ROB BONTA
Attorney General of California
DARRELL W. SPENCE (SBN 248011)
Supervising Deputy Attorney General
STACEY L. LEASK (SBN 233281)
KATHERINE J. GRAINGER (SBN 333901)
TRUMAN S. BRASLAW (SBN 356566)
Deputy Attorneys General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3524
Fax: (415) 703-5480
E-mail: Stacey.Leask@doj.ca.gov
Attorneys for Defendants State Superintendent of Public Instruction Tony Thurmond and Attorney General Rob Bonta

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

T.S., et al. Plaintiffs, **v.** **RIVERSIDE UNIFIED SCHOOL DISTRICT, et al.** Defendants.	5:24-cv-02480-SSS (SPx) **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF STATE DEFENDANTS' MOTION TO DISMISS THE FIRST AMENDED COMPLAINT** Date: May 16, 2025 Time: 2:00 p.m. Courtroom: 2 Judge: The Honorable Sunshine Suzanne Sykes Trial Date: Not Set Action Filed: November 20, 2024

TABLE OF CONTENTS

Page

Introduction 1
Background 1
I. Assembly Bill 1266 1
II. Plaintiffs' First Amended Complaint 2
Applicable Legal Standards 3
Argument 3
I. The Individual Plaintiffs Lack Standing 3
A. Plaintiffs Fail to Allege Concrete and Particularized Injury 4
B. Plaintiffs' Alleged Harms are Not Traceable to State Defendants 5
1. Not Traceable to the Attorney General 6
2. Not Traceable to the SPI 6
C. Lack of Redressability 7
1. The Relief Sought Will Not Redress the Alleged Injury 7
2. The Relief Sought Violates the Rights of Others 8
II. Save Girls' Sports Lacks Standing 9
III. The State Law Claim is Barred by Sovereign Immunity 10
IV. The FAC Should Be Dismissed Because it Fails to State Cognizable Claims Against State Defendants 11
A. Plaintiffs' Title IX Claims Fail Against State Defendants 11
1. State Defendants Are Not Proper Defendants 11
2. There Has Been No Clear Notice That Allowing Transgender Girls on the Cross-Country Team Violates Title IX 12
a. Title IX and its implementing regulations do not mandate exclusion of transgender girls from girls' sports teams 12
b. Plaintiffs' reliance on nonbinding case law and executive orders does not save Plaintiffs' Title IX claims 13
3. Plaintiffs Have Not Plausibly Alleged Intentional Sex Discrimination "on the Basis of Sex" 15
4. Plaintiffs' Title IX Claims Based on an Alleged Denial of Athletic Opportunity and Benefits Fail 16
a. Plaintiffs' Effective Accommodation claim fails 17
b. Plaintiffs' Unequal Treatment claim fails 18
5. Plaintiffs' Preemption Claim Fails 19
B. Plaintiffs' Section 220 Claim Fails 20

TABLE OF CONTENTS
(continued)

Page

Conclusion 21

TABLE OF AUTHORITIES

Page

CASES

Amoco Prod. Co. v. Village of Gambell
(1987) 480 U.S. 531 (1987) 8

Anders v. Cal. State Univ.
No. 121CV00179AWIBAM, 2021 WL 156448, *at 2 (E.D. Cal. July 22, 2021) 16

Arizona v. United States
567 U.S. 387 (2012) 19

Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy
548 U.S. 291 (2006) 12

Ashcroft v. Iqbal
556 U.S. 662 (2009) 3, 15

B.P.J. by Jackson v. W. Va. State Bd. of Educ.
98 F.4th 542 (4th Cir. 2024) 9, 13

Bell Atl. Corp. v. Twombly
550 U.S. 544 (2007) 3

Biediger v. Quinnipiac Univ.
691 F.3d 85 (2d Cir. 2012) 18

Bostock v. Clayton Cnty.
590 U.S. 644 (2020) 9, 20

Camreta v. Greene
563 U.S. 692 (2011) 14

Cannon v. Univ. of Chi.
441 U.S. 677 (1979) 20

City and Cnty. of S.F. v. Trump
897 F.3d 1225 (9th Cir. 2018) 14

Cole v. Oroville Union High Sch. Dist.
228 F.3d 1092 (9th Cir. 2000) 5

Concerned Jewish Parents & Teachers of L.A. v. Liberated Ethnic Studies Model
No. CV 22-3243 FMO (EX), 2024 WL 5274857 (C.D. Cal. Nov.30, 2024) 20, 21

Csutoras v. Paradise High Sch.
12 F.4th 960 (9th Cir. 2021) 20

TABLE OF AUTHORITIES
(continued)

Page

Davis Next Friend LaShonda D. v. Monroe Cty. Bd. of Educ.
526 U.S. 629 (1999) 17

Doe by and through Doe v. Petaluma City Sch. Dist.
830 F. Supp. 1560 (N.D. Cal. 1993) 11

Doe v. Horne
115 F.4th 1083 (9th Cir. 2024) 8, 13, 20

Emeldi v. Univ. of Or.
698 F.3d 715 (9th Cir. 2012) 9

Food & Drug Admin. v. All. for Hippocratic Med.
602 U.S. 367 (2024) 9, 10

Grabowski v. Arizona Bd. of Regents
69 F.4th 1110 (9th Cir. 2023) 9, 20

Grimm v. Gloucester Cnty. Sch. Bd.
302 F. Supp. 3d 730 (E.D. Va. 2018) 9

Hecox v. Little
104 F.4th 1061 (9th Cir. 2024) 8, 20

Hong v. Read
No. 8:19-CV-00086-RGK-JC, 2020 WL 7488913 (C.D. Cal. Dec. 18, 2020) 15

Jones v. Beverly Hills Unified Sch. Dist.
No. WDCV 08-7201JFWPJW, 2010 WL 1222016 (C.D. Cal. Mar. 24, 2010) 4, 11, 15

Kokkonen v. Guardian Life Ins. Co. of Am.
511 U.S. 375 (1994) 3

Lipsett v. Univ. of P.R.
864 F.2d 881 (1st. Cir. 1988) 11

Loper Bright Enters. v. Raimonds
603 U.S. 369 (2024) 14, 20

Lopez v. Regents of Univ. of Cal.
5 F. Supp. 3d 1106 ..... 11, 19

Lujan v. Defs. of Wildlife
504 U.S. 555 (1992) 5, 7

TABLE OF AUTHORITIES
(continued)

Page

Mansourian v. Regents of Univ. of Cal.
602 F.3d 957 (9th Cir. 2010) (*Mansourian II*) 16, 17, 19

Mecinas v. Hobbs
30 F.4th 890 (9th Cir. 2022) 6

MetroPCS Cal., LLC v. Picker
970 F.3d 1106 (9th Cir. 2020) 19

Milliken v. Bradley
418 U.S. 717 (1974) 19

Neal v. Bd. of Trustees of Cal. State Univ.
198 F.3d 763 (9th Cir. 1999) 17, 20

Ollier v. Sweetwater Union High Sch.
768 F.3d 843 (9th Cir. 2014) 17

Parents for Privacy v. Barr
326 F. Supp. 3d 1075,1104 (D. Or. 2018) 16

Parents for Privacy v. Barr
949 F.3d 1210 (9th Cir. 2020) 12, 16

Pennhurst State Sch. & Hosp. v. Halderman
451 U.S. 1 (1981) 12

Pennhurst State Sch. & Hosp. v. Halderman
465 U.S. 89 (1984) 10, 13

PFLAG, Inc. v. Trump
No. 25-cv-337, 2025 WL 685124 (D. Md. Mar. 4, 2025) 14

San Francisco Aids Foundation v. Trump
No. 3:25-cv-1824 (N.D. Cal. Feb. 20, 2025), ECF No. 1 14

Schwake v. Ariz. Bd. of Regents
967 F.3d 940 (9th Cir. 2020) 11

Snoeck v. Brussa
153 F.3d 984 (9th Cir. 1998) 6

Spokeo v. Robins
578 U.S. 330 (2016) 3, 4

TABLE OF AUTHORITIES
(continued)

Page

Sprewell v. Golden State Warriors
266 F.3d 979 (9th Cir. 2001) 10

T.L. v. Orange Unified Sch. Dist.
No. 823CV01078FWSKES, 2024 WL 305387 (C.D. Cal. Jan. 9, 2024) 11

Thomas v. Regents of Univ. of Cal.
No. 19-CV-06463-SI, 2020 WL 3892860 (N.D. Cal. July 10, 2020) 17

Tirrell v. Edelblut
No. 1:24-cv-00251 (D.N.H. Feb. 12, 2025), ECF No. 95 14

Town of Chester v. Laroe Estates, Inc.
581 U.S. 433 (2017) 4

United Food & Commercial Workers Union Local 751 v. Brown Grp., Inc.
517 U.S. 544 (1996) 10

United States v. Lopez
514 U.S. 549 (1995) (Kennedy, J., concurring) 19

Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.
454 U.S. 464 (1982) 9

Videckis v. Pepperdine Univ.
100 F. Supp. 3d 927 (C.D. Cal. 2015) 20

Warren v. Fox Family Worldwide
328 F.3d 1136 (9th Cir. 2003) 3

Warth v. Seldin
422 U.S. 490 (1975) 9

Wash. Envtl. Council v. Bellon
732 F.3d 1131 (9th Cir. 2013) 5, 6, 7

Whitmore v. Arkansas
495 U.S. 149 (1990) 3

Wilson v. Marana Unified Sch. Dist. No. 6 of Pima Cty.
735 F.2d 1178 (9th Cir. 1984) 19

Wyeth v. Levine
555 U.S. 555 (2009) 19

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

5 United States Code
§ 551, *et seq.* 13

20 United States Code
§ 1681(a) 11

Education Code
§ 210.3 21
§ 220 ..... *passim*
§ 221.5(f) 1, 2, 16
§ 221.8 17
§ 230(c) 17
§ 230(d) (1) -(3) 17
§ 230(f) 17

CONSTITUTIONAL PROVISIONS

United States Constitution
Article VI, cl. 2 19

COURT RULES

Federal Rules of Civil Procedure
Rule 12(b)(1) 3
Rule 12(b)(6) 3

OTHER AUTHORITIES

34 Code of Federal Regulations
§ 106.41(b) 13
§ 106.41(c) 18
§ 106.41(c)(1)–(10) 16

89 Federal Register 104937 13

INTRODUCTION

The Sex Equality in Education Act (AB 1266) ensures that transgender students have the same opportunities to succeed in school as other students and allows them to participate in sex-segregated programs and activities, including athletic teams, consistent with their gender identity. Plaintiffs seek to enjoin AB 1266, alleging their high school's decision to allow a transgender girl to participate on the girls' cross-country team alongside them violated federal and state law.

However, Plaintiffs lack standing to sue the California Attorney General (AG) and State Superintendent of Public Instruction (SPI) (collectively, State Defendants) because their alleged harm is speculative, is not traceable to State Defendants, and is not redressable by an injunction against State Defendants. Additionally, Plaintiffs fail to state any claims for relief against State Defendants, primarily because the AG and the SPI are not proper defendants as to Plaintiffs' Title IX and Education Code section 220 claims,[1] the facts pled do not support such claims, and because Title IX does not require schools to exclude transgender girls from girls' interscholastic sports teams. Finally, the relief sought by Plaintiffs–a sweeping ban against transgender students' participation on interscholastic athletic teams consistent with their gender identity–would violate the rights of transgender students.

For these reasons, the Court should grant State Defendants' motion to dismiss without leave to amend.

BACKGROUND

I. ASSEMBLY BILL 1266

Under AB 1266, codified at Education Code section 221.5(f), "a pupil shall be permitted to participate in the sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or

[1] All subsequent references will be to California Education Code, unless otherwise indicated.

her gender identity, irrespective of the gender listed on the pupil's records." § 221.5(f).

In passing AB 1266 in 2013, the Legislature recognized that critics of transgender students' participation in girls' sports often mistakenly focus on unfounded claims that transgender girls have an "unfair competitive advantage." State Defendants' Request for Judicial Notice (RJN), Ex. 1 at 2. However, a report reviewed by the Legislature demonstrated that transgender girls "display a great deal of physical variation," and the assumption that "all male-bodied people are taller, stronger, and more highly skilled in a sport than all female-bodied people is not accurate." *Id*. at 3. And, a growing number of transgender youth are undergoing hormonal treatment, which can have the effect of blocking puberty and thus reducing or eliminating such concerns about physical advantage over non-transgender girls. *Id*. at 2.

II. PLAINTIFFS' FIRST AMENDED COMPLAINT

Plaintiff T.S. is an eleventh-grade student on the Martin Luther King High School (MLKHS) girls' varsity cross-country team. ECF No. 28 (First Amended Complaint (FAC)) ¶¶ 6, 90. Plaintiff K.S. is a ninth-grade student on the girls' junior varsity cross-country team. *Id*. ¶¶ 6, 82. They are suing their school district, their high school's assistant principal and athletic director, the principal (collectively, School Defendants), and State Defendants, alleging that School Defendants' policies denied them fair and equal access to athletic opportunities and unlawfully censored their speech.[2] *Id*. ¶¶ 1, 6, 7. Plaintiffs allege that T.S. was "ousted from her position on the girls' varsity cross-country team to make room for a biological male athlete"—M.L.—"who did not consistently attend practices and failed to satisfy many of the team's varsity eligibility qualifications." *Id.* ¶¶ 8, 115. On these facts, Plaintiffs allege that all defendants violated Title IX and California

[2] Save Girls' Sports, also a plaintiff, is an association comprised of students and parents in California who are allegedly "subject to state and local policies that discriminate based upon biological sex." *Id*. ¶ 17.

Education Code section 220. Plaintiffs seek monetary damages, a judgment declaring that Defendants have violated Title IX, and an injunction barring enforcement of AB 1266. *Id*. at 48–49.

APPLICABLE LEGAL STANDARDS

The party asserting federal subject matter jurisdiction bears the burden of establishing its existence. *Kokkonen v. Guardian Life Ins. Co. of Am*., 511 U.S. 375, 377 (1994). Jurisdictional challenges under Rule 12(b)(1) may be made either on the face of the pleadings or based upon extrinsic evidence. *Warren v. Fox Family Worldwide*, 328 F.3d 1136, 1139 (9th Cir. 2003).

To survive a rule 12(b)(6) motion to dismiss, a complaint must "contain sufficient factual matter . . . to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While the Court must assume that all well-pleaded facts in the complaint are true, it is not required to accept unreasonable inferences or conclusory allegations cast in the form of factual allegations. *Twombly*, 550 U.S. at 570. The Court must also disregard "labels and conclusions" that are not supported by separately alleged facts. *Iqbal*, 556 U.S. at 678.

ARGUMENT

I. THE INDIVIDUAL PLAINTIFFS LACK STANDING

Article III of the Constitution requires standing to bring suit in federal court. *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990). A plaintiff possesses standing only if he or she has "(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 v. Robins*, 578 U.S. 330, 338 (2016) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)). Plaintiffs bear the burden

of establishing each of these three elements for each of the claims asserted. *Id*. For the reasons discussed below, Plaintiffs lack standing.[3]

A. Plaintiffs Fail to Allege Concrete and Particularized Injury

To establish an injury in fact, a plaintiff must show that she suffered "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Id*. at 339 (citing *Lujan*, 504 U.S. at 560). Plaintiffs must also establish standing for each form of relief sought. *Town of Chester v. Laroe Estates, Inc.*, 581 U.S. 433, 434 (2017). Applying these standards, Plaintiffs lack standing.

First, with respect to K.S., Plaintiffs allege that K.S. is a freshman on the junior varsity team. FAC ¶¶ 6, 82. K.S. lacks standing because she is not on the varsity team, and there are no facts alleged to show that K.S. has been harmed by M.L.'s participation on the varsity team. *Id*. ¶ 82; *Jones v. Beverly Hills Unified Sch. Dist.,* No. WDCV 08-7201JFWPJW, 2010 WL 1222016, at *3, n. 7 (C.D. Cal. Mar. 24, 2010), *report and recommendation adopted*, No. WDCV 08-7201JFWPJW, 2010 WL 1222023 (C.D. Cal. Mar. 25, 2010) (citing *Pederson v. La State Univ*., 213 F.3d 858, 872 (5th Cir. 2000)) (plaintiffs lacked standing to challenge treatment of varsity athletes where none of the plaintiffs was a member of a varsity team).

As to T.S., the FAC alleges that T.S. was on the girls' varsity team but was removed from the Varsity Top 7 lineup on one occasion, at the Mt. Sac Invitational. FAC ¶¶ 119–24, 139. However, the FAC also admits that when M.L. was placed on the Varsity Top 7 lineup, another female student declined to participate in the track meet, opening a position in the Varsity Top 7 lineup. *Id*. ¶ 139.[4] Because the FAC alleges that T.S. did not compete on the Varsity Top 7 at the Mt. Sac

[3] State Defendants' Motion solely addresses claims brought against State Defendants, and does not address Plaintiffs' claims against School Defendants.

[4] The FAC also appears to concede that T.S. was permitted to compete at the Mt. Sac Invitational, on the school's junior varsity team. *Id*. ¶ 119.

Invitational, the logical inference is that another student athlete, other than T.S., was next in line to compete. Plaintiffs also have not alleged that T.S.'s race time was at least seventh best among the student athletes competing on her girls' cross-country team, such as to justify her spot on the team based on race times alone. Therefore, under the facts alleged, T.S. was not harmed by M.L.'s participation on the varsity team.

Plaintiffs also allege generalized harms of "loss of the experience of fair competition," "loss of correct placements," "loss of opportunities to advance to higher-level competitions" and "loss of visibility to college recruiters." FAC ¶ 310. However, Plaintiffs have not alleged specific facts regarding actual loss of experiences, placements, or opportunities. Rather, these generalized harms are entirely speculative, as Plaintiffs cannot credibly allege how they will perform or place in any particular race even if M.L. does not compete. Because a particular outcome in athletic performance is never guaranteed, the loss of an athletic opportunity is insufficient to confer standing. *See Cole v. Oroville Union High Sch. Dist.*, 228 F.3d 1092, 1100 (9th Cir. 2000) (finding alleged injury too uncertain to support standing, and likening it to the "very speculative assumption," that, had it "only been given the chance," a company would undoubtedly have won a competitive opportunity and would furthermore have operated it profitably) (citing *Preferred Commc'ns, Inc. v. City of L.A.*, 13 F.3d 1327, 1334 (9th Cir. 1994)). Plainly put, speculation as to Plaintiffs' future athletic performances and opportunities does not confer standing.

B. Plaintiffs' Alleged Harms are Not Traceable to State Defendants

Even if Plaintiffs had alleged a sufficiently concrete and particularized injury, they still would fail to establish causation. To satisfy the causation element for Article III standing, a plaintiff must show that their alleged injury is "fairly traceable" to the defendant's alleged misconduct and not the result of third-party conduct. *Lujan*, 504 U.S. at 560 (internal quotations omitted); *Wash. Envtl.*

Council v. Bellon, 732 F.3d 1131, 1141 (9th Cir. 2013). The line of causation must be more than attenuated and any links in the causal chain must remain plausible, rather than hypothetical or tenuous. *Bellon*, 732 F.3d at 1141–42.

1. Not Traceable to the Attorney General

The sole allegation in the FAC regarding the AG is that he "is authorized to enforce California law," and "is responsible for enforcing and does enforce California law, including AB 1266." FAC ¶ 24. But there are no allegations that the AG had any involvement with the acts alleged in the complaint, or that the Attorney General has had any involvement with School Defendants' decisions complained of in this case.

Absent such specific allegations, Plaintiffs cannot trace their alleged injuries to the AG. Without plausible factual allegations showing that the AG effectively dictated the School Defendants' decisions regarding the Varsity Top 7 lineup, Plaintiffs' theory of standing against the AG is necessarily reduced to bare allegations about the existence of a state law (AB 1266) and the AG's general power to enforce state law. Such allegations are insufficient to establish standing under Article III. *See Snoeck v. Brussa*, 153 F.3d 984, 986 (9th Cir. 1998) ("[A] generalized duty to enforce state law or general supervisory power over the persons responsible for enforcing the challenged provision will not subject an official to suit.") (quoting *Los Angeles Cnty. Bar Ass'n v. Eu*, 979 F.2d 697, 704 (9th Cir. 1992)).[5] Thus, the Attorney General should be dismissed.

2. Not Traceable to the SPI

Likewise, Plaintiffs fail to demonstrate any injury that is fairly traceable to the SPI. Plaintiffs allege only that the SPI is responsible for enforcing California's

[5] Although these cases analyzed sovereign immunity under the Eleventh Amendment, they are instructive on the traceability analysis, because the inquiries for the traceability element of standing and immunity are substantially similar and depend on the same factual allegations. *See Mecinas v. Hobbs*, 30 F.4th 890, 903 (9th Cir. 2022) ("The question of whether there is the requisite connection between the sued official and the challenged law" to defeat sovereign immunity "implicates an analysis that is closely related—indeed overlapping—with the traceability and redressability inquiry" under Article III) (cleaned up).

education laws and that he is "responsible for the implementation of AB 1266." FAC ¶¶ 23, 79. Yet, Plaintiffs have failed to establish a direct connection between the SPI and the actions of School Defendants. The FAC alleges that school administrators took numerous independent actions which resulted in Plaintiffs' alleged harm. Specifically, the FAC alleges that the varsity lineup is left to the discretion of school coaching staff, and involves consideration of a variety of factors, which includes, but is not limited to, previous race times. FAC ¶ 100. Plaintiffs also allege that School Defendants engaged in preferential treatment of M.L., in violation of the school's own policy set forth in its handbook. FAC ¶¶ 100–04, 126–30, 140. Thus, the alleged injuries stem from the school staff's independent actions, and not the SPI or AB 1266. Put differently, AB 1266 only provides the *opportunity* for M.L. to participate on the girls' cross-country team; it does not mandate that she be given a spot on the Varsity Top 7 lineup, nor does it mandate any preferential treatment to be given to M.L. Given Plaintiffs' allegations that School Defendants violated their own school athletic policies, the FAC fails to demonstrate that AB 1266 or any actions of the SPI are responsible for Plaintiffs' claimed injuries. For these reasons, Plaintiffs' claims should be dismissed against the SPI.

C. Lack of Redressability

1. The Relief Sought Will Not Redress the Alleged Injury

While related to causation, redressability further examines the "connection between the alleged injury and requested judicial relief." *Bellon*, 732 F.3d at 1146. To satisfy the redressability element of Article III standing, a plaintiff must show that it is "likely, as opposed to merely speculative, that the [alleged] injury will be redressed by a favorable decision." *Lujan*, 504 U.S. at 561 (quotation marks omitted).

In this case, enjoining AB 1266 will not redress Plaintiffs' hypothetical future injuries because state law only permits the opportunity for M.L. to participate on

sports team aligned with her gender identity; it does not guarantee that M.L. will make the Varsity Top 7 lineup nor does it dictate that T.S. or any other athlete will not make the Varsity Top 7 lineup. Nor will an injunction redress the alleged displacement of T.S. from one past race, as the race is over and cannot be repeated.

Nor can it redress the speculative future losses that Plaintiffs allege in the form of "loss of the experience of fair competition," "loss of correct placements," and other such alleged future harm. As there is no way to know how each student athlete will place in hypothetical races and given the variables inherent in athletic competitions and seasons, it is simply not possible to redress such speculative future events. M.L.'s exclusion from the team also does not guarantee athletic opportunities for Plaintiffs and other unidentified female athletes. Because the requested injunctive relief would not remedy any of the harms alleged, Plaintiffs cannot establish the redressability prong of standing.

2. The Relief Sought Violates the Rights of Others

To issue injunctive relief, "a court must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Amoco Prod. Co. v. Village of Gambell* (1987) 480 U.S. 531, 542 (1987). Plaintiffs' requested injunction would violate the rights of M.L. and other transgender students in California.

First, granting Plaintiffs' requested injunction would likely violate the Equal Protection Clause. *See, e.g.*, *Hecox v. Little*, 104 F.4th 1061, 1073 (9th Cir. 2024), *as amended* (June 14, 2024) (Idaho statute which banned transgender women and girls from participating in women's student athletics preliminarily enjoined because statute violates Equal Protection); *Doe v. Horne*, 115 F.4th 1083, 1102–03 (9th Cir. 2024) (affirming order preliminarily enjoining Arizona from excluding transgender girls from playing on girls' school sports teams, under Equal Protection analysis). Plaintiffs in this case seek the same wholesale exclusion of transgender female athletes from athletics solely on the basis of their transgender status, without

consideration of their actual physical attributes, the specific sport at issue, or their age, which should similarly be rejected.

Second, Plaintiffs' requested relief would likely violate Title IX. In *Bostock v. Clayton Cnty.*, 590 U.S. 644, 660 (2020), the Supreme Court held that under Title VII, discrimination against transgender persons constituted sex-based discrimination. Although *Bostock* specifically declined to extend its holding to Title IX and the Supreme Court has yet to rule on this issue, courts including the Ninth Circuit have looked to Title VII to interpret Title IX. *Emeldi v. Univ. of Or.*, 698 F.3d 715, 723–24 (9th Cir. 2012); *Grimm v. Gloucester Cnty. Sch. Bd.*, 302 F. Supp. 3d 730, 744 (E.D. Va. 2018); *see also Grabowski v. Arizona Bd. of Regents*, 69 F.4th 1110, 1118 (9th Cir. 2023). Further, other circuits have held that excluding transgender students from playing on sports teams that align with their gender identity violates Title IX. *B.P.J. by Jackson v. W. Va. State Bd. of Educ.*, 98 F.4th 542, 563–64 (4th Cir. 2024) (state law excluding transgender girl from girls' cross country and track-and-field teams violated Title IX). Therefore, the requested injunction should not be granted.

II. SAVE GIRLS' SPORTS LACKS STANDING

When a plaintiff is an organization, the standing requirements of Article III can be satisfied in two ways: either the organization can claim that it suffered an injury in its own right or, alternatively, it can assert "standing solely as the representative of its members." *Warth v. Seldin*, 422 U.S. 490, 511 (1975); *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 394 (2024). A generalized disagreement with a government policy and the "psychological consequence" of observing "conduct with which one disagrees" is insufficient to confer standing. *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 485–86 (1982).

Plaintiff Save Girls' Sports (SGS) lacks organizational standing based on direct injury because it fails to plead that, as an organization, State Defendants have

directly injured SGS' pre-existing core activities. *See All. For Hippocratic Medicine*, 602 U.S. at 395–96. A mere "setback to [an] organization's abstract social interests" is insufficient to establish an injury. *Id*. at 394–95. SGS fails to allege any facts demonstrating SGS, as an organization, has suffered any direct injury traceable to any actions of State Defendants, and thus, lacks organizational standing.

SGS also lacks associational standing. To have associational standing, the organization must show that: (1) its members independently possess standing, (2) "the interests it seeks to protect are germane to the organization's purpose," and (3) neither the claim nor the relief requested requires participation of the individual members. *United Food & Commercial Workers Union Local 751 v. Brown Grp., Inc*., 517 U.S. 544, 553 (1996). There are no allegations establishing that any of the SGS members would have independent standing. The FAC contains the conclusory allegations that SGS consists of "students and parents in California who are subject to state and local policies that discriminate based upon biologic sex," and whose unidentified members "have been and continue to be subject to discrimination described herein." FAC ¶ 17. But these conclusory allegations need not be taken as true. *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Moreover, the allegations supporting the claims against State Defendants specifically detail K.S. and T.S.'s personal experiences on the girls' cross-country team, and the alleged harm *they* have suffered. Without any other allegations to establish that the SGS members would have independent standing to bring suit against State Defendants, the FAC fails to establish both organizational and associational standing for SGS.

III. THE STATE LAW CLAIM IS BARRED BY SOVEREIGN IMMUNITY

Plaintiffs' cause of action under section 220 is barred, as the Eleventh Amendment prohibits federal courts from enjoining state officials from violating state law. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984);

see also T.L. v. Orange Unified Sch. Dist., No. 823CV01078FWSKES, 2024 WL 305387, at *11 (C.D. Cal. Jan. 9, 2024) ("[T]he *Ex Parte Young* exception applies only where the state officials are allegedly violating federal law; it does not reach suits seeking relief against state officials for violations of state law."). Thus, the section 220 cause of action is barred by sovereign immunity.

IV. THE FAC SHOULD BE DISMISSED BECAUSE IT FAILS TO STATE COGNIZABLE CLAIMS AGAINST STATE DEFENDANTS

A. Plaintiffs' Title IX Claims Fail Against State Defendants

To prevail on a Title IX claim, a plaintiff must allege and prove, "(1) the defendant educational institution receives federal funding; (2) the plaintiff was excluded from participation in, denied the benefits of, or subjected to discrimination under any education program or activity, and (3) the latter occurred on the basis of sex." *Schwake v. Ariz. Bd. of Regents*, 967 F.3d 940, 946 (9th Cir. 2020); 20 U.S.C. § 1681(a).

1. State Defendants Are Not Proper Defendants

The FAC does not plead that either the AG or the SPI are recipients of federal funding subject to Title IX. The FAC alleges only that MLKHS receives federal financial funding and is required to act in accordance with Title IX. FAC ¶ 218. This alone renders Plaintiffs' Title IX claims against the State Defendants subject to dismissal.

Even beyond this pleading deficiency, the Title IX claims still fail as a matter of law, because neither the AG nor the SPI are proper defendants for Title IX claims. *See Jones*, 2010 WL 1222016, at *6; *Lopez v. Regents of Univ. of Cal.*, 5 F. Supp. 3d 1106, 1120 (N.D. Cal. 2013); *Doe by and through Doe v. Petaluma City Sch. Dist.*, 830 F. Supp. 1560, 1576 (N.D. Cal. 1993) (individuals cannot be liable in their individual or supervisory capacities under Title IX); *Lipsett v. Univ. of P.R.*, 864 F.2d 881, 899–900 (1st. Cir. 1988). Thus, the Title IX claims against State Defendants fail and should be dismissed.

2. There Has Been No Clear Notice That Allowing Transgender Girls on the Cross-Country Team Violates Title IX

To impose Title IX liability on State Defendants, State Defendants must have had clear notice that allowing a transgender girl to participate on a high school girls' cross-country team violates Title IX. *See Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006) ("when Congress attaches conditions to a State's acceptance of federal funds, the conditions must be set out 'unambiguously.'") (quoting *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981)). The Spending Clause to the United States Constitution precludes the federal government from imposing any obligations on states, as a condition of receipt of federal funds, that Congress has not made clear in the statutory language. *Pennhurst*, 451 U.S. at 17. "[L]egislation enacted pursuant to the spending power is much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions" and "[t]he legitimacy of Congress' power to legislate under the spending power thus rests on whether the State voluntarily and knowingly accepts the terms of the 'contract.'" *Id*. "There can, of course, be no knowing acceptance if a State is unaware of the conditions or is unable to ascertain what is expected of it." *Id*.

a. Title IX and its implementing regulations do not mandate exclusion of transgender girls from girls' sports teams

Title IX, which was enacted through Congress' spending power, does not preclude transgender girls from participating on the girls' high school cross-country team. Plaintiffs allege that because MLKHS has sex-segregated sports teams, Title IX mandates that only "biological girls" are permitted to compete on the girls' teams. FAC ¶ 348. However, there is no requirement in the statutory text of Title IX or in the implementing regulations of Title IX that students on a girls' high school cross-country team (which is a non-contact sport) must be "biologically female" or that the team cannot include transgender girls. *See, e.g.*, *Parents for*

Privacy v. Barr, 949 F.3d 1210, 1227 (9th Cir. 2020) ("[J]ust because Title IX authorizes sex-segregated facilities does not mean that they are required, let alone that they must be segregated based only on ['']biological sex['] and cannot accommodate gender identity."); *B.P.J.*, 98 F.4th at 564 (acknowledging that Title IX regulations do not address the issue of transgender students in sports); *see also,* Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams; Withdrawal, 89 Fed. Reg. 104937 (withdrawn Dec. 20, 2024).[6]

Although Title IX regulations permit (but do not require) schools to "operate or sponsor separate teams for members of each sex," (34 C.F.R. § 106.41(b)), neither the statute nor the implementing regulations define the term "sex" to mean "biological sex." *Id*. Thus, Title IX does not preclude transgender girls from playing on girls' sports teams, and State Defendants certainly did not have clear notice that permitting such participation would be in violation of Title IX. *See Pennhurst*, 415 U.S. at 17; *Horne*, 115 F.4th at 1110 (recognizing that it may not have been clear to a state when it accepted federal funding that Title IX's allowance for sex-segregated sports under 34 C.F.R. § 106.41(b) does not authorize distinctions based on assigned sex). Thus, the Title IX claims against State Defendants fail for this additional reason.

b. Plaintiffs' reliance on nonbinding case law and executive orders does not save Plaintiffs' Title IX claims

Plaintiffs reference another district court's ruling on a different Department of Education rule change issued on April 29, 2024, which sought to clarify that

[6] The United States Department of Education previously introduced proposed rulemaking that would have amended the regulations with respect to sex-related criteria concerning eligibility to participate on sports teams consistent with gender identity, however, it later withdrew its notice of proposed rulemaking and noted that if "in the future, we decide it is appropriate to issue regulations on this topic, we will do so via a new notice of proposed rulemaking, subject to the requirements of the Administrative Procedures Act, 5 U.S.C. 551, *et seq*." *Ibid.*

discrimination "on the basis of sex" under Title IX includes on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. FAC ¶¶ 57–59, citing *Tennessee v. Cardona*, No. CV 2:24-CV-072-DCR, 2025 WL 63795 (E.D. Ky. Jan. 9, 2025), *as amended* (Jan. 10, 2025). This case is not binding authority in our case (*see Camreta v. Greene*, 563 U.S. 692, 709 n. 7 (2011) (decision of district court is not binding precedent)), but even if it were, it does not mandate that MLKHS' girls' cross-country team consist only of "biological females," nor that transgender girls be excluded from such teams. *Id*.

Plaintiffs' reliance on recent executive orders also fails to rectify their Title IX claims. "As the Supreme Court has observed, '[t]here is no provision in the Constitution that authorizes the President to enact, to amend, or to repeal statutes.'" *City and Cnty. of S.F. v. Trump*, 897 F.3d 1225, 1233 (9th Cir. 2018) (executive orders cannot attempt to co-opt Congress's power to legislate), citing *Clinton v. City of New York*, 524 U.S. 417, 438 (1998). Notably, both executive orders referenced by Plaintiffs are presently being challenged in court as both unconstitutional and unlawful, and as intentionally discriminating against transgender people. *See, e.g., PFLAG, Inc. v. Trump*, No. 25-cv-337, 2025 WL 685124, at *32–*33 (D. Md. Mar. 4, 2025) (granting preliminary injunction enjoining enforcement of Executive Order No. 14168); Second Amended Complaint, *Tirrell v. Edelblut*, No. 1:24-cv-00251 (D.N.H. Feb. 12, 2025), ECF No. 95; Complaint, *San Francisco Aids Foundation v. Trump*, No. 3:25-cv-1824 (N.D. Cal. Feb. 20, 2025), ECF No. 1. Notwithstanding, and even if these executive orders remain in effect, they have no force and effect with respect to the Court's independent interpretation of Title IX. *See Loper Bright Enters. v. Raimonds*, 603 U.S. 369, 412–13 (2024).

3. Plaintiffs Have Not Plausibly Alleged Intentional Sex Discrimination "on the Basis of Sex"

To prove sex discrimination, plaintiffs must allege facts sufficient to demonstrate that they were treated differently or denied benefits or opportunities *because of* their gender. *Jones*, 2010 WL 1222016, at *4 ("Plaintiff must allege that she was treated differently than the boys, not other girls."); *Hong v. Read*, No. 8:19-CV-00086-RGK-JC, 2020 WL 7488913, at *1 (C.D. Cal. Dec. 18, 2020), *aff'd sub nom*. *Hong v. Garcia*, No. 21-55019, 2022 WL 2256326 (9th Cir. June 23, 2022) (allegations must plausibly demonstrate that "[plaintiff] was ever treated differently because of [plaintiffs'] gender.")

Here, Plaintiffs fail to allege facts sufficient to establish that the mistreatment that they allegedly suffered is because they are cisgender girls. Although Plaintiffs claim that M.L. received preferential treatment because she is transgender (FAC ¶¶ 140, 144, 291–296),[7] the FAC alleges facts which demonstrate that the purported preferential treatment was based on other nondiscriminatory factors. Specifically, that M.L. was given accommodations so that she could graduate early, not because she is transgender. FAC ¶ 144. These facts negate any inference that any preferential treatment of M.L. was based on her transgender status, and thus, fail under the required pleading standard. *See Ashcroft*, 556 U.S. at 678–82 (holding that pleading standard not met when the allegations leave room for an "obvious alternative explanation" to negate an inference of wrongful conduct).

Similarly, the FAC alleges that the makeup of the girls' Varsity Top 7 lineup is typically left to the coaching staff's discretion based on factors such as previous race times, practice attendance, varsity level effort, etc. *Id*. ¶ 100. The FAC also alleges that T.S.' prior race time was 20:42 and M.L.'s prior race time was 19:41. *Id*. ¶ 116. These facts likewise demonstrate that non-discriminatory factors–race

[7] Plaintiffs' allegations rely on the assumption that a cisgender plaintiff can plausibly allege Title IX violations by alleging that another student received preferential treatment based on their transgender status.

times–led to the school's decision regarding the Varsity Top 7 lineup, not Plaintiffs' cisgender status.[8]

Further, even if the Court were to accept Plaintiffs' allegations, nothing in AB 1266 mandates that School Defendants provide preferential treatment to M.L. or that M.L. be held to different standards under the school's athletic policies. AB 1266 provides only that she be permitted to participate on the sports team consistent with her gender identity. § 221.5(f). As noted above, there simply is no connection between AB 1266 and any of the discriminatory conduct alleged. Accordingly, Plaintiffs' intentional discrimination claim against State Defendants must fail.

4. Plaintiffs' Title IX Claims Based on an Alleged Denial of Athletic Opportunity and Benefits Fail

Title IX regulations specific to athletics are set forth at in Title 34 of the Code of Federal Regulations, which state that schools receiving federal funds "shall provide equal athletic opportunity for members of both sexes" and sets forth factors to be considered "[i]n determining whether equal opportunities are available." 34 C.F.R. § 106.41(c)(1)–(10).

The Ninth Circuit interprets these regulations as establishing "two components of Title IX's equal athletic opportunity requirement: 'effective accommodation' and 'equal treatment.'" *Mansourian v. Regents of Univ. of Cal.*, 602 F.3d 957, 964 (9th Cir. 2010) (*Mansourian II*). Effective accommodation prohibits an institution from failing to accommodate effectively the interests and abilities of student athletes of both sexes. *Anders v. Cal. State Univ.*, No. 121CV00179AWIBAM, 2021 WL 156448, *at 2 (E.D. Cal. July 22, 2021) (citing *Mansourian II*, 602 F.3d at 965. "Equal treatment" requires "equivalence in the availability, quality and kinds of

[8] The FAC includes allegations that pertain to a Title IX hostile environment claim (i.e., deliberate indifference to discrimination that was "so severe, pervasive, and objectively offensive.") *Id*. ¶¶ 289–90, 301–302. It is unclear from the pleadings if this claim is alleged against State Defendants. Notwithstanding, the mere presence of a transgender student is insufficient to establish a hostile environment. See *Parents for Privacy v. Barr*, 326 F. Supp. 3d 1075,1104 (D. Or. 2018); *aff'd*, 949 F.3d 1210 (9th Cir. 2020).

other athletic benefits and opportunities provided male and female athletes," such as unequal treatment in schedules, equipment, coaching, and so on. *Id.* Plaintiffs' Title IX claims fail under both theories.

a. Plaintiffs' Effective Accommodation claim fails

Effective accommodation claims are analyzed under a three-part test. *Neal v. Bd. of Trustees of Cal. State Univ.*, 198 F.3d 763, 767-68 (9th Cir. 1999); §§ 221.8; 230(c), (d) (1) –(3), (f). Under this three-part test, a school's athletic program must satisfy one of the following conditions:

> (1) participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
>
> (2) where the members of one sex have been and are underrepresented among athletes, the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or
>
> (3) where the members of one sex are underrepresented among athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, ... it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

See Neal, 198 F.3d at 767–68.

With respect to the first prong, to rise to a level of actionable discrimination, the effect of the challenged practice must be "serious enough to have the systemic effect of denying the [plaintiff] equal access to an educational program or activity." *Davis Next Friend LaShonda D. v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 652 (1999); *Ollier v. Sweetwater Union High Sch.*, 768 F.3d 843, 856 (9th Cir. 2014) ("the first prong of the three-prong test is to consider whether the number of participation opportunities–i.e., athletes–is substantially proportionate to each sex's enrollment" which is "determined on a case-by-case basis in light of 'the institution's specific circumstances and the size of its athletic program'"); *Thomas v. Regents of Univ. of Cal.*, No. 19-CV-06463-SI, 2020 WL 3892860, at *9–10 (N.D. Cal. July 10, 2020) (finding no effective accommodation violation because

plaintiff had not tied her release from the team to any alleged system-wide participation gaps at [the university]); *Biediger v. Quinnipiac Univ.*, 691 F.3d 85, 92-94 (2d Cir. 2012).

Here, Plaintiffs have not alleged any facts demonstrating the denial of athletic opportunities for girls on a program-wide level. There are no facts alleged that would demonstrate that Plaintiffs have been unable to participate on the girls' cross-country team due to one transgender student's participation on the team and no facts to show that cisgender females are underrepresented among athletes or substantially disproportionate in numbers on the girls' cross-country team. Rather, the FAC pleads the opposite, that the school offers a robust girls' cross-country team, that plaintiff-runners have participated on the team, and that they have achieved great success. FAC ¶¶ 80–93. Moreover, the allegation that T.S. was relegated to the junior varsity team for one race does not render her unable to participate on the team and is wholly insufficient to establish the requirement for a systemic effect of denying equal access or opportunity on the cross-country team at a program-wide level. *Id*. For these reasons, the FAC fails to allege any plausible facts to establish violation of Title IX based on an effective accommodation claim.

b. Plaintiffs' Unequal Treatment claim fails

Likewise, Plaintiffs' Title IX claim based on alleged unequal treatment fails. Equal treatment claims under Title IX require consideration of equal opportunities such as scheduling of games and practice time, travel and per diem allowances, coaching, practice spaces, locker rooms, and the like. 34 C.F.R. § 106.41(c). Yet, Plaintiffs have alleged no facts to show any disparity in opportunities or benefits that are available to students based on gender. Plaintiffs instead allege that, because there is "no 'women's' team," there can be no meaningful comparison between benefits and opportunities provided to boys versus girls at MLKHS, but that on this basis alone, AB 1266 violates Title IX and should be enjoined. . . ." FAC ¶ 363. These claims are wholly insufficient to demonstrate any unequal treatment

attributable to Plaintiffs' gender (female), and for the same reasons the effective accommodation claim fails, this claim should likewise fail. *Mansourian II*, 602 F.3d at 965.

5. Plaintiffs' Preemption Claim Fails

The Supremacy Clause is clear that federal law "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2; *Arizona v. United States*, 567 U.S. 387, 399 (2012). Conflict preemption occurs when it is impossible to comply with both state and federal requirements or when state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. *MetroPCS Cal., LLC v. Picker*, 970 F.3d 1106, 1117–18 (9th Cir. 2020).

In civil rights cases, if federal law is silent on a given issue, district courts will apply state law to fill in that gap so long as it is not inconsistent with federal law or policy. *Lopez*, 5 F. Supp. 3d at 1116, citing *Hardin v. Straub*, 490 U.S. 536, 538 (1989) ("In enacting 42 U.S.C. § 1989 Congress determined that gaps in federal civil rights acts should be filled by state law, so long as that law is not inconsistent with federal law.").

Additionally, when Congress has legislated in a field in which there is a "historic presence of state law," a presumption against preemption applies. *See Wyeth v. Levine*, 555 U.S. 555, 565 & n. 3 (2009). It is well established that "education is a traditional concern of the States." *Milliken v. Bradley*, 418 U.S. 717, 741–742 (1974); *United States v. Lopez,* 514 U.S. 549, 580–581 (1995) (Kennedy, J., concurring); *Wilson v. Marana Unified Sch. Dist. No. 6 of Pima Cty.*, 735 F.2d 1178, 1183 (9th Cir. 1984) ("public education has traditionally been a function of the states").

As for this claim, there is no preemption because there is no conflict between Title IX and AB 1266. As explained above, neither Title IX's statutory provisions

nor its implementing regulations expressly preclude transgender athletes from participating in programs and activities that align with their gender identity. Indeed, the Ninth Circuit Court has ruled that the *Bostock* holding—that "sex discrimination" includes sex stereotyping and gender identity—applies to Title IX claims. *Grabowski*, 69 F.4th at 1118 (*Bostock* applied to Title IX claims). The Ninth Circuit Court has also held that bans against transgender students' athletic participation on teams that align with their gender identities (which is effectively the relief sought by Plaintiffs) violate the rights of transgender students. *Hecox*, 104 F.4th at 1090–91; *Horne*, 115 F.4th at 1102.

Also, because the Court must exercise its own independent judgment in interpreting Title IX (see *Loper*, 603 U.S. at 412–13), executive orders and the Department's interpretations of Title IX should not bind the Court's decision.[9] Thus, even if Plaintiffs could prove standing and assert cognizable claims against State Defendants, Plaintiffs' preemption claim would fail as a matter of law.

B. Plaintiffs' Section 220 Claim Fails

The elements for demonstrating a claim under section 220 are generally the same as those under Title IX. *Videckis v. Pepperdine Univ.*, 100 F. Supp. 3d 927, 935 (C.D. Cal. 2015). Because the California Legislature intended Title IX to govern actions under section 220, Plaintiffs' claims under section 220 must also be dismissed for the same reasons as its Title IX claim. *Concerned Jewish Parents & Teachers of L.A. v. Liberated Ethnic Studies Model*, No. CV 22-3243 FMO (EX), 2024 WL 5274857, at *20 (C.D. Cal. Nov.30, 2024), citing *Donovan v. Poway Unified Sch. Dist.,* 167 Cal.App.4th 567, 581 (2008) and *Cannon v. Univ. of Chi.*, 441 U.S. 677, 695–96 (1979).

[9] The Ninth Circuit has held that the Department's Title IX regulations are entitled to "controlling weight" and "substantial deference." *Neal*, 198 F.3d at 770. However, these holdings are all pre-*Loper*, which overturned *Chevron* deference to federal agencies. 603 U.S. at 412. Under *Loper*, it is the judiciary that has the sole prerogative to say what the law is and the final duty to interpret the law. Additionally, "Dear Colleague" guidance letters do not create binding law. *See, e.g.*, *Csutoras v. Paradise High Sch.*, 12 F.4th 960, 967–68 (9th Cir. 2021).

Additionally, section 220 does not apply to the AG or the SPI. California Education Code § 220 prohibits discrimination "in any program or activity conducted by *an educational institution* that receives, or benefits from, state financial assistance, or enrolls pupils who receive state student financial aid." § 220 (emphasis added). Section 210.3 defines educational institution as "a public or private preschool, elementary, or secondary school or institution; the governing board of a school district; or any combination of school districts or counties recognized as the administrative agency for public elementary or secondary schools." Because the AG and the SPI are not an "educational institution," they are not subject to suit under section 220. *See* § 210.3; *Concerned Jewish Parents*, 2024 WL 5274857, at *20 n. 25 (dismissing section 220 suit against individuals).

Lastly, Plaintiffs' position is at odds with the statute itself, as section 220 prohibits discrimination against individuals on the basis of their gender identity. Had the Legislature intended for such discrimination, it would not have expressly required school districts to allow transgender students to participate in sports teams aligned with their gender identity. For these reasons, as well as the fact that this claim is barred by sovereign immunity, Plaintiffs' section 220 claim fails.

CONCLUSION

For the foregoing reasons, all claims against State Defendants should be dismissed without leave to amend.

Dated: March 28, 2025

Respectfully submitted,

ROB BONTA
Attorney General of California

/S/ Stacey L. Leask

STACEY L. LEASK
Deputy Attorney General
Attorneys for State Defendants

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for State Defendants, certifies that this brief contains 6937 words, which complies with the word limit set by court order dated November 22, 2024 (ECF No. 15) and L.R. 11-6.

Dated: March 28, 2025

Respectfully submitted,

ROB BONTA
Attorney General of California

/S/ Stacey L. Leask

STACEY L. LEASK
Deputy Attorney General
Attorneys for State Defendants

CERTIFICATE OF SERVICE

Case Name: **Save Girls' Sports, et al v Tonly Thurmond, et al.** No. **5:24-cv-02480-SSS-SP**

I hereby certify that on March 28, 2025, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF STATE DEFENDANTS' MOTION TO DISMISS THE FIRST AMENDED COMPLAINT

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on March 28, 2025, at Sacramento, California.

Christopher R. Irby	*S/ Christopher R. Irby*
Declarant	Signature

SA2025300597
38912101.docx