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) 510-3870
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) **STATE DEFENDANTS' RESPONSE TO THE STATEMENT OF INTEREST FILED BY THE U.S. ATTORNEY'S OFFICE** Date: June 27, 2025 Time: 2:00 p.m. Courtroom: 2 Judge: The Honorable Sunshine S. Sykes Trial Date: Not Set Action Filed: November 20, 2024

INTRODUCTION

Defendants State Superintendent of Public Instruction Tony Thurmond and Attorney General Rob Bonta (State Defendants) hereby respond to the Statement of Interest of the United States of America (Statement), filed by the United States Attorney's Office (USDOJ) on May 28, 2025. ECF No. 54. As explained below, the Statement is untimely and should be disregarded for this reason.

Additionally, even setting aside the delay in filing it, neither the Statement nor the USDOJ's interpretation of Title IX is owed deference. Rather, the interpretation of Title IX is the sole responsibility of this Court. Because the parties fully and extensively briefed the relevant legal issues concerning Title IX in connection with the State Defendants' motion to dismiss, and the Statement does not clarify any of these issues or add anything further, the Court should afford no weight to the Statement.

BACKGROUND

This action was filed by two California high school students and their parents in relation to the two students' participation on their high school cross-country team. Complaint, ECF No. 1. The lawsuit is brought against the Riverside Unified School District and two of its employees (School Defendants), and the State Defendants. Compl., ECF No. 1; First Amended Complaint, ECF No. 28.

After the First Amended Complaint (FAC) was filed (ECF No. 28), School Defendants filed a motion to dismiss the Fourth and Seventh Claims for Relief under 12(b)(6) for a failure to state a claim for relief and a motion to dismiss the Fifth and Sixth Claims for Relief under 12(b)(1) for lack of standing. School Def.'s Mot. Dismiss, ECF No. 37.

Separately, State Defendants filed their own motion to dismiss all claims for relief asserted against State Defendants in the FAC, on jurisdictional grounds (i.e., lack of standing, sovereign immunity) and for failure to state a claim for relief under Title IX and California Education Code section 220. State Def.'s Mot.

Dismiss, ECF No. 41. Both motions to dismiss have been fully briefed and are set for hearing on June 27, 2025. Scheduling Notice and Order, ECF No. 58.

On May 28, 2025, nearly a month after the deadline for all briefing on the pending motions to dismiss to be submitted pursuant to Local Rule 7-10, the USDOJ submitted its Statement seeking to weigh in on this lawsuit, in which it is not a party.

ANALYSIS

I. THE COURT SHOULD NOT CONSIDER THE STATEMENT

"It is solely within the Court's discretion to permit or deny a statement of interest." *LSP Transmission Holdings, LLC v. Lange,* 329 F. Supp. 3d 695, 703 (D. Minn. 2018) (citing *Creedle v. Giminez*, Civ. No. 17-22477, 2017 WL 5159602, at *2 (S.D. Fla. Nov. 7, 2017)), *aff'd sub nom. LSP Transmission Holdings, LLC v. Sieben*, 954 F.3d 1018 (8th Cir. 2020). "In exercising that discretion, the Court can consider whether the information is timely, useful, or otherwise necessary to the administration of justice." *Id*.

In some cases, a court will accept a statement of interest as an amicus brief. *See, e.g., United States ex rel Hooper v. Lockheed Martin Corp.*, No. CV 0800561, 2014 WL 12561070, at *4 (C.D. Cal. Jan. 17, 2014) (court "accepts the United States' statement of interest as an amicus brief"), *aff'd sub nom. Hooper v. Lockheed Martin Corp.*, 640 F. App'x 633 (9th Cir. 2016); *United States ex rel. Kuriyan v. HCSC Insurance Services Co.*, No. CV161148, 2021 WL 5238332, at *1 (D.N.M., Jan. 29, 2021) ("Statements of interest usually function as amici briefs"). "The extent, if any, to which an amicus curiae should be permitted to participate in a pending action is solely within the broad discretion of the district court." *Waste Management of Pa. v. City of York*, 162 F.R.D. 34, 36-37 (M.D.Pa. 1995). "A court may grant leave to appear as an amicus if the information offered is 'timely and useful.'" *Id*. (quoting *Yip v. Pagano*, 606 F. Supp. 1566, 1568 (D.N.J. 1985), *aff'd mem.*, 782 F.2d 1033 (3rd Cir.), *cert. denied*, 476 U.S. 1141 (1986); *accord Idaho*

v. Coeur D'Alene Tribe, No. 14CV00170, 2014 WL 2218329, at *1 (D. Idaho, May 29, 2014) (district courts "typically allow amicus briefs only when they are both timely and useful").

A. The Statement Should Be Disregarded Because It Is Untimely

The United States submits its Statement pursuant to 28 U.S.C. § 517, which authorizes the U.S. Attorney General "to attend to the interests of the United States in a suit pending in a court of the United States." Statement 3:8-10, ECF No. 54. Significantly, the Statement references the motions to dismiss pending before the Court. Statement 3:19-25, ECF No. 54. However, a statement of interest that seeks to weigh in on a pending motion should be filed no later than the deadline for the non-moving party to file an opposition brief. *See, e.g., United States ex rel. Martinez v. Orange Cnty. Glob. Med. Ctr., Inc.*, No. 15CV01521, 2017 WL 9482462, at *1 n.1 (C.D. Cal. Sept. 14, 2017) ("[T]he United States must file any statement of interest no later than the deadline for the non-moving party to file an opposition brief . . . ."); *LSP Transmission Holdings, LLC v. Lange,* 329 F. Supp. 3d at 703 (rejecting statement of interest filed by the USDOJ as untimely).

Here, the U.S. Attorney's Office filed its Statement 61 days after State Defendants filed their motion to dismiss, 33 days after Plaintiffs filed their Opposition to the motion to dismiss, and 26 days after the briefing deadline closed. Thus, it is untimely.

Further, even if the Court were to consider the Statement as an amicus curiae submission, it still would be untimely. *See, e.g., Idaho v. Coeur D'Alene Tribe*, 2014 WL 2218329, at *1; *Long v. Coast Resorts, Inc*., 49 F. Supp. 2d 1177, 1177-78 (D. Nev. 1999) (rejecting United States' amicus brief as untimely and not useful.) The USDOJ has not filed for leave of court to file any amicus brief in this case, and even if it had, district courts have looked to Rule 29 of the Federal Rules of Appellate Procedure for guidance on timeliness of amicus curiae submissions. *See A1 Procurement, LLC v. Thermcor, Inc.*, No. 2:15cv15, 2017 WL 2881350, *1-

2 (E.D. Va. July 5, 2017) (citing *U.S. ex rel. Gudur v. Deloitte Consulting LLP*, 512 F. Supp. 2d 920, 927 (S.D. Tex. 2007), *aff'd sub nom. U.S. ex rel. Gudur v. Deloitte & Touche*, No. 07-20414, 2008 WL 3244000 (5th Cir. Aug. 7, 2008). Rule 29 provides that an amicus curiae submission must be filed "no later than 7 days after the principal brief of the party being supported is filed." Fed. R. App. 29(a)(6). The Statement is filed in support of the briefs in opposition to State Defendants' motion: it expresses the same position as Plaintiffs with respect to the interpretation of Title IX. Statement, ECF No. 54. If the Court considers the Statement as an amicus brief, the time for an amicus curiae submission would have expired on May 2, 2025, making the Statement filed on May 28, 2025, untimely.

Accordingly, the Court should reject the USDOJ's attempt to get the "last word," and disregard the Statement as untimely.

B. The Statement Should Be Disregarded Because It Is Not "Useful" to the Court As Required

As indicated above, district courts typically only allow statements of interest or amicus briefs when they are both timely and useful. *See Idaho v. Coeur D'Alene Tribe*, 2014 WL 2218329, at *1; *see also Long*, 49 F. Supp. 2d at 1177-78; *U.S. ex rel. Gudur*, 512 F. Supp. 2d at 927-28 (finding United States' statement of interest neither timely nor useful, nor otherwise necessary to the administration of justice). Here, not only is the Statement untimely, but it also does not help to clarify the legal issues before the Court, as it does not offer anything of merit to the Court's determination of the issues already briefed in the motions.

Certainly, the Statement is not owed any deference, because under *Loper Bright Enters. v. Raimondo,* 603 U.S. 369, 385, 413 (2024), the Court owes no deference to the USDOJ's interpretation of Title IX.[1] *See Loper*, 603 U.S. at 412–13 (courts need not defer to an agency's interpretation of the law "simply because a

[1] Indeed, it is the Department of Education, not the USDOJ, that is the agency charged with administering Title IX. *See, e.g., Roberts v. Colorado State Bd. of Agriculture*, 998 F.2d 824, 828 (10th Cir. 1993).

statute is ambiguous."). 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. *Id.* at 392 (it "remains the responsibility of the court to decide whether the law means what the agency says."). Because the Court must exercise its own independent judgment in interpreting Title IX under *Loper*, the USDOJ's interpretation of Title IX should not be given any additional weight.

The Statement asserts "it is the policy of the United States to protect opportunities for women and girls to compete in sports consistent with their biological sex, not gender identity." Statement 3:1-7, ECF No. 54 (citing Executive Order 14201, Keeping Men Out of Women's Sports, 90 F.R. 9279, Feb. 5, 2025). However, the current policy of the United States has no bearing on whether Title IX has been violated under the facts in this case. *See Blum v. Stenson*, 465 U.S. 886, 896 (1984) (when interpreting federal statute, if the language of the statute is unclear, then court may consider *Congress's* intent); *see*, *e.g.*, *City and Cnty. of S.F. v. Trump*, 897 F.3d 1225, 1233 (9th Cir. 2018) (executive orders cannot amend or repeal statutes).[2]

Further, the executive order cited in the Statement is being challenged in court as unconstitutional, unlawful and intentionally discriminatory against transgender people. *See* Second Amended Complaint at 58-64, 135-158, *Tirrell v. Edelblut*,

[2] State Defendants also note that, not long ago, the U.S. Department of Education embraced an entirely contrary interpretation of Title IX. In 2023, the U.S. Department of Education proposed a rule amending Title IX's implementing regulations to *allow* transgender students to participate in sports consistent with their gender identity unless their exclusion was substantially related to an important educational objective and minimized harms to the excluded transgender students. *See* 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, 88 FR 22860-01. The rule was withdrawn on December 20, 2024. *See* 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 FR 104936-01. Such history undermines any argument that there has been an established or long-standing policy of the United States with respect to this issue.

748 F. Supp. 3d 19 (D.N.H. Feb 12, 2025), ECF No. 95. For these additional reasons, the Court should disregard the Statement.

II. NINTH CIRCUIT CASE LAW AND OTHER PERSUASIVE AUTHORITY CONFLICT WITH THE INTERPRETATION ADVANCED BY THE STATEMENT

There is no basis in the text of Title IX or its implementing regulations for excluding a transgender girl from a girls' cross-country team. Indeed, the Statement concedes that "[n]owhere in the original Title IX statute or regulations is there any discussion about transgender athletes." Statement 5:13, ECF. No. 54.

The Statement asserts that "[t]o fulfill Title IX's original promise of 'equal athletic opportunity' within school sports, the law and its implementing regulations prohibit discrimination solely 'on the basis of sex,' not transgender status." Statement 4:21-24, ECF No. 54. However, the Ninth Circuit has ruled that the Supreme Court's holding in *Bostock v. Clayton Cnty.*, 590 U.S. 644, 660 (2020)—that "sex discrimination" includes sex stereotyping and gender identity—applies to Title IX claims. *Grabowski v. Arizona Bd. of Regents*, 69 F.4th 1110, 1118 (9th Cir. 2023) (*Bostock* applied to Title IX claims). The Ninth Circuit has also held that bans on transgender students' participation on sports teams that align with their gender identity violate the rights of transgender students. *See, e.g.*, *Hecox v. Little*, 104 F.4th 1061, 1090-91 (9th Cir. 2024), *as amended* (June 14, 2024), *petition for cert. filed*, No. 24-38; *Doe v. Horne*, 115 F.4th 1083, 1102-07 (9th Cir. 2024), *petition for cert filed*, No. 24-449. This accords with other circuit rulings on the issue. *See 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 teams violated Title IX), *petition for cert. denied*, No. 24-44.

The Statement asserts that Title IX's regulations explicitly and implicitly reference "distinct ways that boys and girls participate in sports," pointing to the portion of the regulation that allows schools to operate separate teams for each sex "where selection for such teams is based upon competitive skill or the activity

involved in a contact sport." 34 C.F.R. § 106.41(b); Statement 5:3-7, ECF. No. 54. The USDOJ then surmises that because the regulation allows for sex separation in the context of "contact sports," it must follow that Title IX is intended to allow only students assigned to a female sex at birth to participate on girls' teams and does not allow transgender girls to participate on a girls' cross-country team. Statement 2:14-23, 5:5-21, ECF No. 54.

It bears noting that cross-country is not a contact sport. Indeed, the Statement does not contend as such. Nor is it the case that there is always a physical difference in size or ability between males and females, or as between girls and boys. *See, e.g., Doe v. Horne*, 115 F.4th at 1102. Notwithstanding, even if cross-country were a contact sport, it does not automatically follow that the regulation permitting single-sex sports' teams should be interpreted as precluding transgender student-athletes from participating on sports' teams that align with their gender identities. Nothing in Title IX bans them from doing so and the single-sex carve-out for contact sports does not mean that such single-sex teams must be segregated based only on sex assigned at birth and cannot accommodate gender identity. *See, e.g., Parents for Privacy v. Barr*, 949 F.3d 1210 (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 542, 564-65 (4th Cir. 2024) (rejecting the argument that Title IX regulations' allowance of separate teams for members of each sex authorizes defendants to discriminate against transgender student athletes).

The USDOJ contends that permitting a transgender girl to participate on a girls' cross-country team would interfere "with the equal opportunity for females to fully participate in and enjoy the educational benefits of athletics." Statement 2:22-23, ECF No. 54. However, the Statement does not demonstrate any actual interference with girls' opportunities to participate in and enjoy the educational

benefits of athletics. As State Defendants argued in their motion to dismiss, the absence of any factual allegations or data demonstrating an actual displacement of female athletes from educational programs and activities precludes a showing of systemic effect on a program-wide basis, which is a necessary component to demonstrating denial of equal opportunity to an educational program or activity. Without more, the arguments advanced are entirely speculative. State Def. Reply 8:4-9:15, ECF No. 48.

As the USDOJ admits, nothing in Title IX or its regulations speaks to the participation of transgender student athletes in high school sports, and nothing in Title IX or its regulation would bar students like M.L. from competing on the girls' cross-country team. Rather, the arguments in the Statement rely on stereotypes and the assumption that fair competition and safety is somehow compromised by the mere presence of a transgender girl on a girls' team, despite the lack of facts to support those arguments.

CONCLUSION

For the foregoing reasons, State Defendants respectfully request that the Court afford no weight to the Statement, and instead, render its ruling on State Defendants' motion to dismiss based solely on the briefs submitted by the parties in this case.

Dated: June 10, 2025

Respectfully submitted,

ROB BONTA
Attorney General of California
DARRELL W. SPENCE
Supervising Deputy Attorney General

/s/ Stacey L. Leask
STACEY L. LEASK
TRUMAN S. BRASLAW
Deputy Attorneys General
Attorneys for Defendants State Superintendent of Public Instruction Tony Thurmond and Attorney General Rob Bonta

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for State Defendants, certifies that this brief contains 2671 words, which complies with the word limit set by court order dated November 22, 2024 (ECF No. 15) and L.R. 11-6.

Dated: June 10, 2025

Respectfully submitted,

ROB BONTA
Attorney General of California

/s/ Stacey L. Leask
STACEY L. LEASK
Deputy Attorney General
Attorneys for State Defendants