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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-SPx **REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANT CALIFORNIA DEPARTMENT OF EDUCATION'S MOTION TO DISMISS THE SECOND AMENDED COMPLAINT** Date: February 6, 2026 Time: 2:00 p.m. via Zoom videoconference Courtroom: 2 Judge: The Honorable Sunshine S. Sykes Trial Date: Not set Action Filed: 11/20/2024

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INTRODUCTION

Plaintiffs have amended their complaint two times, and once after the Court granted the California Department of Education's (CDE) prior motion to dismiss. It is Plaintiffs' burden to establish standing and allege cognizable claims, but again, Plaintiffs have failed to do so. Hence, CDE's motion to dismiss should be granted, and Plaintiffs' request for further leave to amend should be denied.

ARGUMENT

I. PLAINTIFFS LACK STANDING

A. Plaintiffs' Claims for Prospective Relief are Moot and/or Not Yet Ripe for Review

Plaintiffs do not dispute that M.L. will not be participating on the MLKHS' girls' cross-country team in the future. Plaintiffs instead claim that because they remain enrolled at MLKHS, they will continue to be subjected to AB 1266. ECF No. 85 at 4. However, Plaintiffs do not plead that any other transgender student is, or is likely expected to be, participating on the MLKHS's girls' cross-country team. *See Bayer v. Neiman Marcus Grp., Inc.*, 861 F.3d 853, 868 (9th Cir. 2017) ("The mere existence of an ongoing policy is insufficient to establish that a plaintiff challenging that policy has standing to attack all its future applications.")

B. The Mootness Exceptions Raised by Plaintiffs Do Not Apply

Plaintiffs argue their claims are not moot because they are capable of repetition yet evading review, and Plaintiffs face imminent threat of harm by CDE's ongoing governmental policy.[1] Plaintiffs' arguments fail under both theories.

1. The Capable of Repetition Yet Evading Review Exception Does Not Apply

The "capable of repetition, yet evading review" exception to mootness "applies only when (1) the challenged action is too short in duration to be fully litigated before cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subjected to the same action again." *Cole v.*

[1] Plaintiffs repeatedly claim that they are challenging CDE's "gender-identity policy." ECF No. 85 at 1. However, AB 1266 is a legislatively enacted state law, not a "policy." *See* Cal. Ed. Code § 221.5(f), ECF No. 71 at ¶ 404.

Oroville Union High Sch. Dist., 228 F.3d 1092, 1098 (9th Cir. 2000).

"For a controversy to be 'too short to be fully litigated prior to cessation or expiration,' it must be of '*inherently* limited duration'" that would "*always* evade judicial review." *Protectmarriage.com-Yes on 8 v. Bowen*, 752 F.3d 827, 836 (9th Cir. 2014) (citation omitted); *see also, e.g.*, *Roe v. Wade*, 410 U.S. 113, 125 (1973) (abortion case), *overruled by*, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022); *Norman v. Reed*, 502 U.S. 279, 288 (1992) (election case). This exception is applied "sparingly" and "only in 'exceptional situations.'" *Bowen*, 752 F.3d at 836-37 (citation omitted).

Plaintiffs' lawsuit does not include claims that would *always* evade review, as any future controversies could be brought by students subjected to the challenged policies that allege harm. *See DeFunis v. Odegaard*, 416 U.S. 312, 319 (1974). In contrast, the cases cited by Plaintiffs involved factual scenarios where the challenged policies were, by their nature, temporary and of a type that would *always* evade review. *See, e.g., U.S. v. Brandau*, 578 F.3d 1064, 1067 (9th Cir. 2009) (temporary shackling of defendants during pretrial arraignment); *Demery v. Arpaio*, 378 F.3d 1020, 1026 (9th Cir. 2004) (temporary pretrial detainment).

Plaintiffs also cannot establish the second prong of this mootness exception. "As to the second requirement, a 'mere physical or theoretical possibility of a challenged action again affecting a plaintiff is not sufficient.' Rather, there must be a 'reasonable showing of a sufficient likelihood that plaintiff will be injured again.'" *Price v. Cnty. of Los Angeles*, 504 F. Supp. 3d 1099, 1104 (C.D. Cal. 2020) (quoting *Sample v. Johnson*, 771 F.2d 1335, 1340 (9th Cir. 1985)). This requirement is similar to the requirement for standing–if the threat of harm is too remote and speculative, there is no standing. *See Sample v. Johnson*, 771 F.2d 1335, 1339–40 (9th Cir. 1985).; *Alcoa, Inc. v. Bonneville Power Admin.*, 698 F.3d 774, 794 (9th Cir. 2012).

Plaintiffs have not demonstrated a sufficient likelihood they will be injured in

the future, as M.L. is no longer on the cross-country team and Plaintiffs identify no other transgender student who will compete for an intrateam placement against Plaintiffs. In *Demery*, there was a reasonable likelihood that the plaintiff detainees would be reincarcerated in the future based on their history. *Demery*, 378 F.3d at 1027. *Hooks* found that the complaining party will be subject to the petition for injunction in the future. *Hooks v. Nexstar Broadcasting*, Inc., 54 F.4th 1101, 1112-13 (9th Cir. 2022). No such certainty or likelihood is present here. Thus, the "capable of repetition, yet evading review" exception to mootness does not apply.

2. Plaintiffs Have Not Alleged Any Non-Speculative Likelihood of Future Harm

"The mere existence of a statute, which may or may not ever be applied to plaintiffs, is not sufficient to create a case or controversy within the meaning of Article III." *Scott v. Pasadena Unified Sch. Dist.*, 306 F.3d 646, 656 (9th Cir. 2002) (citation omitted). Plaintiffs' fear that "a biological male *could* participate in their events" is insufficient to establish a concrete, particularized harm that is imminent and real. ECF No. 85 at 8 (emphasis added); ECF No. 71 at ¶ 172. Indeed, any alleged "[p]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 564 (1992) (citation omitted). Thus, Plaintiffs' allegations pertaining to past harms (ECF 85 at 11-12) do not confer standing for injunctive relief.

Relying on *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 n.5 (2013), Plaintiffs argue that courts only require a party to demonstrate a "substantial risk" that harm will occur to demonstrate standing. But in *Clapper*, the Supreme Court reaffirmed that a "threatened injury must be certainly impending to constitute injury in fact," and the plaintiffs there lacked standing because their claims were premised on a "highly attenuated chain of possibilities." *Id*. at 409, 410 (citations omitted). So too here, as any allegation that T.S. or K.S. (or any SGS member) will be harmed again in the future depends on highly attenuated and remote events

occurring, which may never occur, and thus are too speculative to establish standing.[2] *Fortyune*, in contrast, did not involve such highly attenuated and remote events; rather, it was determined, based on non-speculative facts, that the plaintiff would certainly attend the movies again and encounter the same situation. *Fortyune v. American Multi-Cinema*, 364 F.3d 1075, 1081-82 (9th Cir. 2004).[3]

C. Plaintiffs Fail to Establish Article III Standing

1. The Individual Plaintiffs Lack Standing

To maintain Article III standing, Plaintiffs must allege a sufficient likelihood that *they* will be subjected to harm. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 101-02 (1983). As indicated above, Plaintiffs fail to establish standing for the prospective relief they seek.[4] As to damages claims for alleged past violations, Plaintiffs state that they "do not challenge a past, isolated event involving a single student, but California's ongoing enforcement of a statewide gender-identity policy," which shows that they seek only a right to prospective relief, not damages, against CDE. *See* ECF No. 85 at 2.

As to causation and redressability, the SAC fails to establish a direct connection between Plaintiffs' alleged injuries and any action by CDE. Nor do Plaintiffs explain how an injunction would redress their alleged harm. While the Court previously concluded that monetary damages could theoretically redress Plaintiffs' past harms (ECF No. 68 at 10), Plaintiffs here have not established the necessary connection to establish CDE's liability. Nor have they addressed the fact that a statewide ban would violate the rights of transgender students under binding

[2] For example, A.H. may decide to graduate early or decide to no longer compete in athletics. There also are no allegations that Plaintiffs or SGS members intend to participate in varsity track and field or varsity volleyball in the future. *See Texas v. U.S.*, 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.'"); *Scott*, 306 F.3d at 659-60.

[3] *Ne Fla. Chapter of the Associated Gen. Contractors of Am. V. City of Jacksonville*, 508 U.S. 656, 666 (1993), involved an equal protection challenge claim, not a preemption or Title IX claim.

[4] Plaintiffs do not allege any facts to support potential future harms, only conclusive statement that they "could" be harmed. ECF No. 71 at ¶ 172.

California precedent. Thus, Plaintiffs have failed to cure the standing defects in their SAC.

2. Save Girls' Sports Lacks Standing

Plaintiffs argue AB 1266 interferes with SGS' ability to conduct programming, recruit and retain members, and frustrates its goals of advocacy and education, because SGS is forced to devote time and resources to pursuing this lawsuit. ECF No. 85 at 17-18. First, these allegations, which are not included in the SAC, are not properly before the court. *See Schneider v. Cal. Dep't of Corr.*, 151 F.3d 1194, 1197 n.1 (9th Cir. 1998). Second, Plaintiffs do not explain how AB 1266 interferes with these alleged goals. These allegations are insufficient to establish standing because setbacks to an "organization's abstract social interests," or "divert[ing] its resources" in response to a defendant's actions are insufficient to confer standing. *See Food & Drug Admin. v. All. for Hippocratic Med. (Hippocratic)*, 602 U.S. 367, 394, 395 (2024) (citation omitted).

Plaintiffs cite to *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982) and *Fellowship of Christian Athletes v. San Jose Unified School District Board of Education*, 82 F.4th 664, 683-84 (9th Cir. 2023) (*FCA*), which they characterize as cases where courts have recognized injuries similar to those advanced by Plaintiffs. ECF No. 85 at 13. However, these cases precede the Supreme Court's 2024 decision in *Hippocratic*. In fact, in *Hippocratic*, the Court specifically confined *Havens Realty* to its facts, emphasizing that it presented an "unusual case" that should not be extended beyond its context. 602 U.S. at 370. Similarly, *FCA* is distinguishable because it involved a direct challenge to a school district's refusal to recognize the organization as an on-campus student club, 82 F.4th at 681–82, unlike SGS' claimed harms that are derived from the alleged injuries of its members. In sum, Plaintiffs fail to allege organizational standing.

SGS also lacks associational standing. Because associational standing is derivative of the standing of its members, *Int'l Partners for Ethical Care Inc v.*

Ferguson, 146 F.4th 841, 853 (9th Cir. 2025), SGS lacks associational standing for the same reasons that the named plaintiffs lack standing. Plaintiffs do not allege facts to show SGS members intend to compete in future events and any attempt to assert that there might be ongoing harm to SGS members at future events is too speculative and remote to establish standing and constitute claims that are not yet ripe for review. And, as to damages for alleged past harms, this form of relief would necessarily require individualized proof of harms requiring the involvement of SGS members. *See Nat'l Fed'n of Blind v. Target Corp.*, 582 F. Supp. 2d 1185, 1192 (N.D. Cal. 2007) (citing *Bano v. Union Carbide Corp.*, 361 F.3d 696, 714 (2d Cir. 2004)). For these reasons, SGS lacks standing.

II. REGARDLESS OF HOW PLAINTIFFS LABEL THEIR CLAIMS AGAINST CDE, THEY FAIL AS A MATTER OF LAW

Plaintiffs conflate preemption and Title IX claims in their SAC. Plaintiffs' SAC asserts preemption claims against CDE, based on the Supremacy Clause of the Constitution. SAC at ¶¶ 401, 405. But now, Plaintiffs state that they are not asserting preemption claims, but instead bring their challenge to state law as "Title IX claims." ECF No. 85 at 21. Regardless of Plaintiffs' labels, their claims fail.[5]

A. Plaintiffs' Claims are Barred by Sovereign Immunity and/or the Lack of Clear Notice Under the Spending Clause

Plaintiffs have not named any state official in their official capacities for alleged violations of federal law, and thus any preemption claim would be barred by sovereign immunity. *Ex Parte Young*, 209 U.S. 123, 155-56 (1908). Plaintiffs argue that California waived its immunity by accepting federal funds, and "funding recipients need not have advance notice of every factual permutation to which a

[5] Plaintiffs argue that CDE waived its arguments regarding "Title IX" claims. ECF No. 85 at 26. However, CDE did address Plaintiffs' "Title IX" claims, and the analysis is virtually the same whether the claims are framed as preemption or Title IX claims. The court also has discretion to consider arguments if Plaintiffs have an opportunity to respond. *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1188 (9th Cir. 2024), citing *El Pollo Loco, Inc. v. Hashim*, 316 F.3d 1032, 1040-41 (9th Cir. 2003).

statutory prohibition might apply." ECF No. 85 at 15, 17.[6] However, *Critchfield* holds that notice must be clear and unambiguous so that states are on notice of the conditions to which they are obliged. *Roe v. Critchfield*, 137 F.4th 912, 930 & n.12 (9th Cir. 2025). *Critchfield* does not, as Plaintiffs argue, hold that executive orders may provide notice; the court did not reach the issue. *Id.* at 928, 931 n.16.

Here there was no clear and unambiguous notice. Neither Title IX nor its regulations conflict with AB 1266 because they do not define "sex" or "discrimination on the basis of sex" to exclude gender-identity discrimination. *See* 20 U.S.C. §§ 1681-1688; 34 C.F.R. pt. 106 (1980). Nor do they prohibit transgender students' access to athletics and facilities consistent with their gender identity. Binding Ninth Circuit authority also precludes any finding of clear and unambiguous notice, because Plaintiffs' interpretation of Title IX would violate the rights of transgender students. *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); ECF No. 68 at 15.

Plaintiffs' reference to the Department of Education's (DOE) 2020 explanation of its regulations is misplaced. ECF No. 85 at 18. DOE's 2020 guidance concerned promulgated regulations by DOE that clarified the scope of sexual harassment under Title IX and related procedural requirements for an educational institution's response to reports of sexual harassment. 85 Fed. Reg. 30,026, 30,573 (May 19, 2020). These 2020 regulations did not define "sex" under Title IX in the manner Plaintiffs allege nor prohibit transgender student athletes' participation in athletics consistent with their gender identities, and nothing in the 2020 guidance constitutes notice that states are precluded from enacting laws like AB 1266, and thus, it is irrelevant.

[6] Plaintiffs also argue that Title IX abrogates states' Eleventh Amendment immunity. ECF 85 at 14. Congress lacks the power to unilaterally abrogate state sovereign immunity through Article I legislation. *Seminole Tribe of Fla. v. Fla.*, 517 U.S. 44, 72-73 (1996).

Likewise, as to Plaintiffs' references to recent executive orders (ECF No. 85 at 18), courts are to exercise their independent judgment in interpreting laws, and executive orders are not binding. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412-13 (2024); *see, e.g.*, *City and Cnty of San Francisco v. Trump*, 897 F.3d 1225, 1232 (9th Cir. 2018); *State of Tennessee v. Dep't of Educ.*, 104 F.4th 577 (6th Cir. 2024).[7] Thus, CDE lacked clear notice that AB 1266 contravened Title IX.

B. Plaintiffs Fail to Plead Cognizable Claims Against CDE

The SAC does not allege any provision of Title IX that preempts or conflicts with AB 1266. Plaintiffs argue that Title IX regulations expressly allow schools to maintain separate teams for each sex. ECF No 85 at 25 (citing 34 C.F.R. § 106.41 (2024)). But there is no such requirement that they *must* do so. And, fatal to Plaintiffs' theory, nothing in Title IX or its implementing regulations *prohibits* states from having anti-discrimination laws that allow for the inclusion of transgender girls in girls' athletics. 20 U.S.C. § 1681; 34 C.F.R. § 106.41 (2024); *Parents for Priv. v. Barr*, 949 F.3d 1210, 1227 (9th Cir. 2020).

Plaintiffs' argument that AB 1266 "frustrate[s] Title IX's core purpose of protecting equal athletic opportunities for biological females" (ECF No. 85 at 20) is also misplaced for several reasons. First, there is a presumption against preemption in fields historically left to the states even in areas of significant federal presence. *Puente Ariz. v. Arpaio*, 821 F.3d 1098, 1104 n.5 (9th Cir. 2016). Plaintiffs offer no argument to overcome this presumption. Second, as discussed above, there is no actual conflict between Title IX and AB 1266, nor is there any showing that AB 1266 stands as an obstacle to prohibiting intentional sex discrimination and unequal treatment on the basis of sex. *See e.g., Knox v. Brnovich*, 907 F.3d 1167, 1179 (9th Cir. 2018) (declining to interpret a federal regulation to create a conflict where

[7] The cited executive orders do not form a basis for Title IX enforcement, and the definitions therein did not go through the Administrative Procedure Act's required notice and comment to amend Title IX's regulations to include the policy and definitions of the executive orders. *E.g., Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 95-96 (2015); *Wilson v. Lynch*, 835 F.3d 1083, 1099 (9th Cir. 2016). They also do not direct the states to take any action.

Congress's purpose was clear). In *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 373-81 (2000), the Supreme Court found that a state's law regarding Burma clearly conflicted with federal law and was an obstacle to Congress' "express command to the President to take the initiative for the United States" and "speak for the Nation with one voice" on matters (federal foreign relations) traditionally occupied by the federal government. This case is distinguishable because anti-discrimination in schools is a field that has traditionally been left to the states, *see, e.g., U.S. v. Lopez*, 514 U.S. 549, 580-81 (1995), and both Title IX and AB 1266 are anti-discrimination statutes that proffer similar objectives and do not conflict.

In their opposition, Plaintiffs claim that AB 1266 has the effect of denying them equal athletic opportunities under Title IX. ECF No. 85 at 21. But as CDE argued in its Motion, "[t]here 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 for female athletes at MLKHS or in the State or to demonstrate a Title IX equal treatment claim." ECF No 76-1 at 21.

Plaintiffs argue that AB 1266 "has a discriminatory impact on female athletes." ECF No. 85 at 20.[8] However, Title IX does not provide a private right of action for claims based on discriminatory impact; Title IX protects only from *intentional* discrimination. *See Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 173 (2005) ("Title IX … prohibit[s] . . . intentional sex 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; *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"). Plaintiffs fail to allege that AB 1266 was enacted or that CDE took any discriminatory action

[8] CDE denies that there has been any such impact.

"because of, not merely in spite of, [their adverse effects upon an identifiable group." *See Horne*, 115 F.4th at 1103; *see also Austin v. Univ. of Ore.*, 925 F.3d 1133, 1138 (9th Cir. 2019) (dismissing disparate-impact claim because there was no showing that plaintiffs "were treated any differently…based on sex."). Because Plaintiffs fail to plausibly allege that CDE *intentionally* discriminated against them on the basis of their gender, 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). Lastly, as previously argued, DOE's interpretations of Title IX should not be afforded any *Skidmore* deference because they are inconsistent with the text of Title IX, there has been no longstanding interpretation of Title IX or its implementing regulations in this manner, and the interpretations conflict with binding judicial determinations. For these reasons, Plaintiffs' claims fail as a matter of law.

III. FURTHER LEAVE TO AMEND SHOULD BE DENIED

Plaintiffs request leave to amend to allege that state officials have a direct connection to enforcement of AB 1266. ECF No. 85 at 23. However, amendment would be futile, because Plaintiffs lack standing and because there is nothing in the allegations "to suggest that the participation of a single transgender athlete . . . or anything else about the operation of AB 1266 has affected the substantial proportionality of participation opportunities available for female athletes at [MLKHS]," ECF No. 68 at 17, and no allegations that Plaintiffs have failed to receive "equivalence in the availability, quality and kinds of other athletic benefits and opportunities provided male and female athletes." *See* ECF No. 68 at 18. Thus, leave to amend should be denied.

CONCLUSION

CDE respectfully requests that the Court grant CDE's motion to dismiss with prejudice.

Dated: January 30, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendant California Department of Education, certifies that this brief contains 4,111 words, which complies with the word limit of L.R. 11-6.1.

Dated: January 30, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

Case Name: **T.S. et al v. Riverside Unified School District et al** No. **5:24-cv-02480-SSS-SP**

I hereby certify that on January 30, 2026, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

- **REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANT CALIFORNIA DEPARTMENT OF EDUCATION'S MOTION TO DISMISS THE SECOND AMENDED COMPLAINT**

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

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on January 30, 2026, at San Francisco, California.

Claudine Santos	*/s/Claudine Santos*
Declarant	Signature

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