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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-SP **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CALIFORNIA DEPARTMENT OF EDUCATION'S MOTION TO DISMISS THE SECOND AMENDED COMPLAINT** Date: January 30, 2026 Time: 2:00 p.m. Courtroom: 2 Judge: The Honorable Sunshine Suzanne Sykes Trial Date: Not Set Action Filed: 11/20/2024

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INTRODUCTION

This Court previously dismissed each of the claims brought against the California Attorney General (AG) and the State Superintendent of Public Instruction (SPI) in Plaintiffs' First Amended Complaint. Plaintiffs have amended their complaint for a second time, this time dropping both the AG and the SPI from the action, adding the California Department of Education (CDE), and asserting two new claims against CDE: facial and as-applied preemption claims under the Supremacy Clause of the United States Constitution.

The Second Amended Complaint (SAC), however, again fails to establish that Plaintiffs possess standing for any of the relief sought. Plaintiffs' preemption claims are also barred by sovereign immunity under the Eleventh Amendment, and, even if they were not barred, fail to adequately allege that Assembly Bill 1266 is preempted by Title IX. For these reasons, and because amendment would be futile, the Court should grant CDE's motion to dismiss the SAC without further leave to amend.

BACKGROUND

I. LEGAL BACKGROUND

A. Title IX and School Athletics

Title IX prohibits discrimination "on the basis of sex . . . under 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 United States 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," such that "both sexes" are effectively accommodated in "the selection of sports and levels of competition," and enjoy equal treatment in the provision of "schedules, equipment, coaching, and other factors." *Mansourian v. Regents of the Univ. of Cal.*, 602 F.3d 957, 964–65 (9th Cir. 2010) (citing 34 C.F.R. § 106.41(c)).

The regulations, like Title IX itself, do not define "sex" or address "gender identity." *See* 34 C.F.R. § 106.2 (2025; promulgated May 9, 1980) (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 on the basis of gender identity. *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. Assembly Bill 1266

In 2013, the California State Legislature enacted Assembly Bill (AB) 1266, codified at Education Code section 221.5(f), which states: "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 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 provisions of California Education Code to enumerate gender identity and gender expression as protected characteristics). And at the time AB 1266 became law, California law already defined "[g]ender" to be equivalent to "sex," and to include "gender identity and gender expression . . . whether or not stereotypically associated with the person's assigned sex at birth." *See* Cal. Educ. Code § 210.7; *see also* Senate Bill (SB) 777, 2007–2008 Sess. (Cal. 2007) (creating Cal. Educ. Code § 210.7); AB 887 (amending Cal. Educ. Code § 210.7).

AB 1266 was intended 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). The Legislature also recognized that since student athletes "display a great deal of physical variation," it is inaccurate to assume that "transgender women will have an unfair advantage over non-transgender women." *Id.* at 2–3.

II. FACTUAL BACKGROUND

Plaintiffs are two high school students on the Martin Luther King High School (MLKHS) girls' varsity cross-country team who seek to challenge AB 1266. ECF 71, SAC ¶ 6. Plaintiff T.S. is an eleventh-grade student on the girls' varsity cross-country team. *Id*. Plaintiff K.S. is a ninth-grade student on the girls' junior varsity cross-country team. *Id*. Save Girls' Sports (SGS), also a plaintiff, is an association comprised of students and parents who are allegedly subject to and harmed by AB 1266. *Id*. ¶ 17.

III. PROCEDURAL BACKGROUND

A. The Court Dismisses the First Amended Complaint

Plaintiffs' First Amended Complaint (FAC, ECF 28) brought First Amendment and Due Process claims against School Defendants; sex discrimination, effective accommodation, and equal treatment claims under Title IX against all defendants, and a state-law gender discrimination claim under California Education Code section 220 against all defendants. Plaintiffs sought monetary relief, as well as an injunction preventing Defendants from "enforcing and implementing AB 1266." ECF 28 at 48–49.

The AG and SPI filed a motion to dismiss the FAC (ECF 41),[1] and on September 24, 2025, this Court granted the motion. ECF 68, Order Dismissing FAC. As to the AG and the SPI, the Court dismissed the Title IX claims on

[1] As did the other defendants.

standing grounds and for failure to state a claim, with leave to amend. ECF 68 at 1. The Court also dismissed the Education Code section 220 claim against the AG and SPI without leave to amend. *Id.*

As to standing, the Court ruled that because "there is no allegation 'that any transgender female athletes will be competing for a spot on the varsity girls' cross-country team next season,'" Plaintiffs did not plausibly allege that they will be injured in the future. *Id.* at 12. As the Court noted, the FAC "describe[d] M.L. as a 'senior' who is attempting to graduate early" and "[a]bsent a non-speculative allegation that Plaintiffs will continue to compete against any transgender athletes, they lack standing to enjoin the operation of AB 1266." *Id.*

The Court also found that there were no allegations (1) "as to whether and how AB 1266 is enforced by Defendants—in other words, what an injunction would accomplish"; no allegations that the AG and SPI are recipients of federal funding that would subject them to Title IX; and no allegations to support an *Ex parte Young* exception to state sovereign immunity. *Id.* at 14. As to the merits of the Title IX claims, the Court found that the FAC failed to state any plausible Title IX claims against the AG and SPI. *Id*. at 15-19.

Accordingly, the Court dismissed each of the claims against the AG and SPI with limited leave to amend, ordering that "any amended complaint SHALL ONLY address the deficiencies identified [in the Court's order]." *Id.* at 20–21.

B. The Second Amended Complaint

On October 29, 2025, Plaintiffs filed the SAC. ECF 71. Plaintiffs re-asserted their free speech, due process and Title IX claims against School Defendants. SAC ¶¶ 246–399. Plaintiffs opted to not re-assert any claims against either the AG or the SPI, instead bringing two new claims against CDE: a facial and an as-applied preemption challenge under the Supremacy Clause. *Id.* at ¶¶ 400–434. Plaintiffs seek declaratory and injunctive relief enjoining the enforcement and implementation of AB 1266, and unspecified monetary damages. *Id.* at 55–56.

LEGAL STANDARDS

A. Motion to Dismiss Under Rule 12(b)(1)

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 Fam. Worldwide*, 328 F.3d 1136, 1139 (9th Cir. 2003). 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).

B. Motion to Dismiss Under Rule 12(b)(6)

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).

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); (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). While a 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.

C. Amendment After Dismissal

When a complaint is dismissed, leave to amend 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); *see Williams v. California*, 764 F.3d 1002, 1018-19 (9th Cir. 2014) (the "fact that 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").

ARGUMENT

I. PLAINTIFFS' CLAIMS ARE NOT JUSTICIABLE

A. The Action is Moot as to CDE

Article III of the United States Constitution limits federal court jurisdiction to "actual, ongoing cases or controversies." *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990). "A case or controversy 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). Where "the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome," the case is moot. *Cnty. of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979) (citation omitted); *see also United States v. Geophysical Corp. of Ala.*, 732 F.2d 693, 698 (9th Cir. 1984). 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).

As the Court recognized in its prior order, the FAC alleged that M.L. was planning to graduate early and therefore "Plaintiffs have not plausibly alleged that they will continue to be injured in the future." ECF 68 at 12. In the SAC, Plaintiffs do not allege that M.L. will be on the team next season, or at any future time, and there are no allegations "that any transgender female athletes will be competing for a spot on the varsity girls' cross-country team next season." *Id.*[2] Thus, their claims for relief are now moot. *See Davis*, 440 U.S. at 631; *Madison Sch. Dist. No. 321,* 177 F.3d at 798.

Plaintiffs attempt to side-step the defect identified by the Court by adding new allegations regarding another transgender female, A.H., who attends a different school in a different district and who allegedly participated in track and field and

[2] CDE is informed and believes that M.L. has graduated from MLKHS and will not at any point in the future compete for a spot on the girls' varsity cross-country team at MLKHS or participate in any future interscholastic events.

volleyball.[3] ECF 71, SAC ¶¶ 163–67. Yet, the SAC does not allege that either T.S. or K.S. participated in track and field or volleyball against A.H., or that A.H. will be competing for a spot on the MLKHS varsity girls' cross-country team next season. Further, the SAC does not allege that Plaintiffs will compete against or be harmed by A.H. in the future.[4] Because the SAC fails to establish any ongoing, live controversy, Plaintiffs' claims against CDE must be dismissed.

B. 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*.

1. Plaintiffs fail to allege a concrete and particularized injury

To establish standing, a plaintiff must show, for each form of relief sought, 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*, 504 U.S. at 560).

Plaintiffs do not allege facts in the SAC that show a sufficiently cognizable injury. Plaintiffs' allegations confirm that T.S. and K.S. competed and participated

[3] These allegations also exceed the scope of the Court's limited leave to amend and should be stricken. *See* ECF 68 at 20–21; *Freeney v. Bank of Am. Corp.*, No. 15-cv-02376-MMM-PJWX, 2015 WL 4366439, at *28 (C.D. Cal. July 16, 2015).

[4] To the extent that Plaintiffs are attempting to assert that there could be a future event at which A.H. or another transgender athlete competes, Plaintiffs fail to allege any non-speculative allegations of a future injury sufficient to establish standing and hence, these claims are not yet ripe for judicial review. *See Portman v. Cnty. of Santa Clara*, 995 F.2d 898, 902 (9th Cir. 1993) (explaining that the ripeness doctrine precludes premature review of speculative injuries that may never occur); *Texas v. United States*, 523 U.S. 296, 300 (1998) ("A claim is not ripe for adjudication if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'").

in their desired sports. SAC ¶¶ 81, 85, 91, 130, 152-160. Further, 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). But even if Title IX's protection of "participation opportunities" were construed as Plaintiffs suggest, Plaintiffs have not plausibly alleged that they will be denied those opportunities in the future or how they would perform if M.L. does not compete, and any such allegations would be entirely speculative. *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 Los Angeles*, 13 F.3d 1327, 1334 (9th Cir. 1994)).

Finally, Plaintiffs' allegation that A.H. competed in the 2024–2025 track and field season at JVHS and displaced SGS members in "numerous" unspecified events (SAC ¶ 165) does not establish standing, as these allegations are conclusory and need not be taken as true. *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). And Plaintiffs do not allege any injury stemming from A.H.'s participation on JVHS's volleyball team; Plaintiffs do not allege that their school competed against JVHS,[5] and do not allege facts that demonstrate that A.H.'s participation has harmed any Plaintiffs in this case. Plainly put, the mere

[5] Plaintiffs' allegations that "at least ten" volleyball teams forfeited matches against JVHS is irrelevant because the SAC does not allege MLKHS even played against JVHS or that any named plaintiffs were harmed.

existence of a transgender female athlete in California is insufficient to establish standing.[6]

2. Plaintiffs' alleged harms are not traceable to CDE

Even if the SAC alleged a sufficiently concrete and particularized injury, Plaintiffs still 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); *see also Wash. Env't. Council v. Bellon*, 732 F.3d 1131, 1141 (9th Cir. 2013).

As with the prior claims in the FAC, the SAC fails to connect Plaintiffs' injuries to CDE. Plaintiffs allege only that CDE "has authority over the interscholastic policies of school districts, including RUSD," and occasionally publishes informational materials and investigates reports. SAC ¶¶ 23, 77, 78. However, 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"). Rather, the SAC again alleges that school administrators took numerous independent actions which resulted in Plaintiffs' alleged harm and that the varsity lineup is left to the discretion of school coaching staff. SAC ¶ 99.

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. SAC ¶¶ 99–103, 125–29, 139. Thus, the alleged injuries stem from the school staff's independent actions, and not CDE 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. *See Thomas v. Anchorage Equal Rights Com'n*, 220 F.3d 1134, 1139 (9th Cir. 2000) ("The mere existence of

[6] Plaintiffs also have not alleged in the SAC that either M.L. or A.H. have any physical or physiological advantages over Plaintiffs due to their transgender status. *See* Order Dismissing FAC at 12, n.8.

a statute is not sufficient to create a case or controversy within the meaning of Article III.") (citation modified). Thus, the SAC fails to demonstrate that AB 1266 or CDE are responsible for Plaintiffs' claimed injuries.

3. Plaintiffs' claims are not redressable

Redressability 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 transgender students such as M.L. to participate on a sports team; it does not guarantee spots on the Varsity Top 7 lineup or outcomes in any athletic events. Nor will an injunction redress the alleged displacement of Plaintiffs from any past races, as the races are over and cannot be repeated. Further, an injunction cannot redress the alleged future losses as those allegations are entirely speculative and may never occur.

Moreover, redressability also requires that the relief requested would "remedy the injury suffered," rather than vindicating some broader interest. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 106–07 (1998). Plaintiffs' requested injunction sweeps far beyond the harms they allege. 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). "[P]olicy disagreement without particularized harm is not a basis for Article III standing." *Id.*

Finally, Plaintiffs' requested injunctive relief would violate the rights of transgender students in California, as well as Title IX. *See, e.g.*, *Hecox v. Little*, 104 F.4th 1061, 1080-81 (9th Cir. 2024), *as amended* (June 14, 2024), *cert. granted*, 2025 WL 1829165 (July 3, 2025) (Idaho statute which banned transgender

women and girls from participating in women's student athletics preliminarily enjoined on grounds that the 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); *B.P.J.*, 98 F.4th at 562-65 (state law excluding transgender girl from girls' sports teams violated Title IX).[7]

Thus, Plaintiffs cannot establish the redressability prong of standing.

4. SGS lacks organizational standing

An organizational plaintiff can establish Article III standing in two ways: by claiming that it suffered an injury in its own right, or, by asserting "standing solely as the representative of its members." *Warth v. Seldin*, 422 U.S. 490, 511 (1975); *see also Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 394 (2024). Here, SGS lacks organizational standing based on direct injury because it fails to plead that, as an organization, CDE has 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. *See also* ECF 68 at 13. Thus, SGS lacks organizational standing.

5. SGS lacks associational 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.,*

[7] The SAC pleads only facial and as-applied preemption challenges to AB 1266, which are not brought directly under Title IX and therefore limited to injunctive and declaratory relief under *Ex parte Young*. *See North East Med. Services, Inc. v. Cal. Dept. of Health Care Servs.*, 712 F.3d 461, 466 (9th Cir. 2013).

Inc., 517 U.S. 544, 553 (1996). As discussed above, the SAC fails to establish that any of the SGS members independently possess standing.

Additionally, the third element of associational standing is not met here because Plaintiffs' claims and requested relief necessarily would require the participation of individual SGS members. *United Union of Roofers, Waterproofers & Allied Trades No. 40 v. Insurance Corp. of America,* 919 F.2d 1398, 1400 (9th Cir. 1990) ("claims for monetary relief necessarily involve individualized proof and thus the individual participation of association members"). Prudential considerations counsel against associational standing here, because Plaintiffs also fail to explain why its members are unable to adequately prosecute their claims on their own behalf. *United States v. Lazarenko*, 476 F.3d 642, 649–50 (9th Cir. 2007); *Nat'l Fed'n of the Blind of Cal. v. Uber Techs.,* 103 F. Supp. 3d 1073, 1079–80 (N.D. Cal. 2015). Thus, SGS lacks associational standing.

C. The Preemption Claims are Barred by Sovereign Immunity

Plaintiffs' claims for relief under the Supremacy Clause are also barred by the Eleventh Amendment. The Eleventh Amendment "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 exist where a state has waived immunity, Congress has abrogated a state's immunity, or a claim seeks prospective declaratory or injunctive relief against state officers in their official capacities, none of these exceptions apply here. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 99 (1984); *Coal. to Defend Affirmative Action v. Brown*, 674 F.3d 1128, 1134 (9th Cir. 2012).

1. Plaintiffs have not alleged facts to invoke the *Ex parte Young* exception to sovereign immunity

Eleventh Amendment immunity extends to state agencies and to officials of those agencies acting in their official capacity. *Krainski v. Nevada*, 616 F.3d 963,

967 (9th Cir. 2010). However, under the *Ex parte Young* doctrine, state officials may be sued in their individual capacities for prospective declaratory and injunctive relief for alleged ongoing violations of federal law. *Ex parte Young*, 209 U.S. 123, 155–56 (1908); *Doe v. Lawrence Livermore Nat'l Lab'y*, 131 F.3d 836, 839 (9th Cir. 1997).[8]

Yet Plaintiffs have not named any state official in their official capacities for alleged violations of federal law. Rather, Plaintiffs bring suit against CDE, which, for the purposes of Eleventh Amendment immunity, is an arm of the state and enjoys state sovereign immunity. Cal. Gov't. Code § 900.6.

Further, under *Ex parte Young*, the individual state official sued "must have some connection with the enforcement" of the challenged act that is "fairly direct; 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." *Snoeck v. Brussa*, 153 F.3d 984, 986 (9th Cir. 1998). As shown Plaintiffs have failed to identify the requisite direct connection between any state official and Plaintiffs' alleged harm. While Plaintiffs allege that CDE has general supervisory power over school districts in California (SAC ¶ 24), this allegation is insufficient to establish the direct connection required to overcome sovereign immunity.

This case is, at its core, a local dispute between Plaintiffs and school district staff over the school districts' specific policies and conduct with respect to its students. Even if CDE was a "state official," there are no allegations that CDE directly enforced AB 1266 or played any role whatsoever in the conduct resulting in the alleged harm. Thus, Plaintiffs' claims against CDE are barred by Eleventh Amendment immunity.

[8] Damages against the state or an arm of the state for past violations are not permitted. *Edelman v. Jordan*, 415 U.S. 651, 667–68 (1974); *Pennhurst*, 465 U.S. at 102–03 ("when a plaintiff sues a state official alleging a violation of federal law, the federal court may award an injunction that governs the official's future conduct, but not one that awards retroactive monetary relief.").

2. CDE has not waived sovereign immunity because it lacked clear notice from Congress that Title IX unambiguously prohibits transgender girls' participation in girls' sports

Plaintiffs' claims are also barred because CDE did not have—and could not have had—clear notice that Title IX unambiguously requires, as a condition of federal funding, the exclusion of transgender girls from girls' sports and facilities.[9]

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). "[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.'" *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981). Thus, under the "contract-law analogy" of Spending Clause legislation, *Barnes v. Gorman*, 536 U.S. 181, 186 (2002), conditions on federal funding must be imposed "unambiguously" to enable funding recipients to "exercise their choice knowingly, cognizant of the consequences of their participation," *City of Los Angeles v. Barr*, 929 F.3d 1163, 1174 (9th Cir. 2019). Recipients must therefore have "clear notice" of a funding condition prior to accepting funds. *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006). The clear-notice rule limits the availability of both money 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 as to those set by Congress, *Los Angeles*, 929 F.3d at 1174–75 & n.6. For multiple reasons, CDE lacked clear and unambiguous notice.

First, neither Title IX nor its regulations indicate that the requirements of AB 1266 violate Title IX. *See generally* 20 U.S.C. §§ 1681–1688; 34 C.F.R.

[9] CDE also notes that while the Supreme Court has recognized Congress's abrogation of a state's sovereign immunity under Title IX, the SAC pleads only preemption claims against CDE, not true Title IX claims.

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, CDE could not possibly have been on notice that AB 1266 contravened Title IX.

Second, prevailing Ninth Circuit precedent forecloses the argument that Title IX and its regulations unambiguously condition federal funding on the categorical exclusion of transgender girls from girls' athletics and facilities. The court has held that discrimination based on "transgender status is discrimination . . . 'on the basis of sex'" under Title IX. *Snyder*, 28 F.4th at 113–14. The court has held that Title IX authorizes, but does not require, "sex-segregated facilities" such as "school bathrooms, locker rooms, and showers," and allows such facilities to "accommodate [students'] gender identity." *Parents for Priv. v. Barr*, 949 F.3d 1210, 1217, 1227 (2020); *see also id.* at 1228–29 ("[T]he mere presence of transgender students in locker and bathroom facilities . . . does not constitute an act of harassment"). And the Ninth Circuit has determined that categorical bans targeting transgender student athletes likely violate the Equal Protection Clause. *Hecox*, 104 F.4th at 1080–81, 1088 (affirming preliminary injunction); *Horne*, 115 F.4th at 1109–10 (same).

The Ninth Circuit's recent decision in *Critchfield* reinforces this analysis. In that case, the court determined, for purposes of the Spending Clause, that Title IX and its regulations do not "unambiguously" "prohibit[] the exclusion of transgender students from [facilities] corresponding to their gender identity." 137 F.4th at 929. The court simultaneously reaffirmed its holding in *Parents for Privacy* that Title IX allows sex-separated facilities to "accommodate gender identity," and does not require sex-separated facilities at all. *See id.* at 927. Taking *Critchfield* and *Parents for Privacy* together, Title IX and its regulations do not "unambiguously" *require* sex-separated facilities to accommodate students' gender identity, but they

also do not "unambiguously" *prohibit* sex-separated facilities from accommodating students' gender identity. Thus, binding Ninth Circuit law precludes a finding of clear notice in this case.

3. The issue of "clear notice" can be decided before the Court reaches the merits of a Title IX claim

The Court indicated that the parties should address whether notice can be decided as a freestanding issue before it reaches the merits of the Title IX claims. ECF 68 at 19. Because the Ninth Circuit recently decided the notice issue as a freestanding issue before a merits analysis in the *Critchfield* case, 137 F.4th at 928–31, it is clear that a court can decide the issue of notice before it reaches the merits of a Title IX claim.

In *Soule*, the Second Circuit determined that the lower court should have decided the notice issue in conjunction with or after the merits analysis. 90 F.4th at 52–53. However, the court "[left] open the possibility that there may be circumstances in which it would be appropriate to decide the question of notice as a threshold freestanding issue." *Id*. The court contrasted the import of the notice issue in *Soule*, "a mere defense to [damages] liability," with the import of a dispositive preliminary matter "like, say qualified immunity—which provides an immunity from suit." *Id.* at 54 (citation modified).

The *Soule* court's analysis of the notice issue is not binding on this court, nor is it applicable to this case. Because the Court's determination of the notice issue will be dispositive on the issue of whether the state has waived its sovereign immunity, the notice issue should be decided as a threshold matter. *See Brown*, 674 F.3d at 1133 (Eleventh Amendment immunity claim should be resolved before reaching the merits); *see also Green v. Mansour*, 474 U.S. 64, 68 (1985) ("States may not be sued in federal court unless they consent to it in unequivocal terms").

II. THE SAC FAILS TO STATE COGNIZABLE CLAIMS AGAINST CDE

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 the state law is in an area fully occupied by federal regulation or where it conflicts with federal law. *Id.; see also In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig.*, 959 F.3d 1201, 1211 (9th Cir. 2020) (defining "express preemption" as a question of statutory construction in which the court looks to the plain wording of the statute and statutory framework 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)).

As with both conflict preemption and field preemption, the touchstone of the inquiry is congressional intent. *Wyeth v. Levine*, 555 U.S. 555, 565 (2009). When analyzing congressional intent, there is an assumption that the historic police powers of the state are not to be superseded by federal laws or action "unless that was the clear and manifest purpose of Congress." *Id.*

A. Plaintiffs' Facial Preemption Claim Fails

A facial challenge is a challenge to an entire legislative enactment or provision. *Am. Apparel & Footwear Assoc., Inc. v. Baden*, 107 F.4th 934, 938 (9th Cir. 2024). To succeed on a facial preemption challenge, the plaintiff must show that "no set of circumstances exists under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987); *see also Puente Ariz. v. Arpaio*, 821 F.3d 1098, 1104 (9th Cir. 2016); *Am. Apparel*, 107 F.4th at 938 ("The *Salerno* rule applies to a federal preemption facial challenge to a state statute."); *id*. at 943 ("[T]he *Salerno* standard applies to conflict preemption.").

Because the plaintiff bringing a facial challenge must show a statute's invalidity beyond the facts of his or her own case, facial challenges "often rest on speculation" and "raise the risk of premature interpretation of statutes on the basis of factually barebones records." *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008) (internal citations omitted). For these reasons, facial challenges to a statute are "disfavored," *id.*, and "are the most difficult to mount successfully." *City of Los Angeles v. Patel*, 576 U.S. 409, 415 (2015) (citation modified)

Plaintiffs argue that AB 1266 is facially preempted by Title IX under the Supremacy Clause because, according to Plaintiffs, "sex" under Title IX refers only to "biological sex," and does not encompass gender identity (SAC, p. 2, n. 1). Plaintiffs further argue that because Title IX's implementing regulations "expressly permit recipients . . . to maintain separate athletic teams for members of each sex," "[b]y requiring schools to integrate athletic teams and facilities based on gender identity rather than biological sex, AB 1266 mandates discrimination against biological females on the basis of sex." SAC ¶¶ 402, 403, 405. However, there is no express preemption clause in Title IX and no actual conflict between Title IX and AB 1266 to preempt AB 1266.

First, the SAC does not allege any provision of Title IX that expressly preempts state anti-discrimination laws that protect transgender students from discrimination in educational programs and activities. *See Volkswagen*, 959 F.3d at 1211 ("Congress may expressly preempt state law by enacting a clear statement to that effect"). Thus, Plaintiffs cannot establish express preemption.

Second, there is no conflict between AB 1266 and Title IX. 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 Supreme Court's holding from *Bostock v. Clayton County*, 590 U.S. 644 (2020)—that "sex discrimination" includes sex stereotyping and gender identity—applies to Title IX claims. *Grabowski*, 69 F.4th at 1118. The Ninth Circuit 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 1080–81; *Horne*, 115 F.4th at 1108-10.

Also, because the Court must exercise its own independent judgment in interpreting Title IX, executive orders and the Department's interpretations of Title IX or its implementing regulations do not bind the Court's decision. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412-13 (2024).[10] While the regulations do provide carve-outs for sex-separated sports teams and facilities, the carve-outs do

[10] 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). However, after *Loper*, courts *may* look to agency interpretations for guidance, but cannot defer to the agency. *Id.*; *see Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (explaining that, while an agency's interpretation is "not controlling," it may still have "power to persuade" based on "the thoroughness evident in its consideration, the validity of its reasoning, [and] its consistency with earlier and later pronouncements"). Under *Skidmore*, the deference given to an agency may be near indifference, depending on these factors. *Garland,* 116 F.4th at 1039. Here, the Court should not afford any deference to the executive agency's current interpretation of Title IX because it is based on an incorrect interpretation of Title IX and is inconsistent with earlier interpretations by the agency.

not *require* sex-separated teams and nothing in the statute or regulations prohibits AB 1266. Thus, nothing in Title IX or its regulations establishes that California law violates or conflicts with Title IX. 20 U.S.C. § 1681; 34 C.F.R. § 106.41.

Similarly, as to sex-separated facilities, "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.

Indeed, where Congress has legislated in a field in which there is a "historic presence of state law," a presumption against preemption applies. *See Wyeth*, 555 U.S. at 565 & n.3. It is well established that "education is a traditional concern of the States." *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) ("public education has traditionally been a function of the states"). And there is nothing in Title IX that indicates that Congress intended Title IX to preempt a state statute that permits students to participate in athletics and use facilities that correspond with their gender identities. At most, Plaintiffs theory rests on a hypothetical or potential conflict that does not exist or is too speculative to justify preemption.

In sum, Plaintiffs have not met their burden of alleging facts sufficient to show clear and manifest purpose intended by Congress to completely preempt state laws that protect transgender students from discrimination in California educational programs and activities. *See Puente*, 821 F.3d at 1108.

B. 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 results in the displacement of Plaintiffs and other female cross-country athletes, which they assert denies Plaintiffs equal athletic opportunities, effective accommodation of interests and abilities, and equal treatment in athletic benefits under Title IX, and creates unsafe and unfair environments. SAC ¶¶ 429–31. The as-applied challenge, however, fails for the same reasons the facial challenge fails. *See Hoye*, 653 F.3d at 857–58. There simply is no conflict between AB 1266 and Title IX and no facts alleged to demonstrate that AB 1266 or the participation of a single transgender athlete at MLKHS has affected the substantial proportionality of participation opportunities available for female athletes at MLKHS or in the State or to demonstrate a Title IX equal treatment claim. ECF 68 at 16–18. Thus, both of Plaintiffs' preemption claims fail as a matter of law.

CONCLUSION

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

Dated: November 25, 2025

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendant California Department of Education, certifies that this brief contains 6,904 words, which complies with the word limit of L.R. 11-6.1.

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