation on the girls' team based on her gender identity would violate Title IX. *A.M. by E.M. v. Indianapolis Pub. Sch.*, 617 F. Supp. 3d 950, 966 (S.D. Ind. 2022), vacated, No. 1:22-CV-01075-JMS-MKK, 2023 WL 11852464 (S.D. Ind. Jan. 19, 2023) (vacated on grounds of mootness) (citations omitted). Each alleged harm that is premised upon M.L.'s inclusion on the girls' cross country team cannot be cured as M.L.'s participation is protected under Title IX. Similarly, Plaintiffs cannot cure Plaintiffs' Fourth Claim for Relief as Plaintiffs themselves have plead facts sufficient to establish that M.L.'s alleged more favorable treatment was due to academic accommodations rather than due to her sex at birth.

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With regard to Plaintiffs' Seventh Claim for Relief for violation of Education Code section 220, this claim must be dismissed without leave to amend. Plaintiffs' argument, in its most basic form, is that Defendants violated the Education Code by complying with the Education Code. Plaintiffs cannot cure this obvious defect.

III. CONCLUSION

For all of the foregoing reasons and those stated in Defendants' Motion to Dismiss, Defendants respectfully request that the Court dismiss Plaintiffs' Fourth and Fifth Claims for Relief with prejudice for lack of constitutional standing. Defendants further respectfully request that the Court dismiss Plaintiffs' Fourth and Seventh Claims for Relief for failure to state a claim. If the Court does not sustain Defendants' Motion to Dismiss, it should nevertheless sustain a motion for a more definite statement.

DATED: March 14, 2025

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By: 

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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 March 14, 2025, I served true copies of the following document(s) described as **DEFENDANTS RIVERSIDE UNIFIED SCHOOL DISTRICT'S, LEANN IACUONE'S, AND AMANDA CHANN'S REPLY TO DEFENDANTS MOTION TO DISMISS** on the interested parties in this action as follows:

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☒ **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 March 14, 2025, at Corona, California.

Sara Rosas