UNITED STATES DISTRICT COURT
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

DEFENDANTS' MOTION TO DISMISS

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 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 to dismiss this action under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

Dated: July 14, 2025

Respectfully submitted,

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

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INTRODUCTION

Plaintiff Rapides Parish School Board (the "School Board") brings this lawsuit against the U.S. Department of Health and Human Services ("HHS"), the Equal Employment Opportunity Commission ("EEOC"), the Department of Justice ("DOJ") and Executive Branch officials seeking declaratory, injunctive, and other equitable relief. The School Board alleges that it maintains certain policies and practices requiring separation between the sexes in athletics, physical education classes, bathrooms, locker rooms, and other similar facilities. Compl. ¶¶ 248-73. It claims to fear a loss of federal funding if the agency defendants bring enforcement actions against these policies and practices under various statutes prohibiting sex discrimination. *E.g., id.* ¶¶ 70, 246, 312, 342. The School Board seeks prospective relief, including vacatur of various postulated "Gender-Identity Mandate[s,]" as well as declaratory and injunctive relief, to prevent the future enforcement actions it allegedly fears. *Id.* at 68-70, Prayer for Relief.

But this case provides no basis to consider entry of that relief. On the day he took office, President Trump issued an Executive Order providing 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 Educational Amendments Act." Exec. Order No. 14,168, 90 Fed. Reg. 8615, 8616 (Jan. 30, 2025). And in a case seeking similar relief as the School Board seeks here, seven Fifth Circuit judges—referencing the type of agency statements and actions the School Board references here—found "[n]one of this may matter . . . in light of actions already taken by the new Administration." *Neese v. Becerra*, 127 F.4th 601, 602 (5th Cir. 2025) (Duncan, J., concurring).

The Court should dismiss this action without prejudice. Especially given the President's Executive Order, there is no Article III case or controversy between adverse parties. The School Board cannot show the requisite credible threat of an enforcement action to establish this Court's jurisdiction over its claims. If that were not enough, traditional equitable principles preclude courts from entertaining suits for declaratory, injunctive, or other equitable relief against the Executive Branch as to policies that appear to be undergoing significant modification. Moreover, dismissal

of the School Board's claims is proper for additional reasons as well, including a failure to challenge discrete reviewable final agency action, mootness arising from superseding agency action, mootness arising from relief provided by another tribunal, and preclusion of duplicative litigation.

BACKGROUND

I. Statutory Background

A. Title IX of the Education Amendments of 1972 and Section 1557 of the Affordable Care Act

Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.*, provides that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance[.]" 20 U.S.C. § 1681(a). Through reference to statutes such as Title VI of the Civil Rights Act of 1964 and Title IX, Section 1557 of the Affordable Care Act provides that individuals shall not—on the basis of race, color, national origin, sex, age, or disability—be excluded from participation in, denied the benefits of, or subjected to discrimination under any health program or activity, any part of which is receiving Federal financial assistance. 42 U.S.C. § 18116(a).

Both Title IX and Section 1557 provide opportunities for administrative procedures, congressional oversight, and judicial review before any entity faces a potential termination of Federal financial assistance. 20 U.S.C. §§ 1682, 1683.[1] Administrative enforcement is typically a complaint-driven process, though HHS has authority to initiate investigations on its own. *E.g.*, 45 C.F.R. §§ 80.7 (HHS Title VI procedures), 86.71 (HHS Title IX procedures), 92.303(a) (Section 1557, incorporating by reference § 80.7). As part of an investigation, agency civil rights offices consider all "factors relevant to a determination as to whether the recipient has failed to comply" with the applicable statute. *E.g.*, *id.* § 80.7(c) (incorporated by § 92.303(a)).

If, following an investigation, an agency civil rights office finds a "failure to comply," first,

[1] Section 1557 incorporates the "enforcement mechanisms provided for and available under" the referenced civil rights statutes, such as Title IX. 42 U.S.C. § 18116(a).

the agency must advise the covered entity of a potential violation and make a good faith effort to come to a voluntary resolution without the need for administrative or judicial review. *E.g.*, 20 U.S.C. § 1682. If that negotiation is unsuccessful, and the agency wishes to proceed further under the administrative process, the agency must initiate the formal agency adjudication procedures of the Administrative Procedure Act ("APA"), which require an opportunity for a hearing and "an express finding on the record" of a failure to comply. *Id.*[2] And if that process results in a determination to withhold federal funding, the agency is to submit a "full written report" to congressional committees before any funding withdrawal can take effect. *Id.*

Moreover, the statutory enforcement mechanism makes any agency decision to terminate or suspend Federal financial assistance subject to judicial review. *Id.* § 1683. The ultimate arbiters of any violation of Title IX or Section 1557 are, thus, Article III courts.

B. Other HHS-Administered Statutes Addressing Sex Discrimination

Several other HHS-administered statutes prohibit sex discrimination. For example, certain HHS-funded services for refugees must be provided "without regard to . . . sex." 8 U.S.C. § 1522(a)(5). And HHS funds State formula grants dedicated to serving individuals with mental health disorders who are experiencing homelessness. Those homeless individuals shall not be denied the benefits of the program "on the ground of sex or religion." 42 U.S.C. § 290cc-33(a)(2). Congress established similar antidiscrimination clauses in several other grant programs. *See* 42 U.S.C. § 290ff-1 (addressing children with serious emotional disturbances); 42 U.S.C. § 295m (Title VII health workforce programs); 42 U.S.C. § 296g (nursing workforce development); 42 U.S.C. § 300w-7 (preventive health services block grant); 42 U.S.C. § 300x–57 (substance use prevention, treatment, and recovery services block grant; community mental health services block grant); 42 U.S.C. § 708 (maternal and child health block grant); 42 U.S.C. § 5151 (disaster relief); 42 U.S.C. § 8625 (low income home energy assistance program); 42 U.S.C. § 9849 (head start);

[2] An enabling act incorporating this key phrase invokes the formal adjudication procedures in the APA. *United States Lines, Inc. v. Fed. Maritime Comm'n*, 584 F.2d 519, 536 (D.C. Cir. 1978).

42 U.S.C. § 9918 (community services block grant program); 42 U.S.C. § 10406 (family violence prevention and services).

In many of these provisions, Congress incorporated the same protections against federal funding suspensions or terminations that Congress included in the Title IX and Section 1557 schemes described above. For example, in the statutory provisions prohibiting discrimination by recipients of Head Start funding, Congress provided that HHS must "enforce the [antidiscrimination] provisions . . . in accordance with" 42 U.S.C. § 2000d-1—the Title VI enforcement protections. 42 U.S.C. § 9849(b). Title VI, in turn, includes the identical termination procedures as Title IX, described above. 42 U.S.C. §§ 2000d-1, 2000d-2.

C. Section 504 of the Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973 ("Section 504") prohibits discrimination on the basis of disability in programs and activities that receive Federal financial assistance as well as in programs and activities conducted by any Federal agency. 29 U.S.C. § 794. Section 504 incorporates the same protections against Federal financial assistance suspensions or terminations that Congress included in the Title IX and Section 1557 schemes described above. Specifically, Congress incorporated by reference the "remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964[.]" 29 U.S.C. § 794a(a)(2). Those Title VI termination procedures are identical to those in Title IX. 42 U.S.C. §§ 2000d-1, 2000d-2; 20 U.S.C. §§ 1682, 1683.

D. Title VII of the Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964 prohibits employers from "discriminat[ing] against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex." 42 U.S.C. § 2000e-2(a)(1). The EEOC is tasked with implementing Title VII. Individuals who believe their rights have been violated under Title VII must file a Charge of Discrimination with the EEOC within a statutorily defined time from the alleged unlawful practice. 42 U.S.C. § 2000e-5(b). The EEOC notifies the employer of the charge within ten days, investigates the charge—which may include soliciting a position statement from the employer—and then determines whether "reasonable cause" exists to believe

discrimination occurred. *Id*. If the EEOC does not find "reasonable cause" or determines that a defense applies, it dismisses the charge and the individual may file suit within ninety days of receiving a Notice of Right to sue. *Id*. § 2000e-5(b), (f)(1). If reasonable cause exists, the EEOC will attempt to conciliate the charge. If conciliation fails, and the employer is a private sector entity, the EEOC will either file suit against the employer or inform the charging party they may bring suit. If conciliation fails and the employer is a state or local government entity, the EEOC will refer the matter to DOJ so that DOJ may determine whether to bring suit. Any civil action is a *de novo* proceeding, *see McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 799 (1973), and any relief due the aggrieved person can be awarded only by the court.

II. Factual Background and the School Board's Complaint

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 EO*"). The *Defending Women EO* 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 Educational Amendments Act." *Id*. at 8616. In line with the Executive Order, the HHS Secretary has promulgated guidance "expanding on the sex-based distinctions set forth in" the *Defending Women EO*. *See* Office on Women's Health, *Sex-Based Definitions*, U.S. Dep't Health & Human Servs., https://womenshealth.gov/article/sex-based-definitions; *see also Defending Women EO* § 3(a).

In this action, the School Board asserts claims against HHS, EEOC, DOJ, and various Executive Branch officials, under the APA. Compl. ¶¶ 8, 305-466. Each claim references separate statements or actions by the various agency defendants or the official capacity defendants' predecessors in office relating to discrimination. Count I challenges a rule issued by HHS interpreting thirteen different HHS-administered statutes that prohibit grantees from discriminating on the basis of sex. *Id*. ¶¶ 304-37; 2 C.F.R. § 300.300(c) (codified by 89 Fed. Reg.

at 80,062); 45 C.F.R. § 75.300(e).[3] Count II challenges portions of a rule issued by HHS implementing Section 1557 of the Affordable Care Act. Compl. ¶¶ 338-67; 45 C.F.R. § 92.101(a)(2)(iv). Count III challenges statements in the preamble to a rule issued by HHS implementing Section 504—statements which have since been superseded. Compl. ¶¶ 368-92; Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 40066, 40068-69 (May 9, 2024) (superseded preamble statements); Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance; Clarification, 90 Fed. Reg. 15412, 15412 (Apr. 11, 2025) (superseding statements). Count V challenges a guidance document issued by the EEOC addressing Title VII of the Civil Rights Act of 1964, as well as other agency statements issued by EEOC. Compl. ¶¶ 427-66.[4] The School Board claims that each challenged agency statement or action is contrary to law, arbitrary and capricious, and contrary to constitutional right, power, privilege, or immunity.

The School Board alleges that it maintains certain policies and practices requiring separation between the sexes in athletics, physical education classes, bathrooms, locker rooms, and other similar facilities. *Id.* ¶¶ 248-73. It claims it fears a loss of federal funding if the agency defendants bring enforcement actions against these policies and practices under Title IX, Section 1557, the thirteen other HHS-administered statutes that prohibit sex discrimination, Section 504, and Title VII. *Id.* ¶ 246. In its Prayer for Relief, the School Board seeks prospective relief, including declaratory relief, injunctive relief, and vacatur of challenged agency statements, to prevent the future enforcement actions it allegedly fears. *Id.* at 68-70, Prayer for Relief.

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[3] These provisions are currently on the books at 45 C.F.R. § 75.300(e), but are being relocated without material change to 2 C.F.R. § 300.300(c). *See* Health and Human Services Adoption of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 89 Fed. Reg. 80055, 80058 (Oct. 2, 2024).

[4] The School Board voluntarily dismissed Count IV, Compl. ¶¶ 393-426, as well as Defendants United States Department of Agriculture and Brooke Rollins, in her official capacity as Secretary of Agriculture. *See* Stipulation of Dismissal of Certain Defs., ECF No. 28.

LEGAL STANDARDS

"A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case." *Home Builders Ass'n of Miss., Inc. v. City of Madison,* 143 F.3d 1006, 1010 (5th Cir. 1998) (citation omitted). A district court may dismiss an action for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1) on any one of three separate bases: (a) "the complaint alone[;]" (b) "the complaint supplemented by undisputed facts evidenced in the record[;]" or (c) "the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." *Den Norske Stats Oljeselskap As v. HeereMac V.O.F.,* 241 F.3d 420, 424 (5th Cir. 2001), *cert. denied,* 534 U.S. 1127 (2002); *see Voluntary Purchasing Grps., Inc. v. Reilly,* 889 F.2d 1380, 1384 (5th Cir. 1989). In examining a Rule 12(b)(1) motion, the court is empowered to consider matters of fact which are in dispute. *Williamson v. Tucker,* 645 F.2d 404, 413 (5th Cir. 1981).

"Rule 12(b)(6) authorizes a court to dismiss a claim on the basis of a dispositive issue of law." *Neitzke v. Williams*, 490 U.S. 319, 326 (1989). A dismissal for want of equitable jurisdiction is properly issued under Rule 12(b)(6). *See Lopez v. Cequel Commc'ns, LLC*, No. 2:20-cv-02242-TLN-JDP, 2021 WL 4476831, at *2 (E.D. Cal. Sep. 30, 2021) (and cases cited therein). The Court "may take judicial notice of prior court proceedings as matters of public record." *In re Deepwater Horizon*, 934 F.3d 434, 440 (5th Cir. 2019).

ARGUMENT

I. The School Board Cannot Demonstrate an Article III Case or Controversy Between Adverse Litigants.

The Court lacks subject matter jurisdiction because the School Board cannot demonstrate an Article III case or controversy. "Article III of the Constitution affords federal courts the power to resolve only 'actual controversies arising between adverse litigants.'" *Whole Woman's Health v. Jackson*, 595 U.S. 30, 39 (2021) (citation omitted). "[N]o principle is more fundamental to the judiciary's proper role in our system of government than [that] constitutional limitation[.]" *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013) (cleaned up). This "bedrock" Article III

requirement ensures that the judicial power is invoked only "as a necessity in the determination of real, earnest and vital controversy." *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 471 (1982) (quotation omitted). Article III "require[s] that a case embody a genuine, live dispute between adverse parties, thereby preventing federal courts from issuing advisory opinions." *Carney v. Adams*, 592 U.S. 53, 58 (2020).

A. Plaintiff Has Not Shown Imminent Enforcement.

The Supreme Court has long held that the mere existence of a legal code alone is insufficient for a plaintiff to establish a justiciable controversy between the plaintiff and an Executive Branch officer, even if the challenged provision's language "commands" the plaintiff to act or to refrain from acting. *California v. Texas*, 593 U.S. 659, 669 (2021). Rather, the plaintiff must show that "he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement" by the defendants. *Massachusetts v. Mellon*, 262 U.S. 447, 488 (1923). Pre-enforcement review is the exception, not the rule. *See Whole Woman's Health*, 595 U.S. at 49-50 (making clear that there is no "unqualified right to pre-enforcement review" and that many statutory and constitutional objections "are as a practical matter asserted typically as defenses," not in "pre-enforcement cases"). "The right to pre-enforcement review is qualified and permitted only 'under circumstances that render the threatened enforcement sufficiently imminent.'" *Neese v. Becerra*, 123 F.4th 751, 753 (5th Cir. 2024) (citation omitted), *petition for cert. filed* (U.S. May 27, 2025) (No. 24-1221). "[W]here the plaintiff fails to allege such actual or threatened enforcement, the Supreme Court has instructed [courts] to reject the mere potential for enforcement as a 'highly attenuated,' 'speculative chain of possibilities' that cannot trace an injury to the government." *A & R Eng'g and Testing, Inc. v. Scott*, 72 F.4th 685, 690 (5th Cir. 2023) (quoting *Clapper*, 568 U.S. at 410).

The School Board cannot show "threatened enforcement sufficiently imminent." *Neese*, 123 F.4th at 753 (citation omitted). It alleges that it fears "significant financial harm" if it were to "lose eligibility for [several] federal programs." Compl. ¶ 245. But the School Board has not shown that it is engaging in any conduct that Defendants view as impermissible gender identity

discrimination. It does not allege that it has ever "received any enforcement warning letters from [any defendant] regarding" any of the School Board's policies. *Am. College of Pediatricians v. Becerra*, No. 1:21-cv-195, 2022 WL 17084365, at *15 (E.D. Tenn. Nov. 18, 2022). Rather, the School Board's allegations are based on its unsubstantiated fears that Defendants will enforce broad antidiscrimination provisions in specific ways as precluding their policies. But "nonparanoid fear" of a non-criminal enforcement action is insufficient. *Clapper*, 568 U.S. at 416. That is particularly so here, where Congress precluded Defendants from taking enforcement actions unless "the department or agency concerned has advised [the School Board] of the [believed] failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means." *See* 20 U.S.C. § 1682 (Title IX); 42 U.S.C. § 2000d-1 (Title VI); *see also* 42 U.S.C. § 9849(b) (Head Start, incorporating Title VI procedures); 42 U.S.C. § 18116(a) (Section 1557, incorporating Title VI and Title IX procedures).

The Fifth Circuit's recent opinion in *Neese v. Becerra*, 123 F.4th 751 (5th Cir. 2024) provides a helpful application of traditional pre-enforcement standing principles in a similar context to this case. In *Neese*, two physicians sought equitable relief, including vacatur, against an agency statement not unlike many of those referenced in the School Board's Complaint. *Id.* at 752. The agency statement at issue in *Neese* addressed Section 1557, the same statute at issue in Count II here. *Id.* But the *Neese* plaintiff doctors welcomed *all* patients into their practices. They "treated many transgender patients . . . in the past, and [expected] to continue doing so in the future." *Neese v. Becerra*, 640 F. Supp. 3d 686, 673 (N.D. Tex. 2022) (citation omitted). They sought pre-enforcement relief not because they wanted to exclude patients from their practice, but instead based on a fear that HHS would "prosecute a doctor who . . . treated a biological male or female according to the medical needs of the physical body." *Neese*, 123 F.4th at 753. Applying established pre-enforcement standing principles, the Fifth Circuit held that the *Neese* plaintiffs failed to establish imminent enforcement based on that conduct. *Id*.

Dismissal of this case is warranted under traditional pre-enforcement standing doctrine. First, the Complaint fails to plausibly allege that the School Board views its sex-separate programs

and spaces as prohibited discrimination. *See id*. The Complaint does not allege that the School Board has barred *anyone*—whether a student who identifies as "transgender" or otherwise—from attending its schools or from, for example, participating in school sports, merely because, for example, a "male student self-identifie[s] as a girl." Compl. ¶ 260. Rather, the Complaint alleges that the "school board's practice is that *all* students, including those who profess a gender identity that differs from their sex, participate in school activities based on sex." *Id*. (emphasis added). No student is excluded. Aside from conclusory assertions, the Complaint fails to meaningfully explain how the School Board views that conduct as impermissible discrimination. Compl. ¶¶ 269-81. *Cf. United States v. Skrmetti*, 145 S. Ct. 1816, 1833-35 (2025) (concluding that policy "does not exclude any individual from medical treatments on the basis of transgender status [*i.e.* gender identity]" and analyzing how *Bostock*'s reasoning, even if applied, does not preclude policy).

Second, the School Board fails to establish that the Government views its policies as impermissible discrimination. *See Neese*, 123 F.4th at 753; *see also Matthew A. Goldstein, PLLC v. U.S. Dep't of State*, 851 F.3d 1, 5 (D.C. Cir. 2017) (no pre-enforcement standing where plaintiff's "general descriptions of [its] activities" were not viewed by Government as impermissible). As the School Board acknowledges, the challenged programs ensure that "no student is turned away" from federally funded programs and activities on impermissible grounds. *See* Compl. ¶ 237. Again, the Complaint nowhere alleges that any students are turned away from participation in school programs or activities merely because, for example, a male student "self-identifies" as a girl. Indeed, the Complaint alleges that the School Board is permitting at least thirteen students "who have identified as a gender identity that differs from their sex" to attend its schools. Compl. ¶ 280. Instead, the School Board invokes its policies requiring sex-separated athletics, physical education classes, bathrooms, locker rooms, and other private facilities. Compl. ¶¶ 251-65. But Executive Branch policy is that any reading of Title IX and other similar antidiscrimination statutes as requiring "gender identity-based access to single-sex spaces . . . is legally untenable[.]" *Defending Women EO* § 3(f). In fact, Defendants are proceeding with Title IX enforcement actions against federal funding recipients that have a "policy of allowing male

athletes to compete against female athletes in high school sports events"—the exact opposite of the School Board's policies at issue here. *See* Ex. 3 HHS, OCR, Notice of Referral (OCR Transaction Number: DO-25-610531-RV-CRR State of Maine) (Mar. 28, 2025), at 7.

Third, the Complaint fails to plausibly allege that the School Board has no "valid, non-discriminatory reasons for" these policies. *See Neese*, 123 F.4th at 753. Under longstanding antidiscrimination law principles, a covered entity may maintain or adopt a policy or practice for valid nondiscriminatory reasons,[5] and thus the presence of a valid non-discriminatory reason for a policy indicates no material risk of imminent enforcement of an antidiscrimination provision. *See id*. Here, the Complaint alleges that the School Board maintains its policies to protect "the privacy and safety of [biological] girls." Compl. ¶ 269. *See D.H. by A.H. v. Williamson Cnty. Bd. of Educ.*, 638 F. Supp. 3d 821, 834-35 (M.D. Tenn. 2022) ("separate bathrooms for the biological sexes have been accepted as a valid differentiation that serves the interest of individual privacy" and "not all differentiation based on sex is impermissible discrimination—especially the provision of separate bathrooms"). The School Board's policies promote other legitimate nondiscriminatory goals as well. For example, requiring competitive school athletics to be separated based on biological sex promotes a legitimate nondiscriminatory interest in fair competition among athletes by addressing the inherent physical advantages of biological males in sports compared to biological females.

Fourth, the Complaint does not allege that the School Board's "current practices have . . . been chilled or otherwise affected" by any challenged agency statements or actions. *Neese*, 123 F.4th at 753. "Allegations of a subjective 'chill' are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm[.]" *Clapper*, 568 U.S. at 417 (citation omitted). But the Complaint fails to plausibly allege even a subjective chilling of the

[5] *See Klocke v. Univ. of Tex.*, 938 F.3d 204, 211 (5th Cir. 2019) (applying "reasonable and non-discriminatory reasons" test to resolve Title IX sexual orientation-related "gender bias" claim); *Pederson v. La. State Univ.*, 213 F.3d 858, 881 (5th Cir. 2000) (applying "legitimate, nondiscriminatory explanation" test to resolve Title IX claim); *Metoyer v. Am. Eagle Airlines, Inc.*, 806 F. Supp. 2d 911, 917, 919 (W.D. La. 2011) (Drell, J.) ("a legitimate, nondiscriminatory or nonretaliatory reason" justifies employment actions under Title VII).

School Board's sex-separation policies. The School Board does not allege that it is authorizing gender identity-based access to athletics, physical education classes, bathrooms, or locker rooms pending this Court's issuance of declaratory, injunctive, or other relief. Rather, the Complaint indicates that the School Board continues to preclude gender identity-based access to these programs and spaces without any interruption by Defendants.

Fifth, no "enforcement proceeding is imminent." *Neese*, 123 F.4th at 753. Contrast the School Board's alleged fears with, for example, entities covered by Title IX who have received a threat of enforcement. On February 21, 2025, the HHS Office for Civil Rights notified the State of Maine of a compliance review based on Maine's policy of allowing "transgender athletes to compete in women's sports." Ex. 1, HHS, OCR, Notice of Compliance Review (OCR Transaction Number DO-25-610531-RV-CRR State of Maine) (Feb. 21, 2025), at 1. Later, HHS followed up with a Notice of Determination and a proposed Voluntary Resolution Agreement. Ex. 2, HHS, OCR, Notice of Determination (OCR Transaction Number: DO-25-610531-RV-CRR State of Maine); Ex. 3, at 6. The School Board fails to show that it has ever received a similar request for voluntary compliance by any of the Defendants in this case, including predecessors in office, regarding any of its policies. The absence of any such request for voluntary compliance means that, under the relevant statutes, no enforcement proceeding is imminent and demonstrates that this case is distinguishable from those where a plaintiff proffers factual allegations that support concrete threats of enforcement. *See Clapper*, 568 U.S. at 419-20; *Am. College of Pediatricians*, 2022 WL 17084365, at *15.

B. The School Board Otherwise Lacks Standing for Each Provision It Challenges.

Even if the School Board could establish imminent enforcement by any Defendant, it otherwise lacks standing to challenge each of the agency rules and statements referenced in the Complaint. "It is now beyond cavil that plaintiffs must establish standing for each and every provision they challenge." *In re Gee*, 941 F.3d 153, 160 (5th Cir. 2019).

Start with Count I. Although ambiguous, Count I references the entirety of 2 C.F.R.

§ 300.300 (codified by 89 Fed. Reg. at 80062). Compl. ¶ 306.[6] Even assuming the School Board's claims in Count I are limited to subsection (c), that subsection addresses antidiscrimination prohibitions in *thirteen* different statutes. 2 C.F.R. § 300.300(c)(1)-(13). *Supra* at pp. 3-4. The Complaint fails to allege that the School Board's conduct is governed by most of them. For example, the School Board cannot challenge 2 C.F.R. § 300.300(c)(1) because it does not allege that it has anything to do with resettling refugees, let alone that it is discriminating against anyone in the provision of refugee resettlement services. At an absolute minimum, Count I must be dismissed insofar as it challenges anything other than 2 C.F.R. § 300.300(c)(11), which relates to the Head Start statute. But, even with respect to 2 C.F.R. § 300.300(c)(11), the School Board does not allege an injury caused by this provision. The Complaint postulates the existence of a "Head Start Gender-Identity Mandate" that prohibits the maintenance of "sex-specific athletic teams and P.E. classes," Compl. ¶ 327. But 2 C.F.R. § 300.300(c)(11) does not say anything about sex-specific athletic teams and physical education classes, much less prohibit them.[7] And the agency statement referenced in § 300.300(c) is explicit: it "does not impose any substantive obligations on entities outside the Department." 2 C.F.R. § 300.300(c) (codified by 89 Fed. Reg. at 80062).

In Count II, the Complaint references the entirety of "HHS's Section 1557 Rule." Compl. ¶ 339. HHS's regulations implementing Section 1557 of the ACA are found at Part 92 of Title 45 of the Code of Federal Regulations. *See* 45 C.F.R. § 92.1 *et seq*. But those provisions apply only to "health program[s] or activit[ies]," 45 C.F.R. § 92.2(a)(1), which is limited to the provision or administration of health services or health insurance coverage, *see* 45 C.F.R. § 92.4 (definitions). The School Board does not plausibly allege that its athletics, physical education classes,

[6] Again, these provisions are currently on the books at 45 C.F.R. § 75.300(e) and are being relocated to 2 C.F.R. § 300.300. *See supra* note 3. For ease of reference, Defendants will refer only to 2 C.F.R. § 300.300(c) in this brief. But argument addressing 2 C.F.R. § 300.300(c) applies to the analogous provision in 45 C.F.R. § 75.300(e).

[7] The same is true for the now-superseded preamble statements referenced in Count III, *see* 89 Fed. Reg. at 40068-69, which means that the School Board has not established injury due to the preamble statements referenced in Count III.

bathrooms, locker rooms, and other similar facilities are health programs or activities, within the meaning of 45 C.F.R. § 92.4, nor could it. The School Board's federally funded educational programs and activities are governed by Title IX, not Section 1557.

The Complaint includes allegations that misunderstand how Section 1557 operates. Compl. ¶ 68. The Complaint wrongly suggests that *any* "entity that 'any part of which' participates in HHS financial assistance in health programs is subject *in all aspects* to Section 1557." *Id*. Actually, only "*health program[s] or activit[ies]*, any part of which receives Federal financial assistance," are subject to Part 92, 45 C.F.R. § 92.2(a) (emphasis added), and, again, the Complaint does not plausibly allege that the School Board's sex-separated athletics, physical education classes, bathrooms, and locker rooms are health programs or activities within the meaning of the statute or rule, i.e., a "project, enterprise, venture, or undertaking" to, for example, "provide or administer health-related services," 45 C.F.R. § 92.4 (definition of "health program or activity"). Rather, the Complaint's allegations indicate that these programs and facilities advance the School Board's educational activities.

To be sure, the provisions of Part 92 govern "[a]ll of the operations of" some federally funded entities. 45 C.F.R. 92.4 (definition of "health program or activity"). But those entities must be "principally engaged in the provision or administration of [certain] health projects, enterprises, ventures, or undertakings[.]" *Id*. The Complaint does not plausibly allege that the *raison d'etre* of the Rapides Parish School Board is to provide health services or health insurance. Rather, it is an educational institution governed by Title IX, not Section 1557.[8] The Court should therefore

[8] The definition of "health program or activity" includes "all of the operations of a State Medicaid program, Children's Health Insurance Program, and Basic Health Program." 45 C.F.R. § 92.4. But the fact that the School Board may receive Medicaid funds for limited services does not make the School Board itself a "State Medicaid program." Rather, in Louisiana, the State Medicaid program is the Louisiana Bureau of Health Services Financing. As clarified in the preamble to the rule, this provision refers to "State or local health agencies" themselves, not all operations of all Medicaid-funded providers. 89 Fed. Reg. at 37540; *see also* 87 Fed. Reg. at 47844 (State Medicaid programs "would be covered in their entirety" even absent this language "as operations of state or local health agencies" not school districts). Although the School District programs and activities paid for by Medicaid funds may be covered by Section 1557, *see* 45 C.F.R.

dismiss Count II for lack of Article III standing.

With respect to Count V, the Complaint fails to "clearly . . . allege facts demonstrating each element" of standing, *see Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (quotation omitted), to press any claims against the EEOC, which administers Title VII. The School Board allegedly fears a loss of federal funding due to the relationship between its sex-separation policies and "at least thirteen students who have identified as a gender identity that differs from their sex." Compl. ¶ 280. But Title VII governs the relationship between employers and employees (or job applicants), not the relationship between schools and students, *see Ames v. Ohio Dep't of Youth Servs.*, 145 S. Ct. 1540, 1543 (2025), and the Complaint does not allege that it has any employees in the same position as those thirteen students. In the same way that an employer may not bring a pre-enforcement suit against the National Labor Relations Board based on mere speculation that its employees may one day engage in a "unionization attempt," *Burnett Specialists v. Cowen*, 140 F.4th 686, 694 (5th Cir. 2025), the School Board may not bring a pre-enforcement suit against the EEOC based on mere speculation that it may one day have to address employment relations with a hypothetical future transgender employee.

What is more, the School Board nowhere explains how its alleged future injury—future loss of federal funding—is caused by the EEOC or redressable by any relief issued against the EEOC. Unlike Title IX or Section 1557, Title VII contains an outright prohibition, not a condition on an offer of future federal funds; the EEOC does not award federal funds to schools. *See Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 286 (1998) ("That contractual framework distinguishes Title IX from Title VII, which is framed in terms not of a condition [on federal funds] but of an outright prohibition"). And while the Complaint gestures towards purported compliance costs, Compl. ¶¶ 217-21, adopting "policies" and "processes" to prevent discrimination in the workplace, *see id.* ¶ 219, is a tool that helps employers avoid liability from private lawsuits brought

§ 92.4 (definition of Health Program or Activity ¶ 1), the Complaint does not plausibly allege the School District is receiving Medicaid funds to pay for athletics, physical education classes, school bathrooms, or school locker rooms. Compl. ¶¶ 227-34. And it does not allege that it is excluding anyone on any basis from any of its Medicaid-funded programs. *Id.*

by employees under Title VII, *see, e.g., Kolstad v. Am. Dental Ass'n*, 527 U.S. 526, 545 (1999) (explaining how employers must "adopt antidiscrimination policies and . . . educate [its] personnel" to avoid liability in private suits under Title VII). No relief against EEOC in this suit will redress the School Board's possible liabilities in private damages actions arising from failing to prohibit discrimination and harassment in the workplace. Private plaintiffs are "not parties to [this] suit, and there is no reason they should be obliged to honor an incidental legal determination [this] suit produce[s]." *Haaland v. Brackeen*, 599 U.S. 255, 293 (2023) (citation omitted). In other words, no challenged EEOC action itself compels the School Board to adopt antidiscrimination policies—nor could it—and the School Board "would continue to incur the complained-of costs" if it wants to minimize liability in private actions even if it receives a judgment against EEOC in this action. *See id*. at 296. *See also Whole Woman's Health*, 595 U.S. at 44 ("petitioners have identified nothing that might allow a federal court to parlay [a Government official's enforcement] authority, or any defendant's enforcement authority, into an injunction [or other effective remedial order] against any and all unnamed private persons who might seek to bring their own" suits under statute authorizing private rights of action).

For these reasons, the Compliant should be dismissed in its entirety for lack of an Article III case or controversy.

II. The Court Should Exercise Its Duty to Dismiss Actions for Declaratory or Equitable Relief Against Executive Branch Policies that Appear to be Undergoing Significant Modification.

This action should be dismissed under 5 U.S.C. § 702(1). Section 702(1) of the APA provides for "the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground." 5 U.S.C. § 702(1). "Then-Assistant Attorney General Antonin Scalia" explained that the "very premise[]" of this provision is "that actions seeking judicial review could still be disposed of on grounds such as . . . discretionary power to refuse equitable relief[.]" *Saavedra Bruno v. Albright*, 197 F.3d 1153, 1158 n.1 (D.C. Cir. 1999) (citation omitted).

Here, this action should be dismissed under *A. L. Mechling Barge Lines, Inc. v. United*

States, 368 U.S. 324 (1961). As the Court held in that case, declaratory, injunctive, and other equitable relief against the Executive Branch must be withheld "where it appears that a challenged" Executive Branch policy "is, at the moment adjudication is sought, undergoing significant modification so that its ultimate form cannot be confidently predicted." *A.L. Mechling Barge Lines, Inc v. United States*, 368 U.S. 324, 331 (1961).

This principle resolves this case. The School Board essentially concedes that it does not face any imminent enforcement actions by Defendants. Rather, it complains of language that it dislikes printed in the Code of Federal Regulations. Pl. Memo. In Supp. of its Mot. for Partial Summ. J. 2, ECF No. 22. And it argues that "[a]lthough new executive orders suggest rescinding" those statements, "rulemaking takes years[.]" *Id.* But that argument runs headlong into the Supreme Court's admonition that a plaintiff may not seek discretionary relief against enforcement of an Executive Branch policy that is "undergoing significant modification so that its ultimate form cannot be confidently predicted." *A.L. Mechling Barge Lines*, 368 U.S. at 331. *See Chamber of Com. of U.S. of Am. v. U.S. Dep't of Energy*, 627 F.2d 289, 292 (D.C. Cir. 1980) (holding that "controversy had become so attenuated and remote as to warrant dismissal of this action pursuant to the court's discretionary authority to grant or withhold injunctive and declaratory relief" where challenged Executive Brach policy "is currently under review and may never recur").

III. Count III Should be Dismissed for Additional Reasons—Failure to Challenge a Reviewable Agency Action and on Mootness Grounds.

Because, in Count III, the School Board does not challenge a reviewable agency action, Count III should be dismissed. And even if the preamble statement referenced in Count III was once reviewable, Count III is moot because that statement has been superseded.

First, Count III must be dismissed because it challenges a preamble statement that speaks in the conditional, which is not a reviewable agency action under the APA. Only "final agency action" is reviewable under the APA. 5 U.S.C. § 704. That requirement has two distinct parts. First, the thing being challenged must be "agency action" recognized by the APA, which defines the term to include a specific "rule, order, license, sanction, relief, or the equivalent[.]" 5 U.S.C.

§ 551(13). Second, agency action must be "final[.]" 5 U.S.C. § 704. The Supreme Court has laid out a two part test for finality: (1) "the action must mark the 'consummation' of the agency's decisionmaking process," rather than being "of a merely tentative or interlocutory nature[;]" and (2) "the action must be one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow[.]" *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997).

In Count III, the Complaint does not challenge anything HHS promulgated in the Code of Federal Regulations. Rather, the School Board takes issue with a statement in the preamble to a rule addressing Section 504. Specifically, the School Board references a preamble statement noting that certain actions preventing, limiting, or interfering with individuals' "access to care due to their gender dysphoria . . . *may* violate section 504." 89 Fed. Reg. at 40069 (emphasis added).

Courts have concluded that preamble statements speaking in the conditional, using the term "may," do not satisfy the second prong of the *Bennett* test. Only in "unique cases" may preamble statements "constitute binding, final agency action susceptible to judicial review" at all. *Nat. Res. Def. Council v. EPA*, 559 F.3d 561, 564 (D.C. Cir. 2009). But "this is not the norm." *Id.* at 565. When a preamble statement speaks "in the conditional," using the term "may" it certainly does not "amount[] to final agency action." *Id*. Courts give "'decisive weight to the agency's choice between 'may' and 'will','" and hold "that similar statements are nonbinding and unreviewable." *Id*. (quoting *Brock v. Cathedral Bluffs Shale Oil Co.*, 796 F.2d 533, 538 (D.C. Cir. 1986) (Scalia, J.)). That rule governs here and requires that Count III be dismissed. *See id.*

Even if the preamble statement referenced in Count III were ever reviewable to begin with, Count III is moot because, among other reasons, the statement has been superseded by subsequent agency action. Courts have confirmed that one way mootness occurs is due to a superseding agency action, which renders a lawsuit challenging the original agency action moot. *U.S. Navy SEALs 1-26 v. Biden*, 72 F.4th 666, 672 (5th Cir. 2023) ("One way [mootness] happens is when a challenged policy is repealed"); *Franciscan All., Inc. v. Becerra*, 47 F.4th 368, 374-75 (5th Cir. 2022); *Alaska v. U.S. Dep't of Agric*., 17 F.4th 1224, 1226 (D.C. Cir. 2021) ("A 'well-settled principle of law' is this: 'when an agency has rescinded and replaced a challenged regulation, litigation over the

legality of the original regulation becomes moot.'" (citation omitted)); *Wyoming v. U.S. Dep't of Interior*, 768 F. App'x 790, 795 (10th Cir. 2019) ("[A]doption of a new rule typically moots a challenge to its predecessor."); *Ozinga v. Price*, 855 F.3d 730, 734 (7th Cir. 2017) ("When a plaintiff's complaint is focused on a particular statute, regulation, or rule and seeks only prospective relief, the case becomes moot when the government repeals, revises, or replaces the challenged law[.]"); *Akiachak Native Cmty v. U.S. Dep't of Interior*, 827 F.3d 100, 113-14 (D.C. Cir. 2016) (collecting cases); *Allied Home Mortg. Corp. v. U.S. Dep't of Hous. and Urb. Dev.*, 618 F. App'x 781, 785 (5th Cir. 2015) (case moot after challenged agency action "ha[d] been withdrawn"); *Gulf of Me. Fisherman's All. v. Daley*, 292 F.3d 84, 88 (1st Cir. 2002) ("The promulgation of new regulations and amendment of old regulations are among such intervening events as can moot a challenge to the regulation in its original form."); *Nat'l Mining Ass'n v. U.S. Dep't of Interior*, 251 F.3d 1007, 1010-11 (D.C. Cir. 2001) (dismissing as moot lawsuit challenging an "old set of rules" because they were replaced and noting that "[a]ny opinion regarding the former rules would be merely advisory").[9]

The agency statement challenged in Count III has been superseded and thus Plaintiff's challenge to it is moot under these principles. On April 11, 2025, HHS Secretary Kennedy published a superseding agency statement making clear that HHS's Section 504 regulations do "not say that gender dysphoria is a disability[.]" Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance; Clarification, 90 Fed. Reg. 15412, 15412 (Apr. 11, 2025). Moreover, the superseding agency statement emphasizes that "'an individual with a disability' does not include an individual on the basis of—. . . gender identity disorders not resulting from physical impairments[.]" *Id.* (quoting 45 C.F.R. § 84.4(g)). This superseding action has rendered moot Plaintiff's challenge to the original preamble statement alone. If challenged agency actions are "superseded with new ones," a case is "moot, and [any]

[9] *See also Bos. All. of Gay, Lesbian, Bisexual & Transgender Youth v. HHS*, No. 20-cv-11297-PBS, 2024 WL 5346305, at *1 (D. Mass. Dec. 6, 2024); *New York v. HHS*, 20 Civ. 5583 (AKH), 2024 WL 5346057, at *1 (S.D.N.Y. Nov. 12, 2024); *New York v. Raimondo*, No. 1:19-cv-09380-MKV, 2021 WL 1339397, at *2 (S.D.N.Y. Apr. 9, 2021).

challenge to new [actions] should be brought in [a] new case[.]" *Allied Home Mortg.*, 618 F. App'x at 787.

IV. Count V Should be Dismissed for Additional Reasons—Failure to Challenge a Discrete Reviewable Agency Action and on Mootness Grounds.

Claims raised in Count V—which references a history of EEOC enforcement actions, an EEOC guidance document that has been vacated by another court, and a superseded agency website—should be dismissed for failure to challenge a discrete, reviewable "agency action," as defined by the APA. And even if they were once reviewable "agency actions," any challenge to the vacated guidance document and superseded website are moot.

First, EEOC's history of enforcement actions is not a circumscribed and discrete agency rule reviewable under the APA. "Under the terms of the APA, [a plaintiff] must direct its attack against some particular 'agency action' that causes it harm." *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 891 (1990). And the challenged agency action must be "circumscribed" and "discrete[.]" *Norton v. S. Utah Wilderness All. ("SUWA")*, 542 U.S. 55, 62 (2004). Count V references a history of enforcement actions by EEOC. Compl. ¶¶ 213-16. Insofar as Count V seeks judicial review of these historical enforcement actions, it must be dismissed for lack of a discrete agency action. *SUWA*, 542 U.S. at 62.

Moreover, EEOC's enforcement actions are not "rules" as defined by the APA. Only "final agency action" is reviewable under the APA. 5 U.S.C. § 704. Again, that requires the thing being challenged to be an "agency action" recognized by the APA, which defines the term to include a specific "rule, order, license, sanction, relief, or the equivalent[.]" 5 U.S.C. § 551(13). In the Complaint, the School Board claims to challenge a "rule" as that term is defined "under the APA[.]" Compl. ¶ 296. Under this definition, rules are "the whole or part of [certain] agency statement[s] of general or particular applicability and future effect[.]" 5 U.S.C. § 551(4). Insofar as Count V seeks judicial review of EEOC's past enforcement actions, it must be dismissed for failure to satisfy the definition of a rule. *Walmart Inc. v. U.S. Dep't of Just.*, 21 F.4th 300, 309 (5th

Cir. 2021) (a "complaint does not create rights or obligations, nor does it have 'future effect'").

Second, any challenge to the EEOC guidance document and website referenced in Count V must be dismissed as moot, even if they were reviewable agency actions to begin with (which they were not). Consider first the EEOC guidance document referenced in Count V. Even if that mere guidance had ever itself created binding legal rights or obligations satisfying *Bennett* prong two,[10] Count V is moot insofar as the challenged guidance is already subject to a vacatur order issued by another district court. "If full relief is accorded by another tribunal . . . a proceeding seeking the same relief is moot." 13B Wright & Miller's Fed. Prac. & Proc. § 3533.2.1 (3d ed. 2025). Here, the EEOC guidance document referenced in Count V is now subject to a vacatur order issued by another district court. *See Texas v. EEOC*, No. 2:24-CV-173-Z, 2025 WL 1414332, at *16 (N.D. Tex. May 15, 2025). The School Board has identified "no authority that would permit either this Court or [the agency] to disregard the final order of a district court vacating part of a regulation." *Whitman-Walker Clinic, Inc. v. HHS*, 485 F. Supp. 3d 1, 26 (D.D.C. 2020).[11]

Count V is also moot insofar as it challenges agency statements on a website that have now been removed and superseded. *See* Compl. ¶¶ 185-93. Even if the agency's website was ever a reviewable agency action—which it was not—EEOC has already replaced in its entirety the website referenced in the Complaint, rendering moot any challenge to the prior website. *Compare* EEOC, Sex-Based Discrimination, https://perma.cc/EE2T-XRLA (cited at Compl. ¶ 185 n.18 and

[10] *But see, e.g., United States v. Mississippi*, 82 F.4th 387, 393 (5th Cir. 2023) ("The guidance never underwent notice and comment under the APA to become a binding regulation"); *Luminant Generation Co. v. EPA*, 757 F.3d 439, 442 & n.7 (5th Cir. 2014) (agency guidance is not reviewable when it "merely expresses its view of what the law requires of a party, even if that view is adverse to the party" and even if that view is incorrect); *Nat'l Pork Producers Council v. EPA*, 635 F.3d 738, 756 (5th Cir. 2011) (similar).

[11] Moreover, the School Board cannot show that the referenced EEOC guidance satisfies *Bennett* prong two insofar as it is subject to the *Texas* court's vacatur order. The Fifth Circuit has explained that a vacatur order "removes the source of the defendant's authority" to take enforcement action. *All. for Hippocratic Med. v. FDA*, 78 F.4th 210, 254 (5th Cir. 2023), *rev'd on other grounds*, 602 U.S. 367 (2024). So even if the guidance referenced in Count V was ever the source of EEOC's authority to take an enforcement action—which it was not—it certainty has no current legal effect insofar as it is subject to the *Texas* court's order.

captured Jan. 13, 2025), *with* EEOC, Sex-Based Discrimination, https://www.eeoc.gov/sex-based-discrimination (accessed July 14, 2025). Again, if challenged agency actions are "superseded with new ones," a case is "moot, and [any] challenge to new [actions] should be brought in [a] new case[.]" *Allied Home Mortg.*, 618 F. App'x at 787; *see also Akiachak Native Cmty.*, 827 F.3d at 114 (citation omitted) (challenges to superseding actions must be brought "in a new suit"); *supra* at pp. 18-19 (collecting cases).

V. DOJ and DOJ Officials Should be Dismissed from this Action.

DOJ and DOJ officials named as Defendants in this case should be dismissed. The Complaint does not clearly identity any "agency action" issued by DOJ that the School Board is asking this Court to review. No count refers specifically to DOJ or any agency action issued by DOJ. Thus, the School Board has failed to state an APA claim, *see* Compl. ¶ 8, against DOJ and the DOJ Defendants should be dismissed without prejudice. *See Dollah v. Navy Recruiting Station*, No. 24-CV-9166 2025 WL 297398, at *1 (S.D.N.Y. Jan. 24, 2025) ("proper defendant in an APA action" includes "the agency whose action is being challenged[] or the appropriate federal officer [at that agency]"); *White v. Dep't of Homeland Sec.*, Civ. A. No. 11-2256, 2012 WL 4815470, at *1 (D.D.C. Oct. 10, 2012) (dismissing action raising APA claim against agency defendant challenging final agency action issued by different agency).[12]

VI. Counts II and III Should be Dismissed to Prevent Duplicative Litigation.

Counts II and III should be dismissed without prejudice to avoid duplicative litigation. "[A] district court may dismiss an action where the issues presented can be resolved in an earlier-filed action pending in another district court." *W. Gulf Marine Ass'n v. ILA Deep Sea Local 24, S. Atl. & Gulf Coast Dist. of ILA, AFL-CIO*, 751 F.2d 721, 729 (5th Cir. 1985). When the Government is faced with "a multiplicity" of suits seeking judicial review of an agency action, a dismissal without

[12] Insofar as the School Board is seeking judicial review of any lawsuit that DOJ has brought on behalf of the United States against nonparties to this suit, the School Board lacks standing to challenge the lawsuit, which is also not a rule, as defined in the APA. *See Walmart*, 21 F.4th at 308-13 (a "complaint does not create rights or obligations, nor does it have 'future effect'"); 5 U.S.C § 551(4).

prejudice is proper "if the same issue is pending in litigation elsewhere." *Abbott Labs. v. Gardner*, 387 U.S. 136, 155 (1967). *See Bergh v. Washington*, 535 F.2d 505, 507 (9th Cir. 1976); *Nat'l Health Fed'n v. Weinberger*, 518 F.2d 711, 712-14 (7th Cir. 1975). The plain text of the APA confirms "the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground," 5 U.S.C. § 702, and "discretionary dismissal is equitable" and warranted in these circumstances, *Nat'l Health Fed'n*, 518 F.2d at 714.

First, Count II should be dismissed insofar as it seeks judicial review of the same provisions of an HHS rule that are subject to judicial review in a multitude of—at least *six*—other pending actions.[13] Second, Count III should be dismissed insofar as it seeks judicial review of the same language in the preamble to an agency rule that is being challenged in a civil action pending in the United States District Court for the Northern District of Texas. *See* Compl. ¶ 3, *Texas v. Kennedy*, No. 5:24-CV-00225 (N.D. Tex. Sept. 26, 2024), ECF No. 1. The Court should thus dismiss Counts II and III without prejudice. *See Bergh*, 535 F.2d at 507; *Nat'l Health Fed*, 518 F.2d at 712-14; *Chamber of Com. of U.S. v. FTC*, 732 F. Supp. 3d 674, 680 (E.D. Tex. 2024) (dismissal of a case warranted where "judicial effort would be substantially duplicated were the two cases to proceed in parallel").

CONCLUSION

For the foregoing reasons, the Court should dismiss this action.

Dated: July 14, 2025 Respectfully submitted,

[13] *Texas v. Kennedy*, No. 6:24-cv-00211-JDK (E.D. Tex.); *Tennessee v. Kennedy*, No. 1:24-cv-161 (S.D. Miss.); *McComb Children's Clinic, Ltd. v. Kennedy*, No. 5:24-cv-48 (S.D. Miss.) ("*Mccomb*"); *Missouri v. Kennedy*, No. 4:24-cv-937 (E.D. Mo.) ("*Missouri*"); *Cath. Benefits Ass'n v. Kennedy*, No. 3:23-cv-203 (D.N.D.); *Dr. James Dobson Fam. Inst. v. Kennedy*, No. 4:24-cv-986 (N.D. Tex.). Another action was recently dismissed after the court concluded that there was no Article III case or controversy. Endorsed Order, *Florida v. HHS*, No. 8:24-cv-1080 (M.D. Fla. June 9, 2025) ("*Florida*"), ECF No. 79. Notably, counsel for the School Board represents plaintiffs in three of those challenges—*McComb*, *Missouri*, and *Florida*. (The *Florida* dismissal has been appealed to the Eleventh Circuit.)

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Exhibit 1

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February 21, 2025

State of Maine
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Re: Notice of Compliance Review (OCR Transaction Number: DO-25-610531-RV-CRR State of Maine)

Dear Counsel:

The U.S. Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) is initiating a compliance review of the Maine Department of Education (MDOE) based upon reports that the Maine Principal's Association, which governs school sports in the state, will continue to allow transgender athletes to compete in women's sports in violation of President Trump's Executive Order (EO) 14201, "Keeping Men Out of Women's Sports," signed on February 5, 2025. These reports were further confirmed by a statement issued by the Governor's office on February 21, 2025.

OCR enforces Title IX of the Education Amendments of 1972[1] (Title IX), which prohibits discrimination on the basis of sex in any educational program or activity that receives Federal financial assistance. OCR ensures compliance through enforcement activities and periodic reviews of HHS-funded institutions such as MDOE, including the University of Maine System. MDOE receives millions of dollars of taxpayer money. It may not accept that funding if it is in violation of the federal civil rights laws. This investigation will uncover whether that has, in fact, happened.

[1] 20 U.S.C. §168, as implemented by HHS at 45 C.F.R. Part 86.

Department of Health and Human Services
Office for Civil Rights
Headquarters ● Humphrey Building
200 Independence Ave S.W. ● Washington, D.C. 20201

As stated in section 1 of EO 14201, under Title IX, "educational institutions receiving Federal funds cannot deny women an equal opportunity to participate in sports. In addition to this Executive Order, federal courts have recognized that 'ignoring fundamental biological truths between the two sexes deprives women and girls of meaningful access to educational facilities.' *Tennessee v. Cardona*, 24-cv-00072 at 73 (E.D. Ky. 2024). *See also Kansas v. U.S. Dept. of Education*, 24-cv-04041 at 23 (D. Kan. 2024) (highlighting 'Congress' goals of protecting biological women in education')."

It is no answer for MDOE to assert that EO 14201 conflicts with state law, as Federal laws preempt conflicting state laws. *See* U.S. Const. art. 6, cl. 2.

As a recipient of HHS Federal financial assistance, MDOE is obligated to comply with Title IX. OCR's right of access to collect information to determine MDOE's compliance status is found at 45 C.F.R. § 80.6(c), (incorporated by reference at 45 C.F.R. § 86.71) which states:

> Each recipient shall permit access by the responsible department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information and its facilities as may be pertinent to ascertain compliance with this part.

The scope of this compliance review will determine whether MDOE denied the benefits of, or otherwise subjected female students in the State of Maine to discrimination on the basis of sex under Title IX.

Please be advised that federal regulations prohibit covered entities from harassing, intimidating, or retaliating against individuals who participate in OCR investigations or compliance reviews. Any such action may constitute a violation of 45 C.F.R. § 80.7(e) (incorporated by reference at 45 C.F.R. § 86.71). We request that you take all necessary steps to assure compliance with this prohibition.

If you have questions, you may contact Daniel Shieh, Associate Deputy Director, at Daniel.Shieh@hhs.gov. When contacting this office, please remember to include the transaction number, referenced above, that we have given this file.

Sincerely,

Anthony F. Archeval
Acting Director
HHS, Office for Civil Rights

Exhibit 2

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office for Civil Rights

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February 25, 2025

State of Maine
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Re: Notice of Determination (OCR Transaction Number: DO-25-610531-RV-CRR State of Maine)

Dear Counsel:

Pursuant to the authority delegated by the Secretary of the United States Department of Health and Human Services (HHS) to the Office for Civil Rights (OCR), I write to inform you that OCR issues a Notice of Violation against the Maine Department of Education (MDOE).

This action is taken under HHS's implementing regulations for Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 168, 45 C.F.R. Part 86, which prohibit discrimination on the basis of sex in any educational program or activity that receives Federal financial assistance. 45 C.F.R. § 86.41(a) provides: "No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis." "[W]hen Title IX is viewed in its entirety, it is abundantly clear that discrimination on the basis of sex means discrimination on the basis of being a male or female." *Tennessee v. Cardona*, __ F. Supp. 3d ___, 2025 WL 63795 at *3 (E.D. Ky. Jan. 9, 2025) (issuing a vacatur of the [the Department of Education's Title IX Final Rule] (Apr. 29, 2024)"). Title IX "applies to every recipient and to the education program or activity operated by such recipient which receives Federal financial

assistance." 45 C.F.R. 86.11.

I. Findings of Fact

1. The Maine Principals' Association (MPA) is the governing body for youth sports in the state of Maine, and "is open to elementary, middle/junior high and high school principals, assistant principals, technical education center directors, assistant directors and other administrators who function primarily as building principals or assistant principals."
2. "All public high schools and a number of private schools [in the state of Maine] are MPA members; they currently total 151," as reported on the MPA website.
3. In 2024, the MPA approved a policy "allowing transgender [sic] athletes to compete on teams either according to their birth-assigned gender [sic] or gender identity . . . ."
4. Mike Burnham, the executive director of the MPA stated, "The executive order [President Trump's Executive Order 14201] and our Maine state Human Rights Act are in conflict, and the Maine Principal's [sic] Association will continue to follow state law as it pertains to gender identity."
5. The Maine Human Rights Act provides at Section 4601: "The opportunity for an individual at an educational institution to participate in all educational, counseling and vocational guidance programs, all apprenticeship and on-the-job training programs and all extracurricular activities without discrimination because of sex, sexual orientation or gender identity, a physical or mental disability, ancestry, national origin, race, color or religion is recognized and declared to be a civil right."
6. On February 17, 2025, it was reported that Greely High, a public high school in the state of Maine, violated Title IX through the participation of a male athlete in a women's high school track meet.
7. On February 18-19, 2025, it was reported that Maine Coast Waldorf, a public high school in the state of Maine, violated Title IX through the participation of a male athlete in a women's high school ski event.

II. Funding Jurisdiction

Based on a review of publicly available data, in 2024 MDOE received funding from the Administration for Community Living totaling $516,131, from the Centers for Disease Control totaling $99,940, and from the Administration for Children and Families totaling $87,015.[1] If you contest the accuracy of these awards, please provide an explanation including any relevant documents.

[1] *See* https://taggs.hhs.gov/Detail/RecipDetail?arg_EntityId=ZyWSnnwwIUZ64ZvdbsJ6hw%3D%3D.

III. Notice of Violation

1. MPA is the governing body for youth sports in the state of Maine for primary and secondary education, and its membership includes all public high schools in the state.

2. MPA "receives money from tournament activities, institutional dues, and individual professional dues." These dues are paid in part by the MDOE.

3. The MDOE receives Federal financial assistance from HHS.

4. MDOE "is an agency of the State of Maine that administers both state education subsidy and state and federal grant programs . . . and leads many collaborative opportunities and partnerships in support of local schools and districts."

5. Under its leadership, MDOE is responsible for interscholastic and extracurricular activities in the state of Maine, which includes ensuring that the youth sports programs in the state's public schools comply with federal nondiscrimination law.

6. Maine public schools follow "the laws, rules, and regulations set by the Maine Principal's Association" which "are reflective of current statewide standards," as noted by at least one public high school in the state.

7. Based on the MPA's policy of allowing male athletes to compete against female athletes, OCR has determined that MDOE is in violation of federal law under Title IX.

8. MDOE violates Title IX by denying female student athletes in the State of Maine an equal opportunity to participate in, and obtain the benefits of participation, "in any interscholastic, intercollegiate, club or intramural athletics" offered by the state by allowing male athletes to compete against female athletes in current and future athletic events. Male athletes, by comparison, are not subject to heightened safety or competitive concerns, which only affect females. This lack of equal opportunity and fair competition constitutes a Title IX violation.

9. Even by the own logic of the Maine Principals' Association, moreover, the provision of additional opportunity for individuals who assert a "gender identity" different from their sex, constitutes discrimination on the basis of gender identity, against students who identify as their sex.

IV. Referral to the United States Department of Justice under 45 C.F.R. § 80.8

45 C.F.R. § 80.8(a) (incorporated through 45 C.F.R. § 86.71) provides: "If there appears to be a failure or threatened failure to comply with this regulation, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by . . . any other means authorized by law. Such other means may include, but are not limited to . . . a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking . . . ."

Pursuant to the process outlined under 45 C.F.R. § 80.8(d) (incorporated through 45 C.F.R. § 86.71) for other "means of enforcement authorized by law," this Notice of Violation constitutes official notice of MDOE's failure to comply with Title IX, as required by subsection (2).

If you have questions, you may contact Daniel Shieh, Associate Deputy Director, at Daniel.Shieh@hhs.gov. When contacting this office, please remember to include the transaction number, referenced above, that we have given this file.

Sincerely,

Anthony F. Archeval
Acting Director
HHS, Office for Civil Rights

Exhibit 3

EXHIBIT 4

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
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March 28, 2025

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Re: Notice of Referral (OCR Transaction Number: DO-25-610531-RV-CRR State of Maine)

Dear Counsel:

We write to inform you that the above-captioned matter is referred to the Department of Justice (DOJ) today pursuant to the authority delegated by the Secretary of the United States Department of Health and Human Services (HHS) to the Office for Civil Rights (OCR). This action is taken under Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 *et seq*., and HHS's implementing regulations for Title IX, 45 C.F.R. Part 86, which prohibit discrimination on the basis of sex in any education program or activity that receives Federal financial assistance.

This matter was initiated based upon reports that the Maine Principals' Association (MPA), which governs school sports in the state of Maine for Secondary Education, continues to allow male athletes to compete in female-only sports in violation of Title IX. It was further reported that on February 17, 2025, Greely fielded a team with a male athlete to compete in the female-only division at the 2025 Class B State Meet for track and field, denying other female athletes an equal opportunity to participate and obtain the benefits of participation in that competition.

45 C.F.R. § 86.41(a) provides: "No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis." "[W]hen Title IX is viewed in its entirety, it is abundantly clear that discrimination on the basis of sex means discrimination on the basis of being a male or female." *Tennessee v. Cardona*, __ F. Supp. 3d ___,

No. CV 2:24-072-DCR, 2025 WL 63795, at *3 (E.D. Ky. Jan. 9, 2025), as amended (Jan. 10, 2025) (issuing a vacatur of the [the Department of Education's Title IX Final Rule] (89 Fed. Reg. 33474 (Apr. 29, 2024)), *appeal docketed*, No. 25-5206 (6th Cir. Mar. 12, 2025). Title IX "applies to every recipient and to the education program or activity operated by such recipient which receives Federal financial assistance." 45 C.F.R. § 86.11.

Below, we provide the findings of fact, jurisdiction and analysis that support OCR's March 17, 2025 Notice of Violation. Based on the events summarized, OCR has determined that compliance by the Maine Department of Education (MDOE), the Maine Principals' Association (MPA), and Greely High School/MSAD #51 (Greely) in this matter cannot be corrected through informal means. We therefore refer this matter to DOJ with a recommendation that appropriate proceedings be brought to enforce the rights of the United States under Title IX.

I. Findings of Fact

1. MDOE "is an agency of the State of Maine that administers both state education subsidy and state and federal grant programs . . . and leads many collaborative opportunities and partnerships in support of local schools and districts" as stated on its website.
2. Under Maine law, the MDOE is authorized to "[s]upervise, guide and plan for a coordinated system of public education for all citizens of the State"; to "[i]nterrelate public education with other social, economic, physical and governmental activities, programs and services"; and to "[e]ncourage and stimulate public interest in the advancement of education." Me. Rev. Stat. Ann. tit. 20-A, § 201.
3. The MPA is the governing body for youth sports in the state of Maine, and the MPA Division of Interscholastic Activities is responsible for organizing and conducting interscholastic athletic activities for all public and some private high schools throughout Maine.
4. "All public high schools and a number of private schools [in the state of Maine] are MPA members; they currently total 151," as reported on the MPA website.
5. In May 2024, the MPA updated its 2024-2025 Handbook to include a new Gender Identity Participation Policy that permits student athletes to participate in MPA sponsored interscholastic athletics "in accordance with either their birth sex [sic] or in accordance with their gender identity [sic], but not both."
6. Mike Burnham, the executive director of the MPA, stated, "The executive order [President Trump's Executive Order 14201] and our Maine state Human Rights Act are in conflict, and the Maine Principal's Association will continue to follow state law as it pertains to gender identity."
7. The Maine Human Rights Act provides:

   "The opportunity for an individual at an educational institution to participate in all educational, counseling and vocational guidance programs, all apprenticeship and on-the-job training programs and all extracurricular activities without discrimination because of

sex, sexual orientation or gender identity, a physical or mental disability, ancestry, national origin, race, color or religion is recognized and declared to be a civil right. It is unlawful educational discrimination in violation of this Act, on the basis of sex, sexual orientation or gender identity . . . to: A. Exclude a person from participation in, deny a person the benefits of, or subject a person to, discrimination in any academic, extracurricular, research, occupational training or other program or activity; B. Deny a person equal opportunity in athletic programs . . . ." Me. Rev. Stat. Ann. tit. 5, § 4602." *See also* Me. Rev. Stat. Ann. tit. 5, § 4601.

8. Greely High School is a public high school in the state of Maine and a member school of Maine School Administrative District #51.

9. On February 17, 2025, it was reported that a male athlete from a public high school in the state of Maine competed in the female event for the 2025 Class B State Meet.

    a. The male athlete competed on Greely's female-only track team.

    b. Greely won the Class B State Meet's indoor track and field events, including in the female-only division.

10. On February 18-19, 2025, it was reported that a male athlete from Maine Coast Waldorf competed in a female-only high school ski event.

    a. On September 30, 2023, the same male athlete competed in the Maine XC Festival of Champions (running) in the female-only division on behalf of Maine Coast Waldorf.

    b. The September 30, 2023 Maine XC Festival of Champions was held at Brewer High School (see meet details), a public high school in the state of Maine, https://www.brewerhs.org/.

11. On February 22, 2025, the United States Department of Agriculture (USDA) initiated a Title IX compliance review of the University of Maine regarding federal funding regarding the participation of male athletes in women's sports.

12. On March 19, 2025, the USDA announced that University of Maine specifically confirmed that they:
    a. Do not permit a male student-athlete to identify as a female student-athlete to establish individual eligibility for NCAA-sanctioned women's sport;
    b. Do not permit a male to participate in individual or team contact sports with females; and
    c. Comply with NCAA regulations and do not permit a male student athlete to participate in NCAA-sanctioned women's sports.

II. Funding Jurisdiction

Based on a review of publicly available data, in 2024 MDOE received funding from the Centers for Disease Control totaling $99,940 and from the Administration for Children and Families totaling $87,015.[1] Greely receives federal financial assistance through MDOE. Finally, OCR exercises jurisdiction over MPA as an entity to which MDOE has ceded control over physical activities, programs, and services, e.g., interscholastic athletic competition, as discussed below.

III. Analysis

1. The MDOE receives Federal financial assistance from HHS.

2. As a recipient of HHS Federal financial assistance, MDOE is obligated to comply with Title IX.

3. Under Maine law, Me. Rev. Stat. Ann. tit. 20-A, § 201, the MDOE is authorized to "***[i]nterrelate*** public education with other social, economic, ***physical and governmental activities, programs and services***." (emphasis added).

4. MPA is the governing body for youth sports in the state of Maine for primary and secondary education, and its membership includes all public high schools in the state of Maine.

5. MDOE has ceded control of certain "activities, programs, and services," specifically high school interscholastic sports competitions, to MPA, which assumes control of "all interscholastic tournaments, meets or other forms of competition"[2] for its members, including "all public high schools."[3]
    a. Public high schools in Maine such as Greely, which fall under the jurisdiction of the MDOE, compete in MPA sporting events under their school's banner.
        i. For example, as a public high school under MDOE's jurisdiction, Greely won the Class B State Meet's indoor track and field events, entering a male competitor in the female-only division.
    b. Many of the MPA-hosted sporting events, such the 2023 Maine XC Festival of Champions, are held at the facilities of Maine public high schools, which again fall under the jurisdiction of the MDOE.
        i. For example, both the 2023 and 2024 Maine XC Festival of Champions was held at Brewer High School (see meet details here and here), a public high school in the state of Maine, which falls under the jurisdiction of MDOE. As noted above, during the 2023 Maine XC Festival of Champions, a male athlete competed in the female-only division.

[1] *See* https://taggs.hhs.gov/Detail/RecipDetail?arg_EntityId=ZyWSnnwwIUZ64ZvdbsJ6hw%3D%3D.
[2] Maine Principals Association Handbook 2024-2025, p. 20
[3] *See* MPA Information - Maine Principal's Association (MPA) (ME)

ii. Likewise, the 2023 Class B State Meet was held at Freeport High School (see meet details), another public high school in the state of Maine, which falls under the jurisdiction of MDOE.

iii. Indeed, the upcoming 2025 State Championship for track and field in the state of Maine for high school athletes will be held on June 1, 2025 at Mount Desert Island High School, another public high school in the state of Maine, which falls under the jurisdiction of MDOE.

c. It is therefore no answer for the MDOE to assert, as it did in its March 4, 2025 letter, that "MDOE is not responsible for interscholastic youth sports or athletic programs in the State of Maine. MDOE does not offer, operate, or sponsor interscholastic, intercollegiate, club or intramural athletics in the State of Maine."

d. MDOE, according to Maine state law, Me. Rev. Stat. Ann. tit. 20-A, § 201, "interrelate[s]" physical "activities, programs, and services," which includes youth sports events. This is further evidenced by the fact that public high schools compete in MPA events *as* their public high school, and the MPA hosts many of their events on public high school facilities.

e. Ceding that authority to a private organization does not relieve MDOE of its legal obligations to follow federal law.

6. Likewise, while MPA is a private nonprofit organization, its authority to promote, organize, and regulate interscholastic activities in the state of Maine on behalf of MDOE[4] requires it to also comply with Title IX.

7. Indeed, by assuming control over physical "activities, programs, and services" such as interscholastic competition, MPA is subject to Title IX in the same way MDOE would be. *See A.B. v. Haw. State Dep't of Educ.,* 386 F. Supp. 3d 1352, 1357-58 (D. Haw. 2019) (finding high school athletic association had controlling authority over many aspects of the DOE's interscholastic athletic programs and was subject to Title IX, independent of funding source); *see also Williams v. Bd. of Regents of Univ. Sys. of Ga.*, 477 F.3d 1282, 1294 (11th Cir. 2007) ("[I]f we allowed funding recipients to cede control over their programs to indirect funding recipients but did not hold indirect funding recipients liable for Title IX violations, we would allow funding recipients to ... avoid Title IX liability."); *Horner v. Ky. High Sch. Athletic Ass'n,* 43 F.3d 265, 271-72 (6th Cir. 1994) (because Kentucky's state laws conferred authority to the Kentucky State Board of Education and Kentucky High School Athletic Association to control certain activities for the federally funded Kentucky Department of Education, both entities were subject to Title IX); *Communities for Equity v. Michigan High Sch. Athletic Ass'n*, 80 F. Supp. 2d 729, 735 (W.D. Mich. 2000) (holding that an athletic association like MPA, which "does not receive any direct assistance from the federal government," and "receives the bulk of its funding from gate receipts generated at MHSAA-sponsored tournaments," was still covered under Title IX, reasoning that "any entity that exercises controlling authority over a federally

[4] MPA Information – Maine Principal's Association (MPA) (ME).

funded program is subject to Title IX, regardless of whether that entity is itself a recipient of federal aid").

8. It is also no answer for MDOE, MPA, and Greely to assert that Maine state law requires MPA's policy. To the extent that it does, however, Federal law preempts conflicting state laws. *See* U.S. Const. art. 6, cl. 2. HHS's Title IX regulations indicate that an obligation under Title IX is not alleviated by any state or local law. 45 C.F.R. § 86.6.

9. In addition, the fact that the University of Maine, Maine's public university system, which is governed by the same state law as MDOE, has interpreted the Maine Human Rights Act such that there is no conflict between federal and state law, undermines MDOE and MPA's position now that Maine law requires MPA's current policy. Stated differently, the Maine Human Rights Act's prohibition on "gender identity" discrimination, as recently interpreted by the University of Maine system, does not compel allowing male athletes (who identify as female) to compete against female athletes in female-only sports.

10. Finally, Greely is a public high school in the state of Maine, which falls under the jurisdiction of the MDOE. As a public high school, Greely is also a member of the MPA and follows MPA's Handbook, including its Gender Identity Participation Policy. On February 17, 2025, Greely fielded a team with a male athlete to compete in the female-only division at the 2025 Class B State Meet for track and field, denying other female athletes an equal opportunity to participate and obtain the benefits of participation in that competition. Greely's team participation, which included a male athlete competing in the female-only division, followed MPA's Gender Identity Participation Policy.

IV. Efforts to Correct Noncompliance under Title IX

1. On February 21, 2025, OCR initiated an investigation of MDOE's compliance with Title IX.

2. On February 25, 2025, OCR sent MDOE a Notice of Violation, and, on February 27, 2025, a proposed Voluntary Resolution Agreement (VRA). On March 5, 2025, OCR expanded the scope of its Title IX investigation to include MPA and Greely.

3. On March 12, 2025, representatives from OCR, MDOE, MPA, and Greely met, and concluded that MDOE would not sign or provide a counteroffer to the proposed VRA.

4. On March 17, 2025, OCR sent MDOE, MPA, and Greely an Amended Notice of Violation and a revised, proposed Voluntary Resolution Agreement (VRA), which superseded the VRA we provided on February 27, 2025. The Amended Notice of Violation found:

    a. MDOE violates Title IX by denying female student athletes in the state of Maine an equal opportunity to participate, and obtain the benefits of participation, "in any interscholastic, intercollegiate, club or intramural athletics," in current and future athletic events. 45 C.F.R. § 86.41. Male athletes, by comparison, are not subject to heightened safety or competitive concerns, which only affect females.

See Tennessee v. Cardona, 737 F. Supp. 3d 510, 561 (E.D. Ky. 2024) ("[I]gnoring fundamental biological truths between the two sexes deprives women and girls of meaningful access to educational facilities.").

b. MPA's policy of allowing male athletes to compete against female athletes in high school sports events violates Title IX.

c. By following MPA's Gender Identity Participation Policy, Greely also violates Title IX by fielding a female-only team with a male athlete.

5. Under 45 C.F.R. § 80.8(d), MDOE, MPA, and Greely had 10 days from the date of the notice of violation to "comply with the regulation and to take such corrective action as may be appropriate." OCR laid out those actions in the VRA. The parties subject to the notice were informed that failure to take corrective action may result in OCR referring the matter to the Department of Justice.

6. Neither MDOE, MPA, nor Greely responded substantively to OCR's findings in its March 17, 2025 Amended Notice of Violation and VRA presented, in either addressing the substance of OCR's factual and legal determinations, or in proposing a resolution of that finding by coming into voluntary compliance.

7. On March 18, 2025, MPA responded that OCR does not have jurisdiction over it because it is not a recipient of federal financial assistance. However, as stated here in the discussion of jurisdiction, and in the March 17th Notice of Violation, OCR asserts jurisdiction over MPA as an entity that has assumed control over the activities of the interscholastic activities of MDOE, a federal funding recipient.

V. Referral to the United States Department of Justice under 45 C.F.R. § 80.8

45 C.F.R. § 80.8(a) (incorporated through 45 C.F.R. § 86.71) provides:

> If there appears to be a failure or threatened failure to comply with this regulation, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by . . . any other means authorized by law. Such other means may include, but are not limited to . . . a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking . . . .

Finding that MDOE, MPA, and Greely are nonresponsive to proffered settlement, OCR concludes that compliance with Title IX in this matter cannot be reached through informal means.

Therefore, we formally refer this matter to DOJ with a recommendation that appropriate proceedings be brought to enforce the rights of the United States under Title IX.

If you have questions, you may contact Daniel Shieh, Associate Deputy Director, at Daniel.Shieh@hhs.gov. When contacting this office, please remember to include the transaction number, referenced above, that we have given this file.

Sincerely,

Anthony F. Archeval
Acting Director
HHS, Office for Civil Rights