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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 CALIFORNIA INTERSCHOLASTIC
15 FEDERATION *et al.*,
16 Defendants.
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Case No. 8:25-cv-01485-CV (JDEx)

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

[DOC. # 25]

1 Plaintiff United States of America brings this case against Defendants California
2 Department of Education (“CDE”) and California Interscholastic Federation (“CIF”)
3 over California’s rules for transgender students in school athletics. Those rules require
4 schools to permit transgender girls to compete on girls’ teams and use girls’ athletic
5 facilities consistent with their gender identity. Plaintiff contends that Title IX instead
6 requires schools receiving federal funds to determine eligibility for girls’ teams and
7 facilities based on biological sex. The Court need not resolve that question. Even
8 assuming Title IX requires what Plaintiff contends, CDE lacked clear notice of that
9 requirement as a condition of federal funding. The Spending Clause therefore bars
10 Plaintiff from enforcing the asserted funding condition in this action.

11 Before the Court is Defendants’ Joint Motion to Dismiss Plaintiff’s Complaint
12 under Federal Rule of Civil Procedure 12(b)(6). Doc. # 25 (“Motion”). Plaintiff filed an
13 opposition on September 19, 2025, Doc. # 27 (“Opposition”), and Defendants filed a
14 reply on October 3, 2025, Doc. # 29 (“Reply”).¹

15 On January 29, 2026, the Court found that oral argument was not necessary to
16 resolve the Motion, and took it under submission. Doc. # 35; *see* Fed. R. Civ. P. 78(b);
17 C.D. Cal. L.R. 7-15; *Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998).

18 The Court has considered the Motion and all related filings. For the reasons
19 discussed below, the Motion is GRANTED. Because Defendants were not given clear
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21 ¹ After the Motion was fully briefed, Defendants filed a Notice of Supplemental Authority identifying
22 the Eighth Circuit’s decision in *Female Athletes United v. Ellison*, No. 25-2899, as additional authority
23 supporting their Spending Clause clear-notice argument. Doc. # 42. Plaintiff filed an ex parte
24 application to strike the notice or, alternatively, for leave to respond, arguing that Defendants’ notice
25 improperly presented supplemental argument and mischaracterized *Ellison*’s relevance to this federal
26 enforcement action. Doc. # 44. Defendants opposed, arguing that the notice properly identified new
27 appellate authority relevant to the clear-notice issue and that Plaintiff’s ex parte application already
28 supplied Plaintiff’s substantive response. Doc. # 46. Plaintiff’s ex parte application is DENIED. The
Court has considered *Ellison* and Plaintiff’s substantive response.

On July 1, 2026, Plaintiff filed a Notice of Supplemental Authority identifying the Supreme Court’s
decision in *West Virginia v. B.P.J.*, No. 24-43. Doc. # 52. On July 6, 2026, Defendants filed a response
to the Notice of Authority. Doc. # 53. The Court has considered *West Virginia* and Defendants’
substantive response.

1 notice of the funding condition Plaintiff now seeks to enforce, Plaintiff's claims are
2 barred by the Spending Clause.

3 **I. INTRODUCTION**

4 Plaintiff filed the Complaint on July 9, 2025. Doc. # 1. Count I alleges that
5 Defendants violated Title IX (20 U.S.C. § 1681, *et seq.*) and its implementing
6 regulations. *Id.* ¶¶ 105–11. Count II alleges that CDE breached contractual assurances
7 requiring compliance with Title IX. *Id.* ¶¶ 112–16. Plaintiff seeks declaratory and
8 injunctive relief, monitoring and enforcement mechanisms, compensation for allegedly
9 affected athletes, correction of past athletic records, damages, costs, and fees. *Id.* ¶ 117.
10 This Court has federal-question jurisdiction under 28 U.S.C. §§ 1331 and 1345.

11 **II. BACKGROUND**

12 **A. The Parties**

13 Plaintiff is the United States of America. Doc. # 1 ¶ 12.

14 CDE receives and distributes federal education funds. *Id.* ¶ 15. The Complaint
15 alleges that CDE has authority over CIF and local school districts' interscholastic
16 athletic policies. *Id.* ¶¶ 16, 40–42.

17 CIF is a statewide nonprofit association that governs high-school athletics in
18 California. *Id.* ¶ 13. Its 1,615 public, charter, and private member schools serve more
19 than 750,000 student-athletes. *Id.* CIF is governed by a Federated Council composed of
20 representatives from schools, districts, and California educational and athletic
21 associations. *Id.* ¶ 14.²

22 **B. Title IX and the Athletics Regulation**

23 Title IX provides that no person shall, “on the basis of sex, be excluded from
24 participation in, denied the benefits of, or be subjected to discrimination under any
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26 ² Defendants state that CIF does not receive federal funds. Doc. # 25-1 at 25 n.17; Doc. # 29 at 20 n.7.
27 The Complaint alleges, however, that CDE receives federal funds, distributes federal funds to local
28 schools, has authority over CIF and local school districts' interscholastic athletic policies, and may
require CIF or school districts to adjust their policies to comply with federal law. Doc. # 1 ¶¶ 15–16,
40–42.

1 education program or activity receiving Federal financial assistance.” 20 U.S.C. §
2 1681(a). The statute did not expressly address athletics. Two years after its enactment,
3 Congress directed the Department of Health, Education, and Welfare to issue Title IX
4 regulations related to athletic activities that included “reasonable provisions considering
5 the nature of particular sports.” Education Amendments of 1974, Pub. L. No. 93-380, §
6 844, 88 Stat. 484, 612; *West Virginia v. B.P.J.*, 146 S. Ct. 2356, 2370 (2026).

7 The resulting athletics regulations for recipients of Federal financial assistance
8 appear at 34 C.F.R. § 106.41. Section 106.41(a) prohibits sex discrimination in
9 interscholastic, intercollegiate, club, and intramural athletics. Section 106.41(b) permits
10 a recipient to operate separate teams for members of each sex where selection is based
11 on competitive skill or the activity is a contact sport. Section 106.41(c) requires
12 recipients to provide equal athletic opportunity for members of both sexes and identifies
13 factors bearing on that inquiry.

14 A separate regulation permits recipients to provide separate toilet, locker-room,
15 and shower facilities on the basis of sex, provided the facilities are comparable. 34
16 C.F.R. § 106.33. Section 106.6 further provides that a recipient’s Title IX obligations
17 are not obviated or alleviated by contrary state law or by the rules of a private athletic
18 association. *Id.* § 106.6(b)–(c).

19 **C. California’s Participation Policy**

20 California Education Code § 221.5(f), enacted in 2013, provides that a pupil may
21 participate in sex-segregated school programs and activities, including athletic teams
22 and competitions, and use facilities consistent with the pupil’s gender identity,
23 regardless of the gender listed in the pupil’s records. Doc. # 1 ¶ 47.

24 CDE has published guidance stating that local educational agencies must comply
25 with California sex-equity laws in addition to Title IX. *Id.* ¶ 46. CIF Bylaw 300.D
26 similarly provides that students should be able to participate in CIF activities consistent
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1 with their gender identity. *Id.* ¶ 52. CIF has also issued participation procedures and
2 guidance addressing facilities. *Id.* ¶¶ 53, 55.³

3 The Complaint alleges that CDE submitted a Grant Certification dated November
4 20, 2024, applicable to all federal funding. *Id.* ¶ 38. In that Certification, CDE agreed
5 that it “[w]ill comply with all applicable requirements of all other Federal laws,
6 executive orders, regulations, and public policies governing financial assistance
7 awards,” including Title IX. *Id.*

8 **D. Federal Policy and Legal Developments Before This Lawsuit**

9 In April 2024, the United States Department of Education issued a final rule
10 providing generally that sex discrimination includes discrimination based on gender
11 identity. Nondiscrimination on the Basis of Sex in Education Programs or Activities
12 Receiving Federal Financial Assistance, 89 Fed. Reg. 33474, 33886 (Apr. 29, 2024).
13 The rule did not establish a final standard for athletic eligibility. *Id.* at 33817. Several
14 courts enjoined enforcement of central provisions of the rule, and the Supreme Court
15 denied applications to stay those injunctions. *Dep’t of Educ. v. Louisiana*, 603 U.S. 866,
16 867–68 (2024). The rule was later vacated. *Tennessee v. Cardona*, 762 F. Supp. 3d 615,
17 627–28 (E.D. Ky. 2025).

18 The federal position changed after the presidential administration changed in
19 January 2025. Executive Order 14168 defined sex for Executive Branch purposes in
20 biological terms. Exec. Order No. 14168, 90 Fed. Reg. 8615, 8615–18 (Jan. 30, 2025);
21 Doc. # 1 ¶ 27. Executive Order 14201 directed the Department of Education to prioritize
22 Title IX enforcement against institutions that allow students whom the Order classifies
23 as male to participate in female athletics or use female locker rooms. Exec. Order No.
24 14201, 90 Fed. Reg. 9279, 9279–80 (Feb. 11, 2025); Doc. # 1 ¶ 27.

25 On March 11, 2025, CIF’s Executive Director asked CDE for immediate
26 direction concerning CIF’s obligations under California law following Executive Order
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28 ³ This Order refers to § 221.5(f), CIF Bylaw 300.D, and the related CDE and CIF guidance alleged in
the Complaint collectively as “California’s policy.”

1 14201. Doc. # 1 ¶ 50. CDE responded on March 17, 2025, that CIF should continue to
2 comply with California Education Code § 221.5(f). *Id.* ¶ 51.⁴

3 **E. The Complaint’s Allegations and OCR’s Investigations**

4 The Complaint alleges that California’s policies deny girls equal athletic
5 opportunities by allowing students to compete on teams consistent with their gender
6 identity when that identity does not align with their biological sex. To illustrate the
7 alleged effects of those policies, Plaintiff identifies five students whom it alleges are
8 male and who participated on girls’ teams in track and field, cross-country, volleyball,
9 basketball, and soccer between 2021 and 2025. Doc. # 1 ¶¶ 65–85. Plaintiff alleges that
10 some of these students won individual events or competed on championship teams,
11 displacing girls or otherwise reducing their athletic opportunities. *Id.*

12 The Complaint also describes a pilot process CIF adopted for the May 2025 State
13 Track and Field Championships. Under that process, an additional “biological female
14 student-athlete” could advance to the finals or receive a medal when another athlete’s
15 placement otherwise prevented her from qualifying or earning that placement. *Id.* ¶¶
16 57–63. Plaintiff alleges that CIF adopted the process in response to the participation of
17 a student Plaintiff identifies as male. *Id.* Plaintiff further contends that, by adopting the
18 process, CIF recognized the policy’s effects on girls’ competitive opportunities but did
19 not adequately remedy them. *Id.*

20 Plaintiff further alleges that California’s policies affect girls outside athletic
21 competition. According to the Complaint, allowing students to use facilities consistent
22 with their gender identity requires girls to share locker rooms and other intimate spaces
23 with students Plaintiff classifies as male. *Id.* ¶¶ 45, 54–55, 86–89. Plaintiff also alleges
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26 ⁴ Defendants state, and Plaintiff does not dispute, that before 2025, neither the Department of
27 Education nor another federal agency had taken enforcement action treating § 221.5(f)’s participation
28 requirements as inconsistent with Title IX. Doc. # 25-1 at 10, 27–28; Doc. # 29 at 21 n.8. Defendants
also state, and Plaintiff does not dispute, that the Department of Education did not use notice-and-
comment rulemaking to amend the regulations after the Executive Orders. Doc. # 29 at 9.

1 that the policies reduce girls' opportunities for athletic recognition, college recruiting,
2 and scholarships. *Id.* ¶¶ 90–95.⁵

3 The Complaint alleges that the Department of Education opened Title IX
4 investigations of CIF in February 2025 and CDE in April 2025. Doc. # 1 ¶¶ 98–99. On
5 June 25, 2025, the Department of Education informed Defendants that it had found them
6 noncompliant with Title IX, provided a proposed voluntary resolution agreement, and
7 advised that, absent an agreement, it could initiate enforcement proceedings or refer the
8 matter to the Department of Justice. *Id.* ¶¶ 100–01. Defendants declined to enter into
9 the resolution agreement on July 7, 2025, and the Department of Education referred its
10 findings to the Department of Justice for enforcement. *Id.* ¶¶ 102–04. Plaintiff filed this
11 action two days later. Doc. # 1.

12 **III. LEGAL STANDARD**

13 Rule 12(b)(6) permits dismissal for failure to state a claim. Fed R. Civ. P.
14 12(b)(6). Dismissal is proper when a complaint lacks a cognizable legal theory or
15 sufficient facts to support one. *Caltex Plastics, Inc. v. Lockheed Martin Corp.*, 824 F.3d
16 1156, 1159 (9th Cir. 2016).

17 A complaint must contain enough factual matter, accepted as true, to state a
18 plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The Court draws
19 reasonable inferences in the plaintiff's favor, but it need not accept legal conclusions or
20 a formulaic recitation of a claim's elements. *Id.* at 678–79; *Bell Atl. Corp. v. Twombly*,
21 550 U.S. 544, 555 (2007).

22 The Court generally confines its review to the complaint, documents incorporated
23 by reference, and matters properly subject to judicial notice. *Khoja v. Orexigen*
24 *Therapeutics, Inc.*, 899 F.3d 988, 998–99 (9th Cir. 2018). The Court considers the
25 public statutes, regulations, Executive Orders, Federal Register materials, and judicial
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27 ⁵ The Complaint also describes an incident in which two students were required to remove or cover
28 shirts with a message protesting Defendants' policy. Doc. # 1 ¶ 97. Plaintiff clarifies that these
allegations provide context and do not assert a separate retaliation claim. Doc. # 27 at 27–28 n.9.

1 decisions cited herein for their contents and legal effect, not for the truth of disputed
2 factual assertions.

3 Leave to amend should ordinarily be granted unless amendment would be futile,
4 unduly prejudicial, or otherwise improper. *Foman v. Davis*, 371 U.S. 178, 182 (1962).
5 Futility alone may justify denial of leave. *Kroessler v. CVS Health Corp.*, 977 F.3d 803,
6 814–15 (9th Cir. 2020).

7 **IV. DISCUSSION**

8 **A. *West Virginia* Frames the Court’s Analysis**

9 On June 30, 2026, the Supreme Court decided two consolidated cases in *West*
10 *Virginia v. B. P. J.*, 146 S. Ct. 2356 (2026). The Court held that Title IX permits schools
11 to determine eligibility for girls’ and women’s teams based on biological sex. *Id.* at
12 2370–73. The Court repeatedly framed that holding in permissive terms. It explained
13 that Title IX’s regulations “expressly *permit* schools” to maintain separate sex-based
14 teams and ultimately held that States “*may* maintain women’s and girls’ sports for
15 biological females” and “*may* determine eligibility” for those teams based on biological
16 sex. *Id.* at 2371, 2375 (emphasis added). The Court thus upheld the biological-sex
17 eligibility rules before it without holding that Title IX requires every school to adopt
18 the same rule.

19 The Court also declined to decide whether Title IX permits transgender girls to
20 participate on girls’ and women’s teams. *Id.* at 2367 n.1. It expressly stated that nothing
21 in the opinion was intended to decide that “distinct question,” because it was not at
22 issue. *Id.*⁶

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⁶ The Court’s equal protection analysis likewise emphasized the institutional limits of judicially administered eligibility rules. It explained that assessing the effects of puberty blockers or hormones on individual transgender athletes, and comparing their athletic abilities with those of other athletes, would be “an almost impossible task for a judge to perform on an equitable basis.” *Id.* at 2378. The Court concluded that legislatures and schools are “better equipped” to assess the competing medical and scientific considerations and “draw appropriate lines.” *Id.* That reasoning further counsels against deciding the question *West Virginia* expressly left open when this case can be resolved on the narrower Spending Clause ground.

1 That reserved question need not be resolved here. Plaintiff seeks to enforce a
2 categorical exclusion rule as a condition of federal funding. The Spending Clause
3 inquiry is therefore whether Title IX and its implementing regulations clearly required
4 California to exclude transgender girls from girls’ teams and sex-separated facilities.
5 As explained below, they did not.

6 **B. The Spending Clause Bars Plaintiff’s Title IX Theory**

7 Title IX is Spending Clause legislation. *Davis ex rel. LaShonda D. v. Monroe*
8 *Cnty. Bd. of Educ.*, 526 U.S. 629, 640 (1999). For Spending Clause legislation, when
9 Congress conditions federal funds on compliance with specified requirements, it must
10 provide recipients with “clear notice” of those conditions so they can make an informed
11 choice whether to accept the funds and the accompanying obligations. *See Pennhurst*
12 *State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17, 24–25 (1981) (requiring Congress to
13 speak “unambiguously” and asking whether it “spoke so clearly” that the State could
14 “make an informed choice” before accepting the funds); *Arlington Cent. Sch. Dist. Bd.*
15 *of Educ. v. Murphy*, 548 U.S. 291, 296 (2006) (asking whether the statute “furnishes
16 clear notice” of the asserted obligation and whether a state official deciding whether to
17 accept federal funds “would clearly understand” that obligation). A recipient therefore
18 is bound only by conditions it accepts “voluntarily and knowingly.” *See Pennhurst*, 451
19 U.S. at 17. The Supreme Court recently reiterated that Congress must “clearly and
20 unambiguously” alert a grant recipient to any condition attached to federal funds.
21 *Landor v. La. Dept. of Corr. & Pub. Safety*, 146 S. Ct. 1931, 1941 (2026).⁷

22 The Ninth Circuit applied these principles to Title IX in *Roe v. Critchfield*, 137
23 F.4th 912 (9th Cir. 2025). There, transgender students asserted that Title IX required
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25 ⁷ Congress’s constitutional authority over federal funds has deep historical roots. By the Constitutional
26 Convention, it was “uncontroversial” that the powers to raise and disburse public money would reside
27 in the Legislative Branch. *Consumer Fin. Prot. Bureau v. Cmty. Fin. Servs. Ass’n of Am., Ltd.*, 601
28 U.S. 416, 428–31 (2024). Consistent with that history, the Ninth Circuit has explained that the
Constitution “exclusively grants the power of the purse to Congress, not the President,” and that
Congress’s spending power includes authority to impose conditions on federal grants. *City & County*
of San Francisco v. Trump, 897 F.3d 1225, 1231–32 (9th Cir. 2018).

1 access to school facilities corresponding to their gender identity. Rather than resolve
2 that broader question, the Ninth Circuit held that the recipients lacked clear notice of
3 the asserted obligation. *Id.* at 926–31. The court also rejected the argument that the
4 clear-notice rule applies only to retrospective monetary relief, explaining that *Pennhurst*
5 itself involved an injunction. *Id.* at 930 & n.12. The same clear-notice requirement
6 therefore governs the prospective relief Plaintiff seeks here.⁸

7 1. Defendants Did Not Receive Clear Notice of the Condition Plaintiff
8 Seeks to Enforce

9 The Complaint asks the Court to order Defendants to issue statewide directives
10 “prohibiting the participation of males in athletic competitions designated for females.”
11 Doc. # 1 ¶ 117(c)(1). It also treats access to girls’ locker rooms and other sex-separated
12 facilities as governed by the same biological-sex classification. *Id.* ¶¶ 5, 45, 54–55, 86–
13 89. The asserted condition is therefore categorical: whenever a recipient provides girls’
14 teams or female facilities, biological sex must control participation and access
15 regardless of gender identity.

16 Plaintiff’s reliance on Section 106.41(c) rests on that premise. Plaintiff argues
17 that a girls’ team becomes, at best, coeducational when a transgender girl participates
18 and that the resulting program denies girls equal athletic opportunity. Doc. # 27 at 27–
19 28.⁹ The Court considers that argument together with the statute and the regulatory
20 scheme as a whole.

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23 ⁸ The clear-notice requirement is not limited to private enforcement. In *Bennett v. Kentucky Dept. of*
24 *Educ.*, the Secretary of Education sought repayment of allegedly misused federal education funds, and
25 the Supreme Court applied *Pennhurst* in determining whether Kentucky had knowingly accepted the
26 obligation the Secretary sought to enforce. 470 U.S. 656, 665–70 (1985). Justice Gorsuch likewise
27 applied the clear-notice principle directly to Title IX athletics in his *West Virginia* concurrence,
28 concluding that Title IX did not clearly and unambiguously inform funding recipients that they were
prohibited from limiting girls’ teams to biological females. *West Virginia*, 146 S. Ct. at 2382–84
(Gorsuch, J., concurring). Plaintiff seeks to enforce the converse rule here: that Title IX requires
recipients to exclude students classified as male based on biological sex from girls’ teams regardless
of gender identity. That asserted condition must satisfy the same clear-notice requirement.

⁹ All record citations reflect CM/ECF pagination.

1 ***a. Title IX and its Implementing Regulations Do Not Clearly***
2 ***State Plaintiff’s Categorical Rule***

3 In deciding whether Spending Clause legislation clearly communicates a funding
4 condition, courts begin with the governing statutory text and consider any implementing
5 regulations that bear on the recipient’s obligations. *See Arlington*, 548 U.S. at 296
6 (beginning the clear-notice inquiry with the statutory text); *Critchfield*, 137 F.4th at
7 928–31 (applying the clear-notice rule by examining Title IX together with its
8 implementing regulations).¹⁰

9 Title IX prohibits discrimination on the basis of sex, and *West Virginia*
10 establishes that “sex” in this context means biological sex. 20 U.S.C. § 1681(a); *West*
11 *Virginia*, 146 S. Ct. at 2370–72. Title IX does not address eligibility requirements for
12 sports programs or access to athletics facilities—indeed it does not address athletics at
13 all. *See generally id.* §§ 1681–1688; *see also, West Virginia*, 146 S. Ct. at 2370 (noting
14 that as originally enacted, Title IX “did not explicitly address sports.”). It also does not
15 state that the participation of a transgender girl on a girls’ team, or a transgender girl’s
16 use of a girls’ facility, necessarily constitutes discrimination against other students on
17 the basis of sex.

18 Congress addressed athletics through the Javits Amendment by directing the
19 agency to issue reasonable provisions that account for the nature of particular sports.
20 Pub. L. No. 93-380, § 844, 88 Stat. 612. Congress did not prescribe eligibility rules for
21 transgender athletes. The regulation it directed likewise stops short of Plaintiff’s rule.

22 Section 106.41(a) states the general nondiscrimination command for athletics.
23 Section 106.41(b) then authorizes separate teams for members of each sex when
24 selection is based on competitive skill or the sport involves contact. 34 C.F.R. §
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26 ¹⁰ This textual focus accords with the contract analogy that informs Spending Clause doctrine. *See*
27 *Landor*, 146 S. Ct. at 1940–42. *Landor* explained that the analogy helps determine whether a recipient
28 knowingly and voluntarily accepted the terms attached to federal funds and, consistent with that
principle, requires Congress to “clearly and unambiguously alert a grant recipient to any condition on
federal funds.” *Id.*

1 106.41(a)–(b). After *West Virginia*, the authorization plainly permits a school to limit a
2 girls’ team to biological females.

3 The text does not require every recipient to adopt that approach, however. Section
4 106.41(b) distinguishes between what recipients may do and what they must do. It
5 provides that recipients “*may* operate or sponsor separate teams for members of each
6 sex” in specified circumstances, but when it imposes a participation requirement, it uses
7 mandatory language: members of an excluded sex “*must* be allowed to try-out” in
8 specified circumstances. 34 C.F.R. § 106.41(b) (emphasis added). The regulation
9 contains no comparable command requiring recipients to exclude transgender girls from
10 girls’ teams based on biological sex. *See Kingdomware Technologies, Inc. v. United*
11 *States*, 579 U.S. 162, 171–72 (2016) (contrasting mandatory and discretionary statutory
12 language).

13 Section 106.41(c) requires equal athletic opportunity and identifies factors
14 bearing on that inquiry. Those factors include effective accommodation, equipment,
15 scheduling, travel, coaching, facilities, medical services, housing, publicity, and support
16 services. 34 C.F.R. § 106.41(c). Neither the general requirement nor the listed factors
17 state that a transgender girl’s participation necessarily converts a girls’ team into a
18 coeducational team. Nor do they make such participation, by itself, a per se denial of
19 equal athletic opportunity for girls.

20 The Complaint’s accommodation and equal-treatment allegations depend on the
21 same unstated rule. It identifies athletic results and asserts that transgender participation
22 reduces girls’ opportunities. Doc. # 1 ¶¶ 57–95. The Complaint does not allege a distinct
23 violation that can be separated from the proposition that transgender girls must be
24 excluded from girls’ teams as a class. Section 106.41(c) cannot supply clear notice of
25 that proposition when the regulation never states it.

26 The facilities regulation follows the same pattern. Section 106.33 permits
27 recipients to provide separate toilet, locker-room, and shower facilities on the basis of
28 sex, provided that the facilities are comparable. 34 C.F.R. § 106.33. It does not require

1 access to be determined exclusively by biological sex in every circumstance. Binding
2 Ninth Circuit precedent had already rejected the argument that Title IX’s authorization
3 of sex-separated facilities necessarily requires biological-sex-only access. *Parents for*
4 *Privacy v. Barr*, 949 F.3d 1210, 1227–29 (9th Cir. 2020) (rejecting a Title IX challenge
5 to a policy permitting access based on gender identity and explaining that sex-separated
6 facilities need not “be segregated based only on biological sex”).

7 Section 106.6 does not supply the missing substantive requirement. It provides
8 that state law or an athletic association’s rule cannot excuse a recipient from complying
9 with Title IX. 34 C.F.R. § 106.6(b)–(c). But that principle applies only after the Court
10 determines what Title IX requires. Section 106.6 does not itself establish that
11 California’s policy conflicts with Title IX or define the eligibility rule Plaintiff seeks to
12 enforce.

13 Read together, Title IX, the Javits Amendment, Section 106.41, and Section
14 106.33 permit biological-sex separation and require equal treatment. They do not
15 clearly communicate Plaintiff’s further condition that biological sex must control every
16 eligibility and facilities decision regardless of gender identity.

17 ***b. Judicial Decisions Did Not Supply the Missing Clarity***

18 Judicial decisions can help determine what a recipient reasonably would have
19 understood a funding condition to require. In *Jackson v. Birmingham Bd. of Educ.*, the
20 Supreme Court relied in part on uniform appellate authority, longstanding regulations,
21 and prior decisions when it held that Title IX clearly prohibited retaliation. 544 U.S.
22 167, 182–84 (2005). A conflict among courts does not by itself defeat clear notice in all
23 instances, however. *Davis*, for example, found adequate notice despite disagreement
24 over liability for severe student-on-student sexual harassment. 526 U.S. at 649–50. The
25 text and regulations remain the starting point of the Spending Clause “clear notice”
26 analysis.

27 As discussed above, the statutory and regulatory text did not state the asserted
28 rule. *See supra* Section IV.B.1(a). To the extent that binding precedent could provide

1 notice in the absence of clear direction from Congress, it did not. *Parents for Privacy*
2 held that Title IX did not prohibit a school from allowing transgender students to use
3 facilities consistent with gender identity. 949 F.3d at 1227–29. *Critchfield* later held
4 that Title IX did not clearly require the opposite rule. 137 F.4th at 927–31. Taken
5 together, those decisions did not give California clear notice that Title IX required
6 facilities access to be determined exclusively by biological sex. *See also State of*
7 *Minnesota v. Trump*, No. 25-cv-1608 (ECT/DLM), 2026 WL 2295012, at *15 (D.
8 Minn. Aug. 10, 2026) (explaining that even if Title IX prohibits transgender girls from
9 participating on girls’ teams or using girls’ facilities, that would not establish that
10 Minnesota had clear notice of the prohibition when it accepted federal funds).

11 Other Ninth Circuit decisions likewise did not signal that Title IX required
12 categorical exclusion based on biological sex. In *Doe v. Snyder*, the Ninth Circuit, while
13 declining to reach the merits, rejected the premise that *Bostock*’s reasoning—that it is
14 impossible to discriminate against a person for being homosexual or transgender
15 without discriminating against that individual based on sex—was necessarily limited to
16 Title VII, noting the similar prohibitions against sex discrimination in Titles VII and
17 IX. 28 F.4th 103, 113–14 (9th Cir. 2022) (citing *Bostock v. Clayton County, Georgia*,
18 590 U.S. 644 (2020)). And in *Grabowski v. Ariz. Bd. of Regents*, the Ninth Circuit held
19 that discrimination based on actual or perceived sexual orientation constitutes
20 discrimination on the basis of sex under Title IX. 69 F.4th 1110, 1116–18 (9th Cir.
21 2023). Neither case involved athletic eligibility or established that California’s policy
22 complied with Title IX. But neither would have alerted California that Title IX
23 unmistakably required the categorical exclusion Plaintiff now seeks.

24 The national case law was similarly unsettled. In 2024, the Fourth Circuit held
25 that a biological-sex eligibility law violated Title IX as applied to a transgender girl who
26 had taken puberty blockers and hormones. *B. P. J. v. West Va. State Bd. of Educ.*, 98
27 F.4th 542, 563–65 (4th Cir. 2024), *rev’d sub nom. West Virginia v. B. P. J.*, 146 S. Ct.
28 2356 (2026). *West Virginia* now controls and establishes that biological-sex eligibility

1 is permissible. The Fourth Circuit’s earlier holding is no longer in force, but the fact
2 that a published court of appeals decision had read Title IX to *require* the inclusion of
3 a transgender athlete on a girls’ team strongly suggests Defendants could not have had
4 clear notice that Title IX required the opposite.

5 In April 2026, the Eighth Circuit described “whether Title IX requires, permits,
6 or prohibits” transgender participation in female athletics as an “open question of law.”
7 *Female Athletes United v. Ellison*, 172 F.4th 1019, 1029 (8th Cir. 2026). The court also
8 observed that, under the prior Administration’s interpretation of Title IX, the defendants
9 there had “good reason to believe” that excluding a transgender girl from girls’ softball
10 would itself have constituted sex discrimination. *Id.* at 1029 n.7. *West Virginia* later
11 resolved part of that uncertainty by holding that Title IX permits schools to determine
12 eligibility for girls’ and women’s teams based on biological sex. 146 S. Ct. at 2371–73.
13 But, as noted above, the Supreme Court expressly reserved the “distinct question” of
14 whether schools may allow transgender girls to participate on those teams. *Id.* at 2367
15 n.1.

16 Plaintiff emphasizes that *Ellison* arose in a private enforcement action and
17 ultimately affirmed on the ground that the plaintiff lacked a private right of action for
18 the Title IX claims it asserted. Doc. # 44 at 5–6; *Ellison*, 172 F.4th at 1027–30. That
19 procedural distinction does not affect the narrower point relevant here. In describing the
20 legal landscape before *West Virginia*, the Eighth Circuit expressly recognized both that
21 the athletics question remained unsettled and that successive administrations had taken
22 materially different positions on it. *See Ellison*, 172 F.4th at 1029 & n.7.

23 Plaintiff also points to litigation over the Department of Education’s 2024 Title
24 IX regulations. Those regulations generally defined sex discrimination to include
25 discrimination based on gender identity, but they did not resolve eligibility for sex-
26 separated athletic teams; the Department expressly left that subject to a separate
27 rulemaking. 89 Fed. Reg. 33474, 33817, 33886 (Apr. 29, 2024). Several courts enjoined
28 enforcement of provisions of the regulations, and the Supreme Court later observed that

1 all Members of the Court agreed the plaintiffs were entitled to preliminary relief against,
2 among other provisions, the regulation’s central definition of sex discrimination. *See*
3 *Louisiana*, 603 U.S. at 867. Those rulings, however, did not hold that Title IX’s
4 preexisting statute and athletics regulations already required schools to exclude
5 transgender girls from girls’ teams or sex-separated facilities. And *West Virginia* later
6 expressly reserved whether Title IX permits schools to allow transgender girls to
7 participate on girls’ teams. 146 S. Ct. at 2367 n.1.

8 Court decisions therefore did not cure the lack of clarity in the statute and
9 regulations. No settled body of authority informed California that accepting federal
10 funds required the statewide rule Plaintiff now seeks to enforce.

11 ***c. Conflicting Executive Branch Interpretations Did Not***
12 ***Provide Clear Notice***

13 Executive Branch interpretations may bear on the clear-notice inquiry because
14 contemporaneous agency materials can inform what a funding recipient would have
15 understood federal law to require.¹¹ But later interpretations cannot retroactively supply
16 notice of a new condition for funds already accepted. *See Pennhurst*, 451 U.S. at 25
17 (1981) (rejecting “post acceptance or ‘retroactive’ conditions”); *City of Los Angeles v.*
18 *Barr*, 929 F.3d 1163, 1174–75 (9th Cir. 2019) (same). And *Critchfield* expressly left
19 open whether Executive Orders may provide prospective notice of a Title IX obligation.
20 137 F.4th at 931 n.16. The Executive Branch’s interpretations are therefore relevant to
21 the notice history, but their timing and consistency matter.¹²

22 _____
23 ¹¹ *See Bennett v. Kentucky Department of Education*, 470 U.S. 656, 669–70 (1985) (considering
24 regulations and administrative interpretations in determining the obligations attached to federal
25 education funds); *Davis ex rel. LaShonda D. v. Monroe County Board of Education*, 526 U.S. 629,
647–48 (1999) (explaining that later-issued OCR guidance came “too late to contribute to” a
recipient’s notice).

26 ¹² Courts have likewise treated inconsistent or newly announced agency positions as evidence against
27 clear notice. *See, e.g., Oakley v. DeVos*, No. 20-cv-03215-YGR, 2020 WL 3268661, at *12 n.19 (N.D.
28 Cal. June 17, 2020) (treating the Department of Education’s reversal of its stated grant-eligibility
position as further support for a Spending Clause claim); *see also Virginia Dep’t of Educ. v. Riley*, 106
F.3d 559, 568 & n.8 (4th Cir. 1997) (Luttig, J., dissenting) (reasoning that the asserted funding

1 In 2015, the Department of Education stated that schools generally must treat
2 transgender students consistent with their gender identity in sex-separated settings. *See*
3 Letter from James A. Ferg-Cadima, Acting Deputy Assistant Sec’y for Policy, Off. for
4 C.R., U.S. Dep’t of Educ., to Emily T. Prince 2 (Jan. 7, 2015). The Departments of
5 Education and Justice adopted the same position in joint guidance the following year.
6 *See* U.S. Dep’ts of Educ. & Just., *Dear Colleague Letter on Transgender Students* 2–3
7 (May 13, 2016). That guidance addressed athletics but permitted “age-appropriate,
8 tailored requirements based on sound, current, and research-based medical knowledge”
9 concerning competitive fairness or physical safety. *Id.* at 3. The Departments withdrew
10 both documents in 2017 to “further and more completely consider the legal issues
11 involved.” U.S. Dep’ts of Educ. & Just., *Dear Colleague Letter* 1–2 (Feb. 22, 2017).

12 The Executive Branch changed course again in 2021. On January 8, the
13 Department of Education’s Office of General Counsel interpreted § 106.41(b) to require
14 athletic teams separated by sex to be organized according to biological sex. U.S. Dep’t
15 of Educ., Off. of Gen. Couns., *Memorandum re Bostock v. Clayton County* 6–8 (Jan. 8,
16 2021). Twelve days later, Executive Order 13988 directed federal agencies to treat
17 discrimination based on gender identity as a form of sex discrimination under statutes
18 including Title IX, absent sufficient indications to the contrary. Exec. Order No. 13988,
19 86 Fed. Reg. 7023, 7023–24 (Jan. 20, 2021).

20 In 2023, the Department of Education proposed an athletics rule while
21 acknowledging that the existing regulations were “not sufficiently clear” on sex-related
22 eligibility criteria. *Nondiscrimination on the Basis of Sex in Education Programs or*
23 *Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for*
24 *Male and Female Athletic Teams*, 88 Fed. Reg. 22860, 22866 (Apr. 13, 2023). The
25 Department withdrew that proposal in December 2024 without adopting a final
26 standard. 89 Fed. Reg. 104936, 104937 (Dec. 26, 2024).

27 _____
28 condition lacked clear notice because the Department adopted its interpretation years after enactment,
described it as a “new condition,” and enforced it “neither uniform[ly] nor constant[ly]” (emphasis
omitted).

1 The Executive Branch changed course yet again in 2025. Executive Order 14168
2 (the “January 2025 Executive Order”) and Executive Order 14201 (the “February 2025
3 Executive Order”) adopted a biological-sex-based enforcement position, including for
4 Title IX athletics. *See* Exec. Order No. 14168, 90 Fed. Reg. 8615, 8615–18 (Jan. 30,
5 2025); Exec. Order No. 14201, 90 Fed. Reg. 9279, 9279–80 (Feb. 11, 2025). Section
6 1682 assigns implementation of Title IX to the federal departments and agencies
7 extending financial assistance, authorizing them to act through “rules, regulations, or
8 orders of general applicability.” 20 U.S.C. § 1682. The February 2025 Executive Order,
9 in turn, directed the Secretary of Education to “take all appropriate action” and to “bring
10 regulations and policy guidance into line” with the President’s policy. 90 Fed. Reg. at
11 9279–80. Thus, even assuming an Executive Order may provide prospective notice in
12 some circumstances, the February 2025 Executive Order itself contemplated further
13 agency action to implement its Title IX athletics policy.¹³

14 This history confirms that Title IX and its implementing regulations did not
15 provide clear notice of Plaintiff’s asserted funding condition. Federal officials
16 repeatedly gave materially different answers to how Title IX applies to transgender
17 students, and in 2023 the Department itself acknowledged that the existing athletics
18 regulations were “not sufficiently clear” on eligibility criteria. 88 Fed. Reg. at 22866,
19 22879. The January and February 2025 Executive Orders announced the current
20 Administration’s interpretation, but they could not retroactively cure that lack of notice
21 for funds already accepted. *See Pennhurst*, 451 U.S. at 25; *City of Los Angeles*, 929
22 F.3d at 1174–75.

23
24
25
26
27 ¹³ The Court does not infer a lack of clear notice from any absence of earlier federal enforcement.
28 Agency nonenforcement may reflect resource constraints, enforcement priorities, or other
considerations unrelated to the agency’s view of the law. *See Heckler v. Chaney*, 470 U.S. 821, 831
(1985). The Court instead relies on the affirmative federal interpretations described above.

2. CDE’s Certification and Later Drawdowns Do Not Establish Clear
Notice

Plaintiff separately argues that CDE’s own conduct shows notice and acceptance of the asserted condition. It points to CDE’s November 2024 Grant Certification and contends that CDE later continued to draw federal funds with notice of the 2025 Executive Orders. Doc. # 1 ¶¶ 37–38; Doc. # 27 at 30, 32. But a recipient’s conduct cannot supply clarity that the funding condition itself lacks. *See Pennhurst*, 451 U.S. at 17 (explaining that there can be “no knowing acceptance if a State is unaware of the conditions or is unable to ascertain what is expected of it”).¹⁴ As explained above, Title IX and its regulations did not clearly impose Plaintiff’s categorical eligibility and facilities rule. *See supra* Section IV.B.1(a).

The November 2024 Certification does not change that conclusion. Title IX’s assurance regulation requires applicants for federal financial assistance to assure that covered programs will comply with Title IX’s regulations. 34 C.F.R. § 106.4(a). The Department of Education’s general grant-compliance regulation likewise requires grantees to comply with applicable statutes, regulations, Executive orders, stated institutional policies, and applications. *Id.* § 75.700. CDE’s Certification similarly states that it “[w]ill comply with all applicable requirements” governing federal financial assistance, including Title IX. Doc. # 1 ¶ 38. These are general promises to comply with applicable requirements; they do not define the disputed eligibility or facilities rule. Nor does the Certification show that CDE accepted the interpretation later announced in the January and February 2025 Executive Orders, which did not yet exist when CDE signed it. *See Pennhurst*, 451 U.S. at 25 (explaining that the Spending Clause does not permit “post acceptance or ‘retroactive’ conditions”); *City of Los Angeles*, 929 F.3d at 1174–75 (applying *Pennhurst* to reject “post acceptance or ‘retroactive’ conditions”).

¹⁴ Recipient conduct can demonstrate acceptance when the condition itself has been clearly stated. *See, e.g., Douglas v. Cal. Dept. of Youth Auth.*, 271 F.3d 812, 820–21 (9th Cir. 2001) (holding that California waived sovereign immunity by accepting Rehabilitation Act funds where federal law clearly conditioned receipt of those funds on waiver).

1 Plaintiff further argues that CDE's continued drawdowns after the 2025
2 Executive Orders show that CDE accepted federal funds with notice of the asserted
3 condition. Doc. # 27 at 30, 32. The Court need not decide whether CDE had actual
4 knowledge of the Orders when it drew those funds or whether each drawdown
5 constituted a new acceptance of federal funding. Even assuming both propositions,
6 CDE's conduct would show acceptance of funds with knowledge of the
7 Administration's interpretation. It would not establish that the interpretation was a
8 clearly stated condition of those funds. For the reasons explained above, it was not. *See*
9 *supra* Section IV.B.1(c). CDE's Certification and alleged later drawdowns therefore do
10 not establish the clear notice required by the Spending Clause.

11 ***

12 Count I depends on a single asserted rule: that Title IX requires schools to use
13 biological sex, regardless of gender identity, to determine eligibility for girls' athletics
14 and access to sex-separated athletic facilities. Plaintiff's athletics, equal-opportunity,
15 and facilities theories all depend on that rule. Because Title IX and its regulations did
16 not clearly impose any such rule as a condition of federal funding, Count I is dismissed.

17 **C. *Count II Fails for the Same Reason as Count I***

18 Count II alleges that CDE agreed to comply with Title IX and its implementing
19 regulations and materially breached that agreement through the Title IX violations
20 alleged in Count I. Doc. # 1 ¶¶ 112–16. The contractual claim therefore depends on the
21 same substantive obligation to restrict girls' sports teams and facilities by biological sex
22 without consideration of gender identity.

23 As explained above, Title IX and its regulations did not clearly condition federal
24 funding on the categorical athletics and facilities rule alleged in the Complaint. An
25 assurance to comply with Title IX cannot supply a term Title IX, its implementing
26 regulations, or then-existing caselaw did not clearly impose. Because Plaintiff has not
27 pleaded the underlying Title IX breach, Count II is dismissed.

