ROB BONTA
Attorney General of California
DARRELL W. SPENCE (SBN: 248011)
Supervising Deputy Attorney General
STACEY LEASK (SBN: 233281)
KATHERINE BRUCK (SBN: 342536)
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 Defendant California Department of Education*

J. SCOTT DONALD (SBN 158338)
SPINELLI, DONALD, & NOTT
300 University Avenue, Suite 100
Sacramento, CA 95825-6518
Telephone: (916) 448-7888
Fax: (916) 448-6888
E-mail: ScottD@SDNLaw.com
*Attorney for Defendant California Interscholastic Federation*

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

| | |
|---|---|
| MADISON MCPHERSON, et al.,<br><br>Plaintiffs,<br><br>v.<br><br>JURUPA UNIFIED SCHOOL DISTRICT, et al.,<br><br>Defendants. | Case No. 5:25-cv-02362 SSS (SPx)<br><br>**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF JOINT MOTION TO DISMISS THE FIRST AMENDED COMPLAINT FILED BY DEFENDANTS CALIFORNIA DEPARTMENT OF EDUCATION AND CALIFORNIA INTERSCOLASTIC FEDERATION**<br><br>Date: March 13, 2026<br>Time: 2:00 p.m. via Zoom videoconference<br>Courtroom: 2<br>Judge: The Honorable Sunshine S. Sykes<br>Trial Date: Not Set<br>Action Filed: 9/09/2025 |

# TABLE OF CONTENTS

# TABLE OF AUTHORITIES

**Page**

**CASES**

## TABLE OF AUTHORITIES
## (continued)

**Page**

**TABLE OF AUTHORITIES**
**(continued)**

**Page**

**TABLE OF AUTHORITIES**
**(continued)**

**Page**

**TABLE OF AUTHORITIES**
**(continued)**

**Page**

## TABLE OF AUTHORITIES
## (continued)

## TABLE OF AUTHORITIES
## (continued)

**Page**

**CONSTITUTIONAL PROVISIONS**

## INTRODUCTION

For over a decade, California's Sex Equality in Education Act (AB 1266) has ensured that transgender students have the same opportunities as other students to succeed in school by allowing them to participate in school-sponsored sports in accordance with their gender identity.

Plaintiff students at Jurupa Valley High School, along with their mothers, initially brought this lawsuit against the Jurupa Unified School District (District), the California Interscholastic Federation (CIF), and the California Department of Education (CDE), seeking to enjoin enforcement of AB 1266 and claiming damages and declaratory relief.

Following amendment of their initial complaint, Plaintiffs now bring only two claims against CDE and CIF under the Supremacy Clause of the United States Constitution, alleging that AB 1266 and CIF Bylaw 300.D conflict with and violate Title IX.[1] The First Amended Complaint (FAC), however, fails to establish that Plaintiffs possess Article III standing. Plaintiffs' claims are also barred by sovereign immunity under the Eleventh Amendment, and, even if they were not barred, Plaintiffs fail to adequately allege facts sufficient to state valid preemption or Title IX claims. First, the FAC does not allege any express or as-applied preemption of California law. Second, even if Plaintiffs could assert these claims, their interpretation of Title IX is unsupported by statutory text, regulations, or case law, it is barred by the Spending Clause, and has been rejected under binding Ninth Circuit precedent. For these reasons, and because additional amendment would be futile, CDE and CIF's motion to dismiss should be granted without leave to amend.

[1] After filing their First Amended Complaint, Plaintiffs notified the Defendants that Plaintiffs A.M. and H.H. elected to graduate early. Because the only other named Plaintiff, Madison McPherson, herself has already graduated from high school, Plaintiffs stipulated to withdraw their prayers for injunctive relief as alleged against CDE and CIF. Plaintiffs also stipulated to withdraw their prayer for punitive damages under Title IX as to CDE and CIF. *See* ECF 34. Thus, Plaintiffs now seek only ordinary damages and declaratory relief against CDE and CIF.

# BACKGROUND

## I. LEGAL BACKGROUND

### A. Title IX and School Athletics

Title IX prohibits discrimination "on the basis of sex" in "any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). While the statute itself does not address school athletics programs, *see generally* 20 U.S.C. §§ 1681–1688, the U.S. Department of Education has promulgated implementing regulations addressing school athletics, 34 C.F.R. § 106.41 (2025; promulgated May 9, 1980).

The regulations establish a general rule prohibiting sex-separated athletics, *id.* § 106.41(a), and provide an exception allowing—but not requiring—sex-separated teams "where selection for such teams is based upon competitive skill or the activity involved is a contact sport," *id.* § 106.41(b). The regulations interpret Title IX to require "equal athletic opportunity for members of both sexes," but like Title IX itself, do not define "sex" or address "gender identity." *See id.* § 106.2 (establishing definitions); *see generally* 34 C.F.R. pt. 106. However, the Ninth Circuit construes Title IX's prohibition of sex discrimination to prohibit discrimination based on gender identity. *See Doe v. Snyder*, 28 F.4th 103, 114 (9th Cir. 2022); *Grabowski v. Ariz. Bd. of Regents*, 69 F.4th 1110, 1116–18 & n.1 (9th Cir. 2023).

### B. AB 1266

In 2013, the California State Legislature enacted AB 1266, codified at Education Code section 221.5(f), which states: "A pupil shall be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil's records." Cal. Educ. Code § 221.5(f).

In passing AB 1266, the Legislature recognized existing California law prohibiting discrimination on the basis of gender identity in any education program or activity receiving state funding. *See* AB 1266, 2013–2014 Sess. (Cal. 2013); *see also* AB 887, 2011–2012 Sess. (Cal. 2011) (amending Education Code to enumerate gender identity and gender expression as protected characteristics). AB 1266 aims to ensure that transgender and intersex students have equal access to school-sponsored athletics, which is critical for their health and well-being, just as it is for any youth. Assemb. Comm. On Educ., AB 1266 Bill Analysis, 2013–2014 Sess., at 3 (Cal. 2013) (Comm. Bill Analysis).

CIF Bylaw 300.D,[2] which is consistent with AB 1266, provides: "All students should have the opportunity to participate in CIF activities in a manner that is consistent with their gender identity, irrespective of the gender listed on a student's records." *See* FAC ¶ 99.

## II. FACTUAL BACKGROUND

Plaintiff Madison McPherson is a former student at Jurupa Valley High School (JVHS) who previously participated in varsity track and field and varsity volleyball. FAC ¶¶ 9, 25, 26–29. She has already graduated. *Id*. ¶ 25.

Plaintiff A.M. is a student at JVHS who is in the process of graduating early, and who previously competed in junior varsity track and field and was a member of the JVHS girls' volleyball team. *Id*. ¶¶ 31–35; ECF 34 ¶ 6.

Plaintiff H.H. is also a student at JVHS who is in the process of graduating early, and who previously competed in varsity track and field and was on the JVHS's girls' volleyball team. FAC ¶ 37; ECF 34 ¶ 6.[3]

[2] In 1981, the California State Legislature authorized CIF, a voluntary statewide nonprofit, to govern interscholastic athletics in California. CIF functions pursuant to multiple provisions of the California Education Code. *See* Cal. Educ. Code §§ 33353, 33354, 35179 (2025).

[3] The remaining Plaintiffs, Munoz and Hazameh, do not bring claims against CDE or CIF. *See* FAC at 51, 54.

Plaintiffs allege that the defendants' adherence to AB 1266 permitted A.H., a transgender girl, to participate in girls' athletics, which they claim has caused them harm such as unfair athletic competition, safety risks, and deprivation of equal educational opportunities. FAC ¶¶ 106–107.

## III. PROCEDURAL BACKGROUND

Plaintiffs' initial complaint, filed on September 9, 2025, brought claims against CDE and CIF under Title IX and the Equal Protection Clause. ECF 1. After service of the initial complaint, this Court subsequently issued an order dismissing similarly pleaded claims in a related case entitled *T. S. v. Riverside Unified School District*. *See* No. 5:24-cv-02480-SSS-SP, 2025 WL 2884416, at *7 (C.D. Cal. Sept. 24, 2025). Accordingly, the parties stipulated to allow Plaintiffs to file an amended complaint to address any similar pleading deficiencies. ECF 25, 26.

On November 12, 2025, Plaintiffs filed their FAC. ECF 29. The FAC clarified which Plaintiffs assert which claims, dropped the Equal Protection claim against CDE and CIF, and added two new claims against CDE and CIF, namely facial and as-applied preemption claims under the Supremacy Clause of the U.S. Constitution. *See* FAC ¶¶ 327–366. Plaintiffs' central theory is that AB 1266 and Bylaw 300.D contravene Title IX by discriminating against cisgender girls. *See generally id.* Plaintiffs seek declaratory relief and damages, but not injunctive relief. *See id.* ¶¶ 348, 366; ECF 34 ¶ 8.

## LEGAL STANDARDS

"[L]ack of Article III standing requires dismissal for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1)." *Maya v. Centex Corp.*, 658 F.3d 1060, 1067 (9th Cir. 2011). A plaintiff asserting subject matter jurisdiction bears the burden of establishing its existence. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).

Dismissal under Federal Rule of Civil Procedure 12(b)(6) is proper when a complaint "fails to state a cognizable legal theory" or fails to "allege sufficient factual support for its legal theories." *Caltex Plastics, Inc. v. Lockheed Martin Corp.*, 824 F.3d 1156, 1159 (9th Cir. 2016). 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) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). While courts assume that all well-pleaded facts in the complaint are true, they need not accept unreasonable inferences or conclusory allegations. *Twombly*, 550 U.S. at 570.

Leave to amend a complaint should be denied when amendment would be "futile," including when "no amendment would allow the complaint to withstand dismissal as a matter of law." *Kroessler v. CVS Health Corp.*, 977 F.3d 803, 814–15 (9th Cir. 2020).

## ARGUMENT

### I. PLAINTIFFS LACK STANDING

A plaintiff possesses standing to sue in federal court, as required by Article III of the Constitution, 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). Plaintiffs bear the burden of establishing these elements for each claim asserted and each form of relief sought. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 430–31 (2021). For the reasons discussed below, Plaintiffs lack standing.

#### A. Plaintiffs Fail to Allege Injury-in-Fact

To establish the injury-in-fact prong of standing, 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." *See Spokeo*, 578 U.S at 339 (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). Additionally, Article III limits federal court jurisdiction to "actual,

ongoing cases or controversies," *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990), which "must exist at all stages of review, not just at the time the action is filed," *Wolfson v. Brammer*, 616 F.3d 1045, 1053 (9th Cir. 2010).

In the education context, once a student graduates, there is no longer a live case or controversy justifying declaratory and injunctive relief against a school's policy. *See Doe v. Madison Sch. Dist. No. 321*, 177 F.3d 789, 798 (9th Cir. 1999). Plaintiff McPherson has already graduated, and Plaintiffs A.M. and H.H. are in the process of graduating. *See* FAC ¶ 25; ECF 34 ¶ 6; Decl. Leask ¶¶ 16–19, Ex. C. Accordingly, Plaintiffs cannot allege an "actual, ongoing" harm to sustain their claim for declaratory relief. *See Lewis*, 494 U.S. at 477. "[A] declaratory judgment merely adjudicating past violations of federal law—as opposed to continuing or future violations of federal law—is not an appropriate exercise of federal jurisdiction." *Bayer v. Neiman Marcus Grp., Inc.*, 861 F.3d 853, 867–68 (9th Cir. 2017).

Plaintiffs also lack injury because they make only generalized allegations about unfair competition. A.M. does not allege that she has ever competed against A.H. in track events. *See* FAC ¶¶ 32–35, 110. McPherson and H.H.'s participation in races against A.H. is not a cognizable injury because Title IX protections do not encompass particular outcomes, such as advancing to finals or winning a medal. *See* 1979 Policy Interpretation, 44 Fed. Reg. 71415 (defining "participants" in terms of receiving coaching, attending practice, and being listed in squad lists); *cf. B.P.J. v. W. Va. State Bd. of Educ.*, 98 F.4th 542, 560 (4th Cir. 2024) (determining that no governmental interest exists "in ensuring that cisgender girls do not lose ever to transgender girls"), *cert. granted*, 2025 WL 1829164 (July 3, 2025). Plaintiffs therefore fail to plead an injury resulting from competing against A.H.

Plaintiffs' allegations that they played with A.H. on the volleyball team likewise fail to establish injury in fact. Playing *alongside* A.H. did not lead to loss

of opportunities because they were teammates, not competitors.[4] Merely playing alongside or sharing space with a transgender person do not constitute injury. *See Doe v. Horne*, No. 23-3188, 2024 WL 4119371, at *2 (9th Cir. Sept. 9, 2024) (cisgender students seeking to intervene lacked standing because they "will not have to play against transgender girls"); *see also Parents for Priv. v. Barr*, 949 F.3d 1210, 1228–29 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 894 (2020) ("the mere presence of transgender students" is not actionable). Because Plaintiffs do not allege cognizable past or future injuries, they do not have standing.

**B. The Alleged Harms Are Not Traceable to CDE or CIF**

Even if Plaintiffs had sufficiently alleged injury-in-fact, they fail to meet the causation element of standing, which requires a plaintiff's alleged injury be "fairly traceable" to the defendant and not the result of third-party conduct. *Lujan*, 504 U.S. at 560. Any links in the causal chain must be plausible, rather than hypothetical or tenuous. *Wash. Env't. Council v. Bellon*, 732 F.3d 1131, 1141–42 (9th Cir. 2013).

Plaintiffs fail to allege a sufficient causal connection between their alleged injuries and CDE or CIF. Other schools' refusal to compete against A.H., *see* FAC ¶¶ 128–29, 359, constitutes the "independent action" of third parties, which is not traceable to CDE or CIF. *See Lujan*, 504 U.S. at 560. Plaintiffs' own refusal to participate alongside A.H, *see* FAC ¶ 236, is likewise not traceable to CDE or CIF. "[N]o plaintiff can be heard to complain about damage inflicted by its own hand," and therefore "voluntary actions that Plaintiffs have taken in response to the [challenged statutes]—not because of any actual requirement that [the statutes] impose"—do not confer standing. *See Partners for Ethical Care Inc. v. Ferguson*, 146 F.4th 841, 848–49 (9th Cir. 2025) (citation modified).

Further, neither AB 1266 nor Bylaw 300.D require the forfeiture of

[4] Unlike the plaintiffs in *T.S.*, Plaintiffs here do not allege that they were competing for "intrateam placement." *See* 2025 WL 2884416, at *7.

participation because of a transgender student's participation. To the contrary, refusing to participate based on A.H.'s transgender status directly contradicts the policy goals underlying AB 1266. *See* FAC ¶ 94 (AB 1266 aims to ensure that transgender students are not "'denied the opportunity to participate'" in athletics and do not "'suffer from stigmatization and isolation'") (quoting Comm. Bill Analysis at 3). It is therefore implausible that refusal to participate is traceable to AB 1266 or Bylaw 300.D.

The FAC also fails to connect any alleged injuries to CDE or CIF. Plaintiffs allege only that CDE and CIF "have policies that violate Title IX" and occasionally publish informational materials and investigate complaints. *See* FAC ¶¶ 87, 96–97. The FAC references Bylaw 300.D and CDE's website, but these references merely reiterate what is *required* by AB 1266. *Id.* ¶¶ 89–91, 95, 99. Simply put, these allegations are insufficient. *See Mendia v. Garcia*, 768 F.3d 1009, 1031 (9th Cir. 2014) (recognizing that "more particular facts are needed to show standing"). The "mere existence" of a statute or policy "is not sufficient to create a case or controversy within the meaning of Article III." *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1139 (9th Cir. 2000) (citation modified).

Moreover, the FAC alleges independent actions by another student and claims that school administrators failed to address Plaintiffs' concerns and allegedly violated Plaintiffs' First Amendment rights. *See, e.g.*, FAC ¶¶ 285–289 (Plaintiffs were allegedly "subjected to sexual harassment" by "repeated sexualized remarks," "linger[ing]" in "shared locker rooms," and "offensive touching and comments"); *id.* ¶ 407 ("Coach Manu [allegedly] retaliated against A.M. and H.H. for expressing their views"). In other words, the FAC alleges harm to Plaintiffs caused by independent third-party actions, not by AB 1266 or Bylaw 300.D.[5] These injuries

[5] Neither CDE nor CIF asserts that the District or A.H. committed any wrongdoing; rather, for the purposes of this motion, they merely point out the factual allegations pleaded in the FAC.

are not traceable to CDE or CIF, and thus all Plaintiffs lack standing as to CDE and CIF.

**C. Plaintiffs' Claims Are Not Redressable by the Relief Sought**

Redressability examines the "connection between the alleged injury and requested judicial relief." *Bellon*, 732 F.3d at 1146. To satisfy the redressability element, it must be "likely, as opposed to merely speculative, that the [alleged] injury will be redressed by a favorable decision." *Lujan*, 504 U.S. at 561 (citation modified). The relief sought must be "within the district court's power to award." *Juliana v. United States*, 947 F.3d 1159, 1170 (9th Cir. 2020).

As stated above, federal courts lack jurisdiction to grant a declaratory judgment that "adjudicat[es] past violations of federal law." *Bayer*, 861 F.3d at 868. This is because the "value of the judicial pronouncement—what makes it a proper judicial resolution of a 'case or controversy' rather than an advisory opinion—is in the settling of some dispute *which affects the behavior of the defendant towards the plaintiff*.'" *Id.* (quoting *Hewitt v. Helms*, 482 U.S. 755, 761 (1987)) (emphasis in original). The mere "psychic satisfaction" associated with a favorable judgment "is not an acceptable Article III remedy because it does not redress a cognizable Article III injury." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 107 (1998). Accordingly, the declaratory relief sought fails to meet the redressability requirement. *See Juliana*, 947 F.3d at 1170.[6]

Nor are Plaintiffs' alleged injuries redressable by damages. Plaintiffs have not alleged that they lost any future opportunities because of A.H.'s participation, let alone lost opportunities quantifiable as damages. Further, as a matter of law, neither punitive nor emotional distress damages are available under Spending Clause statutes like Title IX. *See Cummings v. Premier Rehab Keller, P.L.L.C.*,

[6] For these reasons, the Court should reject Plaintiffs' prayer for declaratory relief because that form of relief is "not available as a matter of law." *See Neuman v. Bag Fund, LLC*, No. 17-cv-06168-SJO-SSX, 2017 WL 10574521, at *5 (C.D. Cal. Dec. 12, 2017).

596 U.S. 212, 220–22 (2022) (citing *Barnes v. Gorman*, 536 U.S. 181, 185 (2002)); *see also Videckis v. Pepperdine Univ.*, No. 15-cv-00298-DDP-JCX, 2017 WL 11633265, at *1 (C.D. Cal. July 18, 2017) (no punitive damages under Title IX); *Party v. Ariz. Bd. of Regents*, No. 18-cv-01623-PHX-DWL, 2022 WL 17459745, at *4 (D. Ariz. Dec. 6, 2022) (no emotional distress damages under Title IX). And, as discussed in greater detail below, damages are unavailable here due to a lack of fair notice under the Spending Clause. Furthermore, any claim based on preemption (assuming it were valid) would be limited to injunctive and declaratory relief, which is not available. Because the relief sought by Plaintiffs is unlikely to remedy their alleged injuries—and, indeed, is unavailable altogether—Plaintiffs lack standing to maintain this suit.

Redressability requires that the relief requested would "remedy the injury suffered," rather than vindicating some broader interest. *See Steel Co.*, 523 U.S. at 106–07. "Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court; that is the very essence of the redressability requirement." *Id.* at 107. A "'generalized grievance' that a school's athletic offerings violate Title IX would be 'too abstract to constitute a case or controversy' appropriate for judicial resolution." *See Soule v. Conn. Ass'n of Sch., Inc.*, 90 F.4th 34, 50 (2d Cir. 2023) (quoting *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 217 (1974)) (citation modified). Plaintiffs "may disagree" broadly with the inclusion of transgender athletes, "but policy disagreement without particularized harm is not a basis for Article III standing." *Id.*

## II. SOVEREIGN IMMUNITY BARS PLAINTIFFS' CLAIMS

Plaintiffs' claims are barred by the Eleventh Amendment, which "has been authoritatively construed to deprive federal courts of jurisdiction over suits by private parties against unconsenting states." *Seven-Up Pete Venture v. Schweitzer*, 523 F.3d 948, 952 (9th Cir. 2008). Although exceptions may exist where a state has waived its immunity, Congress has clearly abrogated a state's immunity, or a

claim seeks prospective or declaratory relief against state officers in their official capacities, none of these exceptions apply here. *See Planned Parenthood Great Nw., Haw., Alaska, Ind., Ky. v. Labrador*, 122 F.4th 825, 841–42 (9th Cir. 2024).

### A. Plaintiffs Do Not Allege Facts to Invoke the *Ex Parte Young* Exception

Under *Ex parte Young*, 209 U.S. 123 (1908), "suits seeking prospective relief under federal law may ordinarily proceed against state officials sued in their official capacities." *Planned Parenthood*, 122 F.th at 842.[7] Yet Plaintiffs have not pleaded their claims in this fashion, instead suing CDE, which is an arm of the state and enjoys sovereign immunity. *See Sato v. Orange Cnty. Dep't of Educ.*, 861 F.3d 923, 928 (9th Cir. 2017); Cal. Gov't Code § 900.6. And even if Plaintiffs had named a state official, *Ex parte Young* requires named officials to have a "fairly direct" connection with enforcement of the challenged act. *See Snoeck v. Brussa*, 153 F.3d 984, 986 (9th Cir. 1998). Plaintiffs' allegations (*see* FAC ¶¶ 96, 361) that CDE possesses a "generalized duty to enforce state law or general supervisory power" are insufficient to establish the requisite connection. *See Snoeck*, 153 F.3d at 986. Lastly, Plaintiffs have no standing to seek injunctive or declaratory relief, as explained above. *See* ECF 34 ¶ 6. Accordingly, Plaintiffs' claims are barred by Eleventh Amendment immunity.

### B. Abrogation Does Not Apply Because Plaintiffs Actually Bring Preemption Claims, Not Title IX Claims

Although Plaintiffs attempt to label their claims as Title IX claims, Plaintiffs have not pleaded actual Title IX claims against CDE or CIF; they have pleaded preemption claims under the Supremacy Clause of the Constitution. *See Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1022 (9th Cir. 2013) (explaining conflict preemption claims); *see also Mansourian v. Regents of the Univ. of Cal.*, 602 F.3d

[7] Damages against the state or an arm of the state for past violations of the law are not permitted. *Edelman v. Jordan*, 415 U.S. 651, 667–68 (1974); *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 102–03 (1984).

957, 964 (9th Cir. 2010) (explaining tests for "effective accommodation" and "equal treatment" claims under Title IX). Thus, any purported abrogation of sovereign immunity under Title IX (if that abrogation is even effective, *see infra*) would not extend to Plaintiffs' preemption claims.

### C. There Has Been No Waiver of Immunity Because Both CDE and CIF Lacked Clear Notice Under the Spending Clause

To the extent Plaintiffs attempt to seek damages under Title IX, that claim is also barred because neither CDE nor CIF had clear notice that Title IX unambiguously requires the exclusion of transgender girls from girls' sports and facilities as a condition of federal funding.

Title IX was "enacted pursuant to Congress' authority under the Spending Clause." *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 640 (1999). Spending Clause legislation "is much in the nature of a contract," and therefore States must "voluntarily and knowingly accept[]" the conditions associated with funding. *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981); *see also Barnes*, 536 U.S. at 186. Thus, conditions on federal funding must be imposed "unambiguously" to provide recipients with "clear notice" prior to accepting funds. *See Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006). The clear-notice rule limits the availability of both damages and injunctive relief, *Roe v. Critchfield*, 137 F.4th 912, 930 & n.12 (9th Cir. 2025), and applies equally to funding conditions imposed by agencies, *City of L.A. v. Barr*, 929 F.3d 1163, 1174–75 & n.6 (9th Cir. 2019).

As this Court explained in *T.S.*, whether a state waived its sovereign immunity under Title IX hinges on "whether the state received notice from Congress that the allegedly conflicting condition of its funding was unambiguously imposed on the state." 2025 WL 2884416, at *12. The issue of notice can be decided before a merits analysis, as the Ninth Circuit did in *Critchfield*. *See* 137 F.4th at 928–31; *see also Soule*, 90 F.4th at 52 (acknowledging it could be

appropriate to decide the question of notice as a threshold freestanding issue such as when evaluating a dispositive preliminary matter like "immunity from suit"); *Coal. to Defend Affirmative Action v. Brown*, 674 F.3d 1128, 1133 (9th Cir. 2012) ("[O]ur precedent dictates that we resolve an Eleventh Amendment immunity claim before reaching the merits."). For multiple reasons, CDE lacked clear notice and therefore did not waive sovereign immunity.

First, neither Title IX nor its regulations indicate that AB 1266's requirements violate Title IX. *See generally* 20 U.S.C. §§ 1681–1688; 34 C.F.R. pt. 106. The statute and regulations do not define "sex" or "discrimination on the basis of sex" to include or exclude gender-identity discrimination, and do not address whether transgender students may access athletics and facilities consistent with their gender identity. Thus, neither CDE nor CIF could possibly have been on notice that AB 1266 contravened Title IX.

Second, binding precedent forecloses the argument that Title IX unambiguously conditions federal funding on the categorical exclusion of transgender girls from girls' athletics and facilities. The Ninth Circuit has held that discrimination based on "transgender status" constitutes discrimination "on the basis of sex" under Title IX, *Snyder*, 28 F.4th at 113–14, and that Title IX does not require "sex-segregated facilities," but rather allows for facilities to "accommodate [students'] gender identity," *Parents for Priv.*, 949 F.3d at 1217, 1227. The Ninth Circuit has also determined that categorical bans targeting transgender student athletes likely violate the Equal Protection Clause. *See Hecox v. Little*, 104 F.4th 1061, 1080–81, 1088 (9th Cir. 2024), *cert. granted*, 145 S. Ct. 2871 (2025); *Doe v. Horne*, 115 F.4th 1083, 1109–10 (9th Cir. 2024).[8]

Further, in *Critchfield*, the Ninth Circuit conducted a Spending Clause analysis and determined that Title IX and its regulations do not "unambiguously"

[8] The Equal Protection Clause, like Title IX, *see infra*, prohibits only intentional discrimination. *See Ballou v. McElvain*, 29 F.4th 413, 426 (9th Cir. 2022).

"prohibit[] the exclusion of transgender students from [facilities] corresponding to their gender identity." 137 F.4th at 929. That decision also reaffirmed the holding in *Parents for Privacy* that Title IX allows sex-separated facilities to "accommodate gender identity," and does not require sex-separated facilities. *See id.* at 927. The import of these cases, taken together, is that Title IX and its regulations do not "unambiguously" *require* sex-separated facilities to accommodate students' gender identity, nor do they "unambiguously" *prohibit* sex-separated facilities from accommodating students' gender identity. This authority precludes a finding of clear notice here.

## III. PLAINTIFFS FAIL TO STATE CLAIMS AGAINST CDE OR CIF

### A. Plaintiffs' Preemption Claims Fail

Under the Supremacy Clause, Congress has the power to preempt state law. U.S. Const. art. VI, cl. 2; *Arizona v. United States*, 567 U.S. 387, 399 (2012). Congress may exercise this power expressly or preemption may be implied where state law is in an area fully occupied by federal regulation or conflicts with federal law. *Id.*; *see also In re Volkswagen "Clean Diesel" Litig.*, 959 F.3d 1201, 1211 (9th Cir. 2020) ("express preemption" is a question of statutory construction requiring analysis of the plain wording of the statute to determine whether Congress intended to preempt state law).

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 v. Regents of Univ. of Cal.*, 5 F. Supp. 3d 1106, 1116 (N.D. Cal. 2013).

Field preemption occurs where (1) the "regulatory framework is so pervasive" that there is no room for state regulation, or (2) where the "federal

interest [is] so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." *Arizona*, 567 U.S. at 399 (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).

In both conflict and field preemption, the key inquiry is congressional intent. *Wyeth v. Levine*, 555 U.S. 555, 565 (2009). A state's historic police powers are not superseded by federal law "unless that was the clear and manifest purpose of Congress." *Id.*

**1. Plaintiffs' Facial Preemption Claim Fails**

To succeed on a facial preemption challenge, the plaintiff must show that "no set of circumstances exists under which the Act would be valid." *See United States v. Salerno*, 481 U.S. 739, 745 (1987); *Am. Apparel & Footwear Assoc., Inc. v. Baden*, 107 F.4th 934, 938 (9th Cir. 2024) ("The *Salerno* rule applies to a federal preemption facial challenge to a state statute."). *See also Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008) (facial challenges are "disfavored" because they "often rest on speculation" and "raise the risk of premature interpretation of statutes on the basis of factually barebones records") (citation modified).

Plaintiffs do not point to any provision of Title IX that expressly preempts state anti-discrimination laws protecting transgender students from discrimination in educational programs and activities—and no such provision exists. *See generally* 20 U.S.C. §§ 1681–1688; 34 C.F.R. pt. 106. Thus, Plaintiffs cannot establish express preemption.

Nor is there any conflict between Title IX and either AB 1266 or the derivative Bylaw 300.D. 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, case law holds to the contrary. The Ninth Circuit has ruled that the Supreme Court's holding from *Bostock v. Clayton County*, 590 U.S. 644 (2020)—that "sex discrimination"

extends to gender identity—applies to Title IX claims. *Grabowski*, 69 F.4th at 1118. As a result, bans against transgender students' athletic participation on teams that align with their gender identities (which is effectively the relief sought by Plaintiffs) have been held to violate the rights of transgender students. *See Hecox*, 104 F.4th at 1080–81; *Horne*, 115 F.4th at 1108–10; *B.P.J.*, 98 F.4th at 563–64.

Further, because the Court must exercise its own independent judgment in interpreting Title IX, the Executive Orders and U.S. Department of Education interpretations of Title IX Plaintiffs rely upon do not control the Court's decision. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412–13 (2024).[9] While the regulations do provide carve-outs for sex-separated sports teams and facilities, the carve-outs do not *require* sex-separated teams, and nothing in the statute or regulations prohibits the inclusion of transgender girls on girls' teams. Thus, nothing in Title IX or its regulations establishes that AB 1266 violates or conflicts with Title IX. *See* 20 U.S.C. § 1681; 34 C.F.R. § 106.41. Similarly, "just because Title IX authorizes sex-segregated facilities" (i.e., "school bathrooms, locker rooms, and showers") "does not mean that they are required, let alone that they must be segregated based only on biological sex and cannot accommodate gender identity." *Parents for Priv.*, 949 F.3d at 1217, 1227. At most, Plaintiffs' theory rests on a hypothetical or potential conflict that does not exist or is too speculative to justify preemption.

Importantly, where Congress has legislated in a field in which there is a "historic presence of state law," there is a presumption against preemption. *See*

[9] Prior to *Loper Bright*, which overturned *Chevron* deference to federal agencies, courts could defer to an agency's interpretation of a statute it administers. *Lopez v. Garland*, 116 F.4th 1032, 1039 (9th Cir. 2025). Post-*Loper Bright*, courts afford agency interpretations "due respect" under *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944), which "may range from great respect to near indifference" depending on factors including "the degree of the agency's care, its consistency, formality, and relative expertness," and "the persuasiveness of the agency's position." *Lopez*, 116 F.4th at 1039. Here, the Court should not afford any deference to the agency's recent interpretation of Title IX because, unlike Title IX's longstanding implementing regulations, it is based on an incorrect interpretation of Title IX and is inconsistent with earlier interpretations.

*Wyeth*, 555 U.S. at 565 & n.3. It is well established that "education is a traditional concern of the States." *See United States v. Lopez*, 514 U.S. 549, 580–81 (1995) (Kennedy, J., concurring); *see also Milliken v. Bradley*, 418 U.S. 717, 741–42 (1974); *Wilson v. Marana Unified Sch. Dist. No. 6 of Pima Cnty.*, 735 F.2d 1178, 1183 (9th Cir. 1984). And there is nothing in Title IX that indicates Congress intended to supersede the State's longstanding police powers over education.

In sum, Plaintiffs have not met their "burden" of alleging facts sufficient to show a "clear and manifest" Congressional intent to completely preempt state laws that protect transgender students from discrimination in State educational programs and activities. *See Puente Arizona v. Arpaio*, 821 F.3d 1098, 1108 (9th Cir. 2016).

**2. Plaintiffs' As-Applied Preemption Claim Fails**

Plaintiffs' "as-applied" preemption claim likewise fails. An "as-applied" preemption challenge attacks the application of a statute to a specific set of facts. *Am. Apparel*, 107 F.4th at 938; *Hoye v. City of Oakland*, 653 F.3d 835, 857 (9th Cir. 2011). Here, Plaintiffs allege that allowing transgender girls to participate in girls' sports and access girls' facilities "frustrat[es] Title IX's goal" of providing equal athletic opportunities, effective accommodation of interests and abilities, and equal treatment in athletic benefits. *See* FAC ¶¶ 359–65. The as-applied challenge, however, fails for the same reasons the facial challenge fails. *See Hoye*, 653 F.3d at 857–58. There is no conflict between AB 1266 or Bylaw 300.D and Title IX. And Plaintiffs allege no facts indicating that the inclusion of transgender athletes, let alone the participation of a single transgender athlete, affects the substantial proportionality of participation opportunities available for female athletes at JVHS or in the State, or otherwise denies equal treatment. *See T. S.*, 2025 WL 2884416, at *10–12. Thus, Plaintiffs' preemption claims fail as a matter of law.

### B. To the Extent Plaintiffs are Attempting to Bring a Title IX Claim Against CDE and CIF, That Claim Fails

Plaintiffs have not brought true Title IX claims against CDE and CIF, but even if they had, those claims would fail. To prevail on a Title IX claim, a plaintiff must allege and prove that "(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. The Spending Clause Bars Plaintiffs' Claim

As discussed above, Title IX does not unambiguously require, as a condition of federal funding, the exclusion of transgender girls from girls' sports and facilities. Accordingly, any Title IX claim against both CDE and CIF would fail, separate and apart from the issue of sovereign immunity. *See Critchfield*, 137 F.4th at 929 ("liability does not arise under Title IX unless the challenged conditions were set out 'unambiguously'").

#### 2. A Disparate Impact Theory Is Not Cognizable Under Title IX

Private plaintiffs may enforce Title IX through the implied cause of action recognized in *Cannon v. University of Chicago*, 441 U.S. 677, 717 (1979). However, that right of action covers only intentional discrimination, not disparate impact.

Title IX was "patterned after" Title VI, *see id.* at 695–96, and therefore courts "interpret[] Title IX consistently with Title VI," *see Barnes*, 536 U.S. at 185. *See also Kaiser Found. Health Plan of Wash.*, 965 F.3d 945, 953 (9th Cir. 2020). It is "beyond dispute" that Title VI prohibits only intentional discrimination. *Alexander v. Sandoval*, 532 U.S. 275, 280, 285, 293 (2001) (holding that private individuals may not sue on a disparate-impact theory under Title VI). Title IX,

which was modeled after Title VI and uses nearly identical language, thus necessarily also prohibits only intentional discrimination. *See Cannon*, 441 U.S. at 694–95 ("Except for the substitution of the word 'sex' in Title IX to replace the words 'race, color, or national origin' in Title VI, the two statutes use identical language to describe the benefited class."). Indeed, the Supreme Court has described *Cannon* as holding that "Title IX implies a private right of action to enforce its prohibition on *intentional* sex discrimination." *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 173 (2005) (citing *Cannon*, 441 U.S. at 690–93) (emphasis added).

The Circuits that have addressed this issue concluded that Title IX prohibits only intentional discrimination. *See, e.g.*, *Doe v. Edgewood Indep. Sch. Dist.*, 964 F.3d 351, 358 (5th Cir. 2020) (recognizing liability under Title IX "only for *intentional* sex discrimination"); *Haidak v. Univ. of Mass.-Amherst*, 933 F.3d 56, 75 (1st Cir. 2019) ("We have never recognized a private right of action for disparate-impact discrimination under Title IX"); *see also Doe v. BlueCross BlueShield of Tenn., Inc.*, 926 F.3d 235, 240 (6th Cir. 2019). While the Ninth Circuit has not directly addressed the question, it previously dismissed an attempted "disparate impact" claim brought under Title IX because the existence of a mere "asymmetr[y]" in treatment of male and female students does not suggest that the plaintiffs "were treated any differently . . . *based on sex*." *See Austin v. Univ. of Ore.*, 925 F.3d 1133, 1138 (9th Cir. 2019) (emphasis added).

Plaintiffs fail to allege that AB 1266 or Bylaw 300.D were enacted, or that CDE or CIF took any discriminatory action, "because of, not merely in spite of, [their] adverse effects upon an identifiable group." *See Horne*, 115 F.4th at 1103 (quoting *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979)); *see also Gallinger v. Becerra*, 898 F.3d 1012, 1021 (9th Cir. 2018) ("Accommodating one interest group is not equivalent to intentionally harming another."). Because Plaintiffs fail to plausibly allege that CDE or CIF *intentionally* discriminated

against cisgender girls, they cannot maintain a Title IX claim. *See Female Athletes United v. Ellison*, No. 25-cv-2151, 2025 WL 2682386, at *15 (D. Minn. Sept. 19, 2025) (finding a disparate impact theory challenging transgender girls' inclusion in athletics was not cognizable under Title IX).

**3. No Effective Accommodation or Equal Treatment Claims**

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

The "two components of Title IX's equal athletic opportunity requirement" are "'effective accommodation' and 'equal treatment.'" *Mansourian*, 602 F.3d at 964. Effective accommodation prohibits an institution from failing to accommodate the interests and abilities of student athletes of both sexes. *Id.* at 965. "Equal treatment" requires "equivalence in the availability, quality and kinds of other athletic benefits and opportunities provided male and female athletes," such as schedules, equipment, coaching, and so on. *Id.* Plaintiffs' purported Title IX claim would fail under both theories.

First, as to effective accommodation, Plaintiffs have not alleged any facts demonstrating denial of athletic opportunities for girls on a program-wide level. 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*, 526 U.S. at 652; *see also Ollier v. Sweetwater Union High Sch. Dist.*, 768 F.3d 843, 856 (9th Cir. 2014) (part of the analysis under 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'"). Plaintiffs do not allege that they have been unable to participate in girls' varsity track and field or volleyball due to one transgender student's participation, nor do they allege that cisgender females are underrepresented or substantially disproportionate in numbers on the girls' varsity track and field or volleyball teams. Rather, the complaint pleads the opposite: that Plaintiffs have participated and been highly successful on those teams. *See* FAC ¶¶ 24–42. Accordingly, Plaintiffs fail to plausibly allege a Title IX effective accommodation claim. *See 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 failed to "tie[] her release from the team to any alleged system-wide participation gaps at [the university]").

Likewise, as to unequal treatment. An equal treatment claim considers equality in athletic benefits such as game schedules, 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. *See T. S.*, 2025 WL 2884416, at *11 (in assessing an equal treatment claim, "the appropriate comparison is between male and female").

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, and therefore "there are no benefits or opportunities that are granted to the girls at JVHS in the way they are granted to the boys." FAC ¶ 319. This allegation is wholly insufficient to demonstrate any unequal treatment attributable to Plaintiffs' gender. *See Mansourian*, 602 F.3d at 965.

Lastly, as discussed above, Plaintiffs' interpretation of Title IX is unsupported by the statutory text of Title IX and Ninth Circuit precedent forecloses Plaintiffs' interpretation. *See* 20 U.S.C. §§ 1681–1688; 34 C.F.R. pt. 106; *Snyder*,

28 F.4th at 114; *Parents for Priv.*, 949 F.3d at 1217, 1227; *Hecox*, 104 F.4th at 1080–81; *Horne*, 115 F.4th at 1108–10; *Critchfield*, 137 F.4th at 929.

## CONCLUSION

For the foregoing reasons, all claims against CDE and CIF should be dismissed without leave to amend. *See Williams v. California*, 764 F.3d 1002, 1018–19 (9th Cir. 2014) ("[T]hat Plaintiffs have already had two chances to articulate clear and lucid theories underlying their claims, and they failed to do so, demonstrates that amendment would be futile.").

Dated: January 9, 2026

Respectfully submitted,

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

*/s/ Stacey Leask*
STACEY LEASK

*/s/ Katherine Bruck*
KATHERINE BRUCK

Deputy Attorneys General
*Attorneys for Defendant Department of Education*

Dated: January 9, 2026

*/s/ J. Scott Donald*
J. SCOTT DONALD
*Attorney for Defendant California Interscholastic Federation*

**CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for California Department of Education and California Interscholastic Federation, certify that this brief contains 6,945 words, which:

_X_ complies with the word limit of L.R. 11-6.1.

____ complies with the word limit set by court order.

Respectfully submitted,

Dated: January 9, 2026

*/s/ Stacey Leask*
STACEY LEASK

*/s/ Katherine Bruck*
KATHERINE BRUCK

Deputy Attorneys General
*Attorneys for Defendant Department of Education*

Dated: January 9, 2026

*/s/ J. Scott Donald*
J. SCOTT DONALD
*Attorney for Defendant California Interscholastic Federation*