IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA

ALEXANDRIA DIVISION

RAPIDES PARISH SCHOOL BOARD, Plaintiff, v. UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, *et al*., Defendants.	Case No. 1:25-CV-00070-DDD-JPM

MOTION TO STAY BRIEFING ON PLAINTIFF'S
PREMATURE MOTION FOR PARTIAL SUMMARY JUDGMENT

COMES NOW, Defendants United States Department of Health and Human Services ("HHS"); Robert F. Kennedy Jr., in his official capacity as Secretary of HHS; United States Department of Agriculture; Brooke Rollins, in her official capacity as Secretary of Agriculture; United States Equal Employment Opportunity Commission ("EEOC"); Andrea R. Lucas, in her official capacity as Acting Chair of the EEOC; United States Department of Justice ("DOJ"); Pamela Bondi, in her official capacity as Attorney General of the United States; and Mac Warner, in his official capacity as Deputy Assistant Attorney General for the Civil Rights Division of DOJ; who hereby move this Honorable Court for an order staying briefing on Plaintiff's Motion for Partial Summary Judgment, ECF No. 19, for the reasons stated in the memorandum in support of this motion filed today. As noted in the Certificate of Conference below, Plaintiff opposes this motion.

Dated: June 20, 2025

Respectfully submitted,

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Counsel for Defendants

CERTIFICATE OF CONFERENCE

I hereby certify that I met and conferred electronically with counsel for Plaintiff with respect to this motion, pursuant to Local Civil Rule 7.4.1. Counsel for Plaintiff indicated that Plaintiff does not think a stay is appropriate.

/s/ Liam C. Holland
LIAM C. HOLLAND
Trial Attorney

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RAPIDES PARISH SCHOOL BOARD, Plaintiff, v. UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, *et al.*, Defendants.	Case No. 1:25-CV-00070-DDD-JPM

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO STAY BRIEFING ON PLAINTIFF'S PREMATURE MOTION FOR PARTIAL SUMMARY JUDGMENT

On June 3, 2025, Plaintiff Rapides Parish School Board (the "School Board") moved for partial summary judgment. ECF No. 19. The Government's opposition is currently due on June 26, 2025. *See* ECF No. 23. Because summary judgment motions practice is premature, Defendants hereby move for an order deferring their time to file an opposition until a date set by the Court after the Court considers the joint proposed schedule required by this Court's Order dated March 26, 2025, ECF No. 16.[1]

BACKGROUND

On January 20, 2025, Donald J. Trump was inaugurated as the forty-seventh President of the United States. On the same day, the President issued an Executive Order titled "Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government." Exec. Order No. 14,168, 90 Fed. Reg. 8615 (Jan. 30, 2025) ("*Defending Women*"). *Defending Women* provides that "[i]t is the policy of the United States to recognize two sexes,

[1] Defendants are also requesting, by separate motion, an extension of time to respond to the School Board's motion for partial summary judgment until thirty days after the Court rules on this motion.

male and female." *Id*. And "'[s]ex' shall refer to an individual's immutable biological classification as either male or female." *Id*. Moreover, *Defending Women* provides that it "is legally untenable" to "require[] gender identity-based access to single-sex spaces under" antidiscrimination statutes including, "for example, Title IX of the Education Amendments Act." *Id*. at 8617. In line with the Executive Order, the Secretary of Health and Human Services has promulgated "guidance expanding on the sex-based distinctions set forth in" *Defending Women*. *See Defending Women* § 3(a); https://womenshealth.gov/article/sex-based-definitions.

In this action, the School Board asserts several claims against Defendants the United States Department of Health and Human Services, the United States Department of Agriculture, the Equal Employment Opportunity Commission, and the United States Department of Justice, under the Administrative Procedure Act ("APA"). Compl. ¶¶ 8, 305-466. The School Board alleges that it maintains policies and practices such as sex-separated athletics, physical education classes, bathrooms, locker rooms, and other such facilities. *Id*. ¶¶ 248-73. It fears a loss of federal funding as a result of enforcement actions by Defendants under Title IX and similar statutes that preclude federal funding recipients from discriminating against individuals on the basis of sex. *E.g., id*. ¶¶ 70, 246, 147. The School Board seeks prospective declaratory and injunctive relief to preclude those feared enforcement actions. *Id*. at pp. 68-70, Prayer for Relief.

After the School Board filed the Complaint, the Court issued a case management order. ECF No. 11. Counsel for the parties then conferred and Defendants filed an unopposed motion to vacate that order. ECF No. 13. Defendants explained that the School Board's claims are brought under the APA, which is an action for review on an administrative record exempt from the requirements of Federal Rule of Civil Procedure 26(f). ECF No. 14 at 2-3. They also explained that summary judgment motions are the appropriate procedural vehicle for resolving challenges to an "agency action," as defined in the APA, after threshold issues are addressed at the motion to dismiss stage. *Id*. at 3. In addition to vacating the Court's case management order, Defendants requested that the Court instead enter an order requiring the parties to submit a joint proposed

schedule at the appropriate time in the litigation to address summary judgment briefing. *Id*. On March 26, 2025, the Court granted that motion and ordered the parties to file a joint proposed schedule not later than thirty days after Defendants serve an answer to the Complaint. ECF No. 16.

Defendants' answer or other response to the School Board's seventy-one-page, 466-paragraph Complaint is due Monday, July 14, 2025. ECF No. 18. On June 3, the School Board filed a motion for partial summary judgment and a motion for leave to file excess pages. ECF Nos 19-20. The School Board did not confer with Defendants pursuant to Local Rule 7.4.1 about the motion for partial summary judgment before it was filed.[2] On June 4, 2025, the Court granted the School Board's motion for excess pages and, on June 5, 2025, a Notice of Motion Setting issued setting June 26, 2025, as Defendants' deadline for responding to the motion for partial summary judgment. ECF No. 23. On June 10, 2025, the Court *sua sponte* issued an order vacating the date for hearing on the School Board's motion for partial summary judgment, noting "that the answer date has been extended[.]" ECF No. 24. The Court scheduled a conference call to discuss future proceedings for July 15, 2025. *Id*.

ARGUMENT

This Court should stay briefing on the School Board's premature motion for partial summary judgment until a date set by the Court after the Court considers the joint proposed schedule required by this Court's Order dated March 26, 2025, ECF No. 16. The Court has the inherent authority to "control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). That broad discretion includes the "inherent power to control the sequence in which it hears matters

[2] On Friday, May 30, 2025, counsel for the School Board did e-mail undersigned counsel indicating that the School Board was going to file a motion for partial summary judgment and requested Defendants' position on the motion for excess pages. On Monday, June 2, undersigned counsel messaged the School Board's counsel to acknowledge receipt and inform counsel that the Government continued to confer internally on its position on excess pages given its potential implications for the existing schedule.

on its calendar." *United States v. W. Elec. Co.*, 46 F.3d 1198, 1207 n.7 (D.C. Cir. 1995). In particular, the Court may first consider a motion that "addresses a specific and narrow issue" rather than a motion that "encompass[es] issues far broader." *United States v. W. Elec. Co.*, 158 F.R.D. 211, 220 (D.D.C. 1994), *aff'd*, 46 F.3d 1198 (D.C. Cir. 1995); *see also W. Elec. Co.*, 46 F.3d at 1207 n.7 ("[T]he [district] court's explanation amply supports its exercise of discretion."). In this case, interests of efficiency and judicial economy make it appropriate for the Court to defer consideration of any summary judgment briefing.

First, a stay would facilitate the possible resolution of this matter without the need for litigation. As Defendants previously noted, *see* ECF No. 17 at 2, the parties had been actively considering alternatives to pursuing further litigation in this matter when the School Board filed its unanticipated motion for partial summary judgment. Undersigned counsel for Defendants lacks the capacity to meaningfully engage with the School Board over proposals for alternatives to litigation while briefing a motion for partial summary judgment and preparing a response to the Complaint.

Moreover, Defendants' forthcoming response to the Complaint, currently due on July 14, 2025—which could take the form of a motion to dismiss—could substantially narrow the issues or obviate the need for further briefing entirely. For example, the Complaint seeks APA review of an extraordinary number of agency statements and inactions—many of which are not binding on anyone, let alone the new presidential administration.[3] *See* ECF No. 14 at 3 (attempting to break down everything seemingly challenged in the Complaint). But the APA does not permit a plaintiff to place "many individual actions referenced in [a] complaint . . . before [a] court[] for

[3] For that reason, many of those individual statements are not reviewable. For example, the United States Department of Agriculture memorandum challenged in Count IV has been held to be a nonbinding document that is unreviewable under the APA. *Tennessee v. U. S. Dep't of Agric.*, 665 F. Supp. 3d 880, 900-03 (E.D. Tenn. 2023). Moreover, not all—and perhaps none—of the things the School Board challenges involving the Equal Employment Opportunity Commission (and other agency Defendants as well) are "agency actions" as that term is defined in the APA.

wholesale correction" simultaneously. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 893 (1990). Instead, the Complaint must petition for judicial review of agency action that is "circumscribed" and "discrete[.]" *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 62 (2004). And challenges to many of the referenced documents would be independently moot because they have either been superseded or vacated by a court. Even assuming this Court has jurisdiction—*but see, e.g., Neese v. Becerra*, 123 F.4th 751, 753-54 (5th Cir. 2024) (no jurisdiction to adjudicate similar issues considering several factors appliable here, including no impending enforcement action); *Neese v. Becerra*, 127 F.4th 601, 602 (5th Cir. 2025) (Duncan, J., concurring) ("None of this may matter . . . in light of actions already taken by the new Administration."); *Princeton Univ. v. Schmid*, 455 U.S. 100, 102 (1982) (courts do not "give advisory opinions about issues as to which there are not adverse parties")—if this case is narrowed to address a discrete, reviewable agency action that the School Board has standing to challenge, there will be no need for lengthy briefing at the summary judgment stage. A ruling on jurisdictional and other threshold APA issues may eliminate the need to resolve the School Board's motion for partial summary judgment entirely and could, at a minimum, clarify which, if any, of its claims are viable and reviewable.

Until this Court rules on these threshold issues, Defendants "should not be put to the trouble and expense of any further proceeding, and the time of the court should not be occupied with any further proceeding." *United Transp. Serv. Employees of Am., CIO v. Nat'l Mediation Bd.*, 179 F.2d 446, 454 (D.C. Cir. 1949). Neither the Court's nor the parties' time is well served by engaging in a "struggle over the substance of the suit" at this early stage of this case before threshold issues are resolved. *Democratic Rep. of Congo v. FG Hemisphere Assocs., LLC*, 508 F.3d 1062, 1064 (D.C. Cir. 2007).

It would not be an efficient use of resources to require the parties or the Court to address the substance of the School Board's partial summary judgment motion at this time. Nothing in Rule 56 justifies such waste. In fact, the Advisory Committee notes for Rule 56 encourage courts to issue orders that will prevent the premature briefing of summary judgment motions filed at the

commencement of a case: "Although the rule allows a motion for summary judgment to be filed at the commencement of an action, in many cases the motion will be premature until the nonmovant has had time to file a responsive pleading or other pretrial proceedings have been had. Scheduling orders or other pretrial orders can regulate timing to fit the needs of the case." Fed. R. Civ. P. 56 advisory committee's note (2010 amendments). Indeed, Rule 12(b) "promotes the early and simultaneous presentation and determination of preliminary defenses." 5B CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FED. PRAC. & PROC. § 1349 (4th ed. 2025 update). Adjudicating motions under Rule 12(b) thus helps to "produce an overall savings in time and resources as well as avoid delay in the disposition of cases[,]" thereby benefiting both the parties and the courts. *Id*. The School Board should not be permitted to preempt Defendants' rights under Rule 12 and waste the parties' and the Court's resources by seeking to advance this litigation straight to summary judgment.

Of course, the School Board's motion does not, in fact, advance this litigation straight to summary judgment. Deferring briefing on Plaintiff's motion for *partial* summary judgment is particularly justified because a motion for partial summary judgment is procedurally improper and futile in an APA case. A motion for partial summary judgment does not seek final judgment but instead seeks "a pre-trial adjudication that certain issues are established for trial of the case." *FDIC v. Massingill*, 24 F.3d 768, 774 (5th Cir. 1994). But there is no basis for a trial in an APA case. "In APA cases such as this one, . . . 'the district court sits as an appellate tribunal. The 'entire case' on review is a question of law.'" *FirstHealth Moore Reg'l Hosp. v. Becerra*, 560 F. Supp. 3d 295, 303 (D.D.C. 2021) (citation omitted). It is thus standard practice to resolve APA cases on cross-motions for summary judgment that address all the plaintiff's claims. *See, e.g., id*.

This practice is standard for a reason. After production of the certified administrative record for a discrete agency action, the parties can narrow the universe of contested issues and then submit briefing as they would before an appellate court addressing the entire universe of the School Board's claims, based on a complete record, at one time. Adjudicating the School Board's motion

for partial summary judgment risks this case devolving into piecemeal summary judgment motions. Litigating each component of each count in the Complaint separately would result in multiple rounds of summary judgment briefing, which would be inefficient and time consuming for the Court and the parties. Indeed, in an APA challenge to a rule that was superseded by a rule referenced in Count II of the Complaint here, the district court—rather than stay summary judgment briefing after the plaintiffs submitted a similar premature partial summary judgment motion—*sua sponte* dismissed the plaintiffs' motion for partial summary judgment without prejudice. Order Regulating Motion Practice and Record Procedures, *New York v. HHS*, No. 20-cv-5583-AKH (S.D.N.Y. Sept. 22, 2020), ECF No. 93.

Despite the School Board's unorthodox request for bifurcated briefing in this APA case, it provides no justification for the request in its motion, merely asserting that it "reserves the right to . . . raise its other statutory and constitutional claims later, if necessary[.]" ECF No. 19 at 3. But APA cases provide no basis to brief the issue of whether a discrete agency action is contrary to law ahead of briefing on a claim that the same agency action is arbitrary and capricious or contrary to constitutional right. The mere fact that the School Board wants to litigate a portion of Subheading (A) of each count of the Complaint is not a sufficient reason for bifurcated briefing in an APA case, since any APA plaintiff could make that argument, and the exception would swallow the rule. In short, the School Board has provided no reason, and there is no reason, for bifurcated briefing.

Relatedly, a stay of summary judgment briefing is appropriate so that summary judgment motions, if ultimately necessary, can be properly resolved on the certified administrative record for the circumscribed and discrete reviewable agency action the Court identifies through appropriate Rule 12 or other motion practice as being challenged in the Complaint (if such an agency action exists). The School Board's claims for substantive violations of the APA must be determined based on the certified administrative record for a discrete challenged agency action, and the agency is charged with compiling that administrative record. *See Camp v. Pitts*, 411 U.S.

138, 142 (1973) ("[T]he focal point for judicial review should be the administrative record[.]"); *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 743–44 (1985) ("The task of the reviewing court is to apply the appropriate APA standard of review to the agency decision based on the record the agency presents to the reviewing court.") (citation omitted)). Here, the School Board moved for partial summary judgment, but the Complaint does not provide Defendants with clear notice of which (if any) discrete reviewable agency action is being challenged—and thus which administrative record must be compiled, certified, and produced for judicial review. In the absence of an administrative record, the School Board seeks to support its motion with various exhibits. This unofficial, School Board-selected compilation of documents, however, does not and cannot substitute for the certified administrative record against which an agency action, as defined by the APA, must be evaluated under the terms of the APA. *Oceana, Inc v. Ross*, 920 F.3d 855, 865 (D.C. Cir. 2019); *Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560, 1579-80 (10th Cir. 1994). The School Board may not unilaterally redefine the method for judicial review of agency action required by 5 U.S.C. § 706, and Defendants should not be forced to brief, nor the Court to decide, merits issues without the benefit of the certified administrative record. Of course, spending significant time and resources identifying and compiling an administrative record to enable review of the merits would become wasted effort if this case can be resolved without the need for litigation or via a potential threshold Rule 12 motion.

Defendants' response to the Complaint could take the form of a motion to dismiss that, if granted, would put an end to this litigation. And any merits issues that do survive any motion to dismiss should be considered together at one time after production of the administrative record. Thus, it would be an inefficient use of resources to require the parties and the Court to address the

substance of the School Board's motion for partial summary judgment at this time. For these reasons, courts routinely defer consideration of motions for summary judgment.[4]

Moreover, deferring summary judgment briefing would not prejudice the School Board. Insofar as the School Board believes that its motion for partial summary judgment may result in expedited entry of some effective remedial order, it is mistaken. Any relief awarded upon entry of an order granting a motion for partial summary judgment would be interlocutory and thus ineffective until the Court enters final judgment.[5] And if the Court ultimately denies any motion to dismiss that Defendants may file, the parties can then turn to the merits issues raised in Plaintiff's

[4] *See, e.g.*, Electronic Order, *Bos. All. of Gay, Lesbian, Bisexual and Transgender Youth v. HHS*, No. 1:20-cv-11297-PBS (D. Mass. June 5, 2024), ECF No. 160 (terminating summary judgment briefing deadlines in challenge to rule superseded by a rule referenced in Count II pending resolution of subject matter jurisdiction); *Hucul Advertising LLC v. Grand Rapids Charter Twp.*, No. 11-376, 2012 WL 381715, at *2 (W.D. Mich. Feb. 6, 2012) ("[T]he Court concludes that it must hold the cross-motions for summary judgment in abeyance and require Plaintiff to show cause why this case should not be dismissed for lack of subject matter jurisdiction."); *Furniture Brands Int'l Inc. v. U.S. Int'l Trade Comm'n*, No. 11-202, 2011 WL 10959877, at *1 (D.D.C. Apr. 8, 2011) ("[S]taying further briefing of the plaintiff's summary judgment motion will allow the parties to avoid the unnecessary expense, the undue burden, and the expenditure of time to brief a motion that the Court may not decide."); *Lee v. Walmart, Inc.*, 237 F. Supp. 2d 577, 578 (E.D. Pa. 2002) ("After reviewing the parties' submissions, this court finds itself uncertain whether it has subject-matter jurisdiction. The summary judgment motion will not be ruled on until the question of jurisdiction has been resolved.").

[5] *Gerardi v. Pelullo*, 16 F.3d 1363, 1371 n.13 (3d Cir. 1994); *Int'l Controls Corp. v. Vesco*, 535 F.2d 742, 744-46 (2d Cir. 1976); *Redding & Co. v. Russwine Const. Corp.*, 417 F.2d 721, 727 (D.C. Cir. 1969); *Gauthier v. Crosby Marine Serv., Inc.*, 590 F. Supp. 171, 175 (E.D. La. 1984). Plaintiff's motion for partial summary judgment includes a request that the "Court expressly determine that there is no just reason for delay for entry of final judgment on this claim" under Federal Rule of Civil Procedure 54(b). But Rule 54(b) requires the party seeking certification to make a complex two-step showing, *see Curtiss-Wright Corp. v. General Electric Co.*, 446 U.S. 1, 7-10 (1980), and the School Board's memorandum in support of its motion entirely fails to make any argument supporting such certification here. ECF No. 22. Moreover, Rule 54(b) certification "should not be entered routinely as a courtesy to counsel." *PYCA Indus., Inc. v. Harrison Cnty. Waste Water Mgmt. Dist.*, 81 F.3d 1412, 1421 (5th Cir. 1996). Indeed "[i]t will be a rare case where Rule 54(b) can appropriately be applied when the contestants on appeal remain, simultaneously, contestants below." *Spiegel v. Trs. of Tufts Coll.*, 843 F.2d 38, 44 (1st Cir. 1988).

motion for partial summary judgment motion along with any cross-motions for summary judgment that the parties may file to resolve this case in its entirety. *See Furniture Brands*, 2011 WL 10959877, at *1 ("Because the Court must necessarily resolve the motions to dismiss before considering plaintiff's summary judgment motion, suspending briefing of the summary judgment motion pending the Court's resolution of the motions to dismiss will not prejudice plaintiff.").

Indeed, if there is prejudice to any party, it would be to Defendants. Defendants are prejudiced by having to brief a summary judgment motion when such briefing may be altogether unnecessary. And absent guidance from the Court on the discrete, reviewable agency action that Plaintiff challenges—which may come from appropriate Rule 12(b) or similar threshold motion practice—Defendants are unable to identify and compile administrative record(s) at this premature stage. This Court should be permitted the opportunity to consider Defendants' forthcoming response to the Complaint, which may take the form of a motion to dismiss, rather than facing litigation on confusing parallel tracks.

CONCLUSION

For the foregoing reasons, the Court should stay Defendants' time to file an opposition to the School Board's motion for partial summary judgment until a date set by the Court after the Court considers the joint proposed schedule required by this Court's Order dated March 26, 2025, ECF No. 16, which is due thirty days after Defendants serve an answer to the Complaint.

A proposed order is attached.

Dated: June 20, 2025

Respectfully submitted,

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