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FAIR EDUCATION SANTA BARBARA

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 FAIR EDUCATION SANTA
BARBARA, INC., a 501(c)(3)
12 organization

13 Plaintiff,

14 vs.

15 SANTA BARBARA UNIFIED
SCHOOL DISTRICT, a public school
16 district; and JUST COMMUNITIES
CENTRAL COAST, INC., a
17 501(c)(3) organization,

18 Defendants.
19

Case No.: 2:18-cv-10253-SVW-PLA

**PLAINTIFF’S OPPOSITION TO
MOTION TO DISMISS FILED BY
JUST COMMUNITIES CENTRAL
COAST, INC.**

The Honorable Stephen V. Wilson

Date: February 25, 2019
Time: 1:30 PM
Courtroom: 10A

Trial Date: None Yet

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1 **I. INTRODUCTION**

2 This action concerns an exclusionary and discriminatory instructional
3 program for Santa Barbara Unified School District (“SBUSD”) staff and students
4 run by defendant Just Communities Central Coast, Inc. (“JCCC”). According to
5 JCCC (and as taught to SBUSD children in elementary school), racism can only be
6 perpetrated by “white people” and all “white people” are racist whether they are
7 conscious of it or not. JCCC’s radical programming, which costs SBUSD nearly
8 \$300,000 per year, goes so far as to physically separate all “white” participants
9 from all participants of color where each group is then provided with separate
10 instructional programs. This is *per se* discrimination. Through the entity Fair
11 Education Santa Barbara, Inc. (“FESB”), taxpaying community members and
12 parents with minor students in SBUSD subjected to this indoctrination have filed
13 this lawsuit to put a stop to JCCC’s unconstitutional indoctrination program.

14 Defendant JCCC has filed a Motion to Dismiss all the claims asserted against
15 it in this litigation. However, JCCC’s Motion to Dismiss is fatally deficient each
16 step of the way.

17 First, JCCC argues that FESB lacks standing to assert Counts I, II and III for
18 illegal discrimination under 42 U.S.C. § 2000d, 42 U.S.C. § 1983 and Government
19 Code § 11135, respectively. Specifically, JCCC argues that FESB lacks
20 organizational standing to bring these claims on behalf of its members because the
21 members purportedly would have not have standing to bring these claims on their
22 own behalf. JCCC is wrong. FESB counts among its members, parents with minor
23 children currently in the SBUSD and subjected to JCCC’s discriminatory teachings.
24 As parents of minor children, these members have standing to assert discrimination
25 claims on behalf of themselves and their minor children under Federal Rule of Civil
26 Procedure 17(c) and have alleged a detailed pattern and practice of overt
27 discrimination. FESB also has organizational standing to sue in its own right due to
28 JCCC’s and SBUSD’s actions undermining FESB’s organizational goals of

1 “advocating for fair education policies in the SBUSD [...] that benefit all
2 Americans educated in the SBUSD” and ensuring that “SBUSD provides every
3 student, irrespective of race, ethnicity, culture and sexual orientation, the
4 opportunity to achieve his or her highest ability and potential.” (Complaint ¶¶ 1,
5 11-12.) *See e.g Havens Realty Corporation v. Coleman*, 455 U.S. 363, 378-379
6 (1982) (organization has direct standing where defendants’ practices have
7 “perceptibly impaired” organization’s ability to provide the services it was formed
8 to provide).

9 Second, JCCC argues that Count IV for violation of California Education
10 Code § 220 fails because FESB has insufficiently alleged any discrimination and
11 has not alleged that SBUSD acted with deliberate indifference to that
12 discrimination. To the contrary, FESB has pled these elements with great detail.
13 The Complaint alleges in granular detail, and with direct quotes from JCCC’s
14 written instructional materials, that Caucasian pupils are taught they are inherently
15 and irredeemably flawed simply due to their skin color, religion or sex. (Compl. ¶¶
16 19-26.) The Complaint further alleges that this has resulted in a hostile educational
17 environment, has increased racial tensions against students in these so-called
18 “privilege groups” and that anti-white graffiti and racial epithets have been directed
19 against Caucasian students. (*Id.* ¶ 27.) The Complaint further alleges that the
20 discriminatory nature of JCCC’s programming was brought to the SBUSD School
21 Board’s attention at the Board Meetings occurring on September 11, 2018 and
22 October 9, 2018, and that these concerns were ignored and disregarded, that
23 SBUSD refused to allow parents to examine JCCC’s instructional materials and that
24 SBUSD refused to consider any other service providers other than JCCC to carry
25 out its diversity training initiatives. (*Id.* ¶¶ 28-31.) These allegations satisfy the
26 elements of California Education Code § 220.

27

1 Finally, JCCC argues that the Court lacks supplemental jurisdiction over
2 Count VI for violation of California Public Contracts Code § 20111, because the
3 claim purportedly does not arise from the common nucleus of operative fact shared
4 with the federal discrimination claims alleged in Counts I and II. This argument
5 also is incorrect. Count VI pertains to SBUSD's refusal to let its diversity training
6 contract for public bidding as required under California law, and SBUSD's rubber
7 stamping of the nearly \$300,000 contract with JCCC, without considering any other
8 service providers. While this stands alone as a violation of California Public
9 Contracts Code § 20111, it also demonstrates SBUSD's deliberate indifference to
10 FESB's claims that JCCC's programming is discriminatory (a necessary element of
11 Counts I and II). Count VI also addresses SBUSD's failure to seek bids from other
12 providers whose programs are non-discriminatory, as well as the abject favoritism
13 (which § 20111 seeks to prevent) shown JCCC's indoctrinators by SBUSD. The
14 claims have the same common nucleus of facts in that all the claims concern: (1)
15 the JCCC Contract; (2) the unlawful discrimination arising from the services
16 provided pursuant to the JCCC Contract; (3) whether the JCCC Contract is void as
17 a matter of law for failure to have been submitted for public bidding and for being
18 the basis for teachings which illegally discriminate; and (4) the damages arising
19 from the services provided pursuant to the JCCC Contract.

20 Consequently, based on the facts alleged in the Complaint, a proper basis for
21 supplemental jurisdiction over Count VI exists. It is inextricably intertwined with
22 FESB's federal discrimination claims, for which this Court has original jurisdiction.

23 In sum, JCCC's Motion to Dismiss should be denied in its entirety.

24 **II. ALLEGATIONS IN COMPLAINT**

25 FESB is an Internal Revenue Code Section 501(c)(3) organization "formed to
26 advocate for fair education policies in the Santa Barbara Unified School District and
27 in Santa Barbara County that benefit all Americans educated in the Santa Barbara
28 Unified School District through, among other methods, lobbying, grass roots

1 organizing, community outreach, legal actions and education.” (Complaint, ¶ 11.)
2 “Members of Fair Education Santa Barbara include SBUSD taxpayers and parents
3 of current minor students in the SBUSD system that identify as Caucasian,
4 Christian and/or male.” (*Id.* ¶ 12.)

5 The Complaint alleges that SBUSD has engaged the entity Just Communities
6 Central Coast, Inc. to provide training and educational programs to SBUSD staff
7 and students with respect to “diversity, inclusion, and equity” and that these
8 programs consist of several workshops and training sessions provided to staff and
9 students throughout the year. (*Id.* ¶ 17.) SBUSD has paid JCCC well over
10 \$1,000,000 over the past several years to provide this programming and recently
11 renewed a one-year contract with JCCC at a cost to taxpayers of at least \$294,000 in
12 Local Control Accountability Plan (“LCAP”) funds. (*Id.* ¶ 18.)

13 The Complaint alleges that the training and educational programs provided
14 by SBUSD and JCCC are radical, exclusionary and discriminatory and “attempt to
15 indoctrinate staff and students with a warped view of the world where racism can
16 only be perpetrated by ‘white people’ and where the success of students in so-called
17 ‘privileged’ groups is due solely to their ‘unearned access to resources ...” (*Id.* ¶
18 19.) JCCC’s written instructional materials utilized at its training sessions include
19 the following direct quotes, among many others:

- 20 a. “Privileged Groups” include “Men,” “White People,” “Christian
21 People,” and “Wealthy People,” and “Target Groups” include
22 “Women,” “People of Color,” and “Working Class & Poor.” (Exh. B,
23 p. 15.)
- 24 b. “Racism” is “[a] system of oppression based on race that privileges
25 white people and targets people of color.” (Exh. B, p. 17.)
- 26 c. “Privilege” is “[u]nearned access to resources that enhance one’s
27 chances of getting what one needs or influencing others in order to lead
a safe, productive and fulfilling life.” (Exh. B, p. 19.)

1 d. JCCC’s materials define “Religious Oppression” as “Christian People”
2 targeting “All Others” and “Sexism” as “Men” targeting “Women.”
3 (Exh. B, p. 15.)

4 (*Id.* ¶ 21.)

5 Further, during the actual workshops and training sessions, “JCCC physically
6 separates participants into different racial groups, requiring all individuals that
7 JCCC *perceives* to be ‘white’ to be segregated in a separate room to receive
8 instruction that differs from all perceived ‘non-white’ participants.” (*Id.* ¶ 22.) “In
9 these racially segregated sessions, the “white” participants are instructed that,
10 whether they are conscious of it or not, all ‘white people’ are racist and collude to
11 promote or perpetuate racism against non-whites.” (*Id.* ¶ 23.) The Complaint
12 further alleges that “[p]ast participants in JCCC’s programs for SBUSD have
13 reported that, if any dissent or argument is expressed concerning JCCC’s
14 instruction, the dissenter is labeled as a racist.” (*Id.* ¶ 25.)

15 As alleged in the Complaint, JCCC’s and SBUSD’s discriminatory
16 programming is “creating a hostile educational environment for teachers and
17 students that fall within a so-called ‘Privileged Group’ as per JCCC’s materials [i.e.
18 Caucasian, Christian and/or male].” (*Id.* ¶ 27.)

19 The Complaint alleges that these discriminatory actions were expressly
20 brought to the attention of the SBUSD School Board at the September 11, 2018 and
21 October 9, 2018 Board Meetings when the topic of renewal of JCCC’s contract with
22 the SBUSD was considered. (*Id.* ¶¶ 28-31.) The SBUSD School Board ignored
23 and disregarded these concerns, refused to consider any service providers other than
24 JCCC and also refused to allow SBUSD citizens and parents to see JCCC’s
25 instructional materials. (*Id.*) SBUSD then approved a new, one-year contract with
26 JCCC for an aggregate cost of at least \$294,000. (*Id.* ¶ 31, Ex. A.)
27

1 **III. LEGAL STANDARD**

2 Defendant JCCC’s Motion to Dismiss constitutes a challenge to the legal
3 sufficiency of Plaintiff FESB’s Complaint pursuant to Federal Rule of Civil
4 Procedure 12(b)(6). In order to successfully oppose a motion to dismiss, a plaintiff
5 need only allege facts “sufficient ... to state a facially plausible claim to relief.”
6 *Shroyer v. New Cingular Wireless Services, Inc.*, 622 F.3d 1035, 1041 (9th Cir.
7 2010).

8 In analyzing a motion to dismiss under Rule 12(b)(6), the court must “accept
9 as true all of the factual allegations set out in plaintiff’s complaint, draw inferences
10 from those allegations in the light most favorable to plaintiff, and construe the
11 complaint liberally.” *Rescuecom Corp. v. Google Inc.*, 562 F.3d 123, 127 (2d Cir.
12 2009); *Doe v. United States*, 419 F.3d 1058, 1062 (9th Cir. 2005). Traditionally,
13 courts have viewed motions to dismiss under Rule 12(b)(6) with “disfavor,” due to
14 the lesser role pleadings play in federal practice and the liberal policy in favor of
15 allowing amendment. *See Lormand v. US Unwired, Inc.*, 565 F.3d 228, 232 (5th
16 Cir. 2009) (Rule 12(b)(6) motions “viewed with disfavor and rarely granted”);
17 *Broam v. Bogan*, 320 F.3d 1023, 1028 (9th Cir. 2003) (Rule 12(b)(6) dismissal with
18 prejudice proper only in “extraordinary” cases).

19 “A jurisdictional challenge under Rule 12(b)(1) may be made either on the
20 face of the pleadings or by presenting extrinsic evidence.” *Warren v. Fox Family*
21 *Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003). JCCC’s Motion raises a
22 facial attack to FESB’s jurisdiction premised exclusively on the allegations of the
23 Complaint. Thus, all material allegations of the Complaint are presumed true, and
24 the question for the Court is whether a purported lack of jurisdiction appears from
25 the face of the pleading itself. *Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir.
26 2004) (citing *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004)).
27

1 **IV. ARGUMENT**

2 **A. Plaintiff FESB Has Standing To Bring Counts I, II and III**
 3 **Pertaining To Unlawful Discrimination**

4 Article III standing requires that three conditions be satisfied. “First and
 5 foremost, there must be alleged (and ultimately proved) an ‘injury in fact.’” *Steel*
 6 *Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 103 (1998) (quoting *Whitmore v.*
 7 *Arkansas*, 495 U.S. 149, 155 (1990)). This injury “must be concrete in both a
 8 qualitative and temporal sense,” “distinct and palpable” as opposed to “abstract,”
 9 and “actual or imminent” as opposed to “conjectural or hypothetical.” *Whitmore*,
 10 495 U.S. at 155 (internal quotations and citations omitted). As addressed below on
 11 pages 9 through 11, such injury unquestionably exists here and has been alleged in
 12 the Complaint. Second, standing requires causation, defined as a “fairly traceable
 13 connection between the plaintiff’s injury and the complained-of-conduct of the
 14 defendant.” *Steel Co.*, 523 U.S. at 103. The connection between FESB’s injury and
 15 the Defendants’ discriminatory conduct is clear and is also addressed below on
 16 pages 9 through 11. Finally, standing requires “redressability – a likelihood that the
 17 requested relief will redress the alleged injury.” *Id.* The relief requested by FESB’s
 18 action will certainly redress the injuries that are alleged, given that FESB seeks to
 19 put a stop to the Defendants’ discriminatory conduct, and obtain a ruling that the
 20 JCCC contract is void as a matter of law.

21 **1. Plaintiff FESB Has Standing To Bring Suit On Behalf Of Its**
 22 **Members And Their Minor Student Children**

23 “[A]n association has standing to bring suit on behalf of its members when:
 24 (a) its members would otherwise have standing to sue in their own right; (b) the
 25 interests it seeks to protect are germane to the organization’s purpose; and (c)
 26 neither the claim asserted nor the relief requested requires the participation of
 27 individual members in the lawsuit.” *Hunt v. Wash. State Apple Advert. Comm’n*,
 432 U.S. 333, 343 (1977). Only one member need have individual standing in order

1 for an organization to satisfy the first *Hunt* factor. See *Playboy Enters., Inc. v. Pub.*
2 *Serv. Comm'n of P.R.*, 906 F.2d 25, 34 (1st Cir. 1990) (“[T]he Supreme Court has
3 never required that *every* member of an association have standing before it can sue
4 on behalf of its members. ‘The association must allege that its members, or *any one*
5 *of them*, are suffering immediate or threatened injury as a result of the challenged
6 action of the sort that would make out a justiciable case had the members
7 themselves brought suit.’” (quoting *Warth v. Seldin*, (1975) 422 U.S. 490, 511))
8 (emphasis added).

9 JCCC does not dispute that FESB satisfies the second and third *Hunt*
10 prerequisites. JCCC solely argues that FESB does not meet the first *Hunt*
11 prerequisite that “its members would otherwise have standing to sue in their own
12 right,” claiming that FESB “has not pled any direct injury to its members.”
13 (Motion, pp. 5-6.) JCCC is wrong.

14 Under Federal Rule of Civil Procedure 17(c), parents, as guardians, may sue
15 on behalf of their minor children. Fed. R. Civ. P. 17(c). This is particularly the
16 case with respect to suits against public school districts in which the parent’s minor
17 child is a student. “[S]tudents and parents of students attending public schools ...
18 enjoy a cluster of rights vis-à-vis their schools – a relationship which removes them
19 from the sphere of ‘concerned bystanders’” and signifies that they are personally
20 subjected to school policies or actions. *Doe ex rel. Doe v. Beaumont Indep. Sch.*
21 *Dist.*, 240 F. 3d 462, 466-67 (5th Cir. 2001) (en banc) (both students *and parents* in
22 school district had standing to challenge constitutionality of school district’s
23 “Clergy in Schools” counseling program); *see also School Dist. Of Abington Tp.*
24 *Pa. v. Schempp*, 374 U.S. 203, 225 (1963) (school children *and their parents*
25 directly affected by practices relating to religious exercises in schools had standing
26 to complain of the practices as unconstitutional). FESB counts among its members
27 parents of minor children students in the SBUSD. (Compl., ¶¶ 11-12).

1 **2. The Injury Caused By Defendants’ Conduct is Concrete,**
2 **Distinct and Palpable**

3 With respect to demonstrating an injury in fact, an injury to an individual’s
4 intangible rights is as “concrete,” for standing purposes, as injury to economic
5 interests or other tangible forms of harm. “[D]iscrimination itself, by perpetuating
6 ‘archaic stereotypic notions’ or by stigmatizing members of the disfavored group as
7 ‘innately inferior’ and therefore as less worthy participants in the political
8 community [cite], can cause serious non-economic injuries to those persons who are
9 personally denied equal treatment solely because of their membership in a
10 disfavored group.” *Heckler v. Mathews*, 465 U.S. 728, 739-40 (1984) (recognizing
11 that discrimination itself is an injury in the Equal Protection context); *Allen v.*
12 *Wright*, 468 U.S. 737, 756 (1984) (recognizing threat to racially integrated
13 education as “one of the most serious injuries recognized in our legal system”).
14 Where “the plaintiff is himself an object of the [government] action ... at issue ...
15 there is ordinarily little question that the action ... has caused him injury, and that a
16 judgment preventing ... the action will redress it. *Lujan v. Defenders of Wildlife* ,
17 504 U.S. 555, 561-62 (1992).

18 “[S]tudents and parents of students attending public schools ... enjoy a
19 cluster of rights vis-à-vis their schools – a relationship which removes them from
20 the sphere of ‘concerned bystanders’” and signifies that they are personally
21 subjected to school policies or actions. *Doe ex rel. Doe v. Beaumont ndep. Sch.*
22 *Dist.*, 240 F. 3d 462, 466-67 (5th Cir. 2001) (en banc) (both students **and parents** in
23 school district had standing to challenge constitutionality of school district’s
24 “Clergy in Schools” counseling program); *see also School Dist. Of Abington Tp.*
25 *Pa. v. Schempp*, 374 U.S. 203, 225 (1963) (school children **and their parents**
26 directly affected by practices relating to religious exercises in schools had standing
27 to complain of the practices as unconstitutional).

1 An injury caused by “exposure” to a school’s discriminatory practices is
2 sufficient to establish an injury in fact for plaintiffs challenging those practices. In
3 *Ad Hoc Comm. Of Concerned Teachers ex rel. Minor & Under-Age Students v.*
4 *Greenburgh, No. 11 Union Free School Dist.*, 873 F. 2d 25 (2d Cir. 1989), the
5 Second Circuit found injury to the plaintiffs’ “right to a school environment free
6 from the effects of racially discriminatory practices.” *Id.* at 28. A similar right was
7 recognized by Judge (now Justice) Ginsburg in *Women’s Equity Action League v.*
8 *Cavazos*, 879 F. 2d 880, 885 (D.C. Cir. 1989) (“The district court recognized that
9 the plaintiffs here asserted ‘not an abstract or generalized grievance,’ but a right,
10 currently denied them, to be educated ‘in an environment ... free from
11 discrimination.’”); *see also Otero v. Mesa County Valley Sch. Dist.*, 568 F. 2d 1312,
12 1315 (10th Cir. 1977) (holding that Mexican-American public school students had
13 standing to challenge discriminatory faculty hiring practices).

14 Here, FESB counts among its members parents who currently have minor
15 school children in the SBUSD school system. (Complaint ¶¶ 11-12.) These parents
16 not only have standing in their own right to challenge the discriminatory actions of
17 SBUSD and JCCC, but also have standing on behalf of their minor children who are
18 students in the district and who are directly exposed to these discriminatory
19 practices.

20 The Complaint further alleges direct injury to these members and their minor
21 school children in the form of SBUSD’s and JCCC’s discriminatory instruction and
22 programming and denial of equal treatment based on race, religion and sex.
23 (Complaint ¶¶ 19-27.) Specifically, SBUSD and JCCC teach that “White People”,
24 “Men” and “Christian People” are “Privileged Groups” and “target,” respectively,
25 “People of Color,” “Women,” and “All Other [religions].” (*Id.* ¶ 21, Ex. B., pp. 15,
26 17 and 19.) SBUSD and JCCC further teach that “racism” can only be perpetrated
27 by “white people” and that “Religious Oppression” is defined as “Christian People”
targeting “All Other [religions].” (*Id.* ¶¶ 19, 21, Ex. B., pp. 17, 19.) SBUSD and

1 JCCC also teach staff and students that “the success of students in so-called
 2 ‘privileged’ groups [i.e. Caucasians, Christians, males] is due solely to their
 3 ‘unearned access to resources . . .” (*Id.* ¶ 19.) Additionally, in its instruction, JCCC
 4 “physically separates participants into different racial groups, requiring all
 5 individuals that JCCC perceives to be ‘white’ to be segregated in a separate room to
 6 receive instruction that differs from all perceive ‘non-white’ participants.” (*Id.* ¶
 7 22.) As the Complaint alleges, in these racially segregated sessions, “the ‘white’
 8 participants are instructed that . . . all ‘white people’ are racist and collude to
 9 promote or perpetuate racism against non-whites.” (*Id.* ¶ 23.)

10 The Complaint alleges that these discriminatory actions have resulted in
 11 stigmatic injuries to the student children of Plaintiff’s members, causing so-called
 12 “privilege group” students (i.e. Caucasian, Christian and/or male) to believe they
 13 are inherently flawed, racist and “less than” their peer students, and has increased
 14 racial animosity within the school toward Caucasian students and teachers. The
 15 complaint further alleges that anti-White graffiti has appeared within the school,
 16 and anti-white racial epithets have been hurled at SBUSD teachers and students,
 17 resulting in a hostile educational environment. (Complaint ¶¶ 27, 34, 37, 41, 42, 47,
 18 49.)¹

19 In sum, FESB has standing to sue on Counts I, II and III on behalf of its
 20 members.

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 1 ¹ JCCC also argues that, with respect to Count I for violation of Title VI, Plaintiff has failed to plead that SBUSD had “notice of the problem” and failed to respond adequately. (Motion p. 7.) JCCC is not correct. The Complaint specifically alleges that SBUSD’s and JCCC’s discriminatory conduct and the resulting hostile educational environment were brought to SBUSD’s attention at the September 11, 2018 and October 9, 2018 School Board meetings and that these notifications were ignored by SBUSD. (Complaint ¶¶ 28-32.)

1 **3. FESB Has Direct Organizational Standing To Sue In Its**
2 **Own Right**

3 An organization has direct standing to sue where the defendants' practices
4 have "perceptibly impaired" the organizational plaintiff's ability to provide the
5 services it was formed to provide. *See Havens Realty Corporation v. Coleman*, 455
6 U.S. 363, 378-379 (1982) (petitioners' alleged practices found to perceptibly impair
7 plaintiff's ability to provide counseling and referral services for low-and moderate-
8 income home seekers, with the consequent drain on the organization's resources);
9 *El Rescate Legal Servs., Inc. v. Executive Office of Immigration Review*, 959 F.2d
10 742, 748 (9th Cir. 1991) (standing found where defendant's alleged policies
11 frustrate plaintiff's declared goals and require the organization to expend resources
12 in representing members they otherwise would spend in other ways).

13 This direct organizational standing has been applied in the context of Equal
14 Protection § 1983 discrimination claims against a school district in the case of *Gay-*
15 *Straight All. Network v. Visalia Unified Sch. Dist.*, 262 F. Supp. 2d 1088 (E.D. Cal.
16 2001). In that case, plaintiff Gay-Straight Alliance Network ("GSA") was a non-
17 profit organization comprised of gay, lesbian, bisexual, transgender and
18 heterosexual students and "supportive adults" with the espoused mission of
19 "eliminating homophobia and intolerance in schools." *Id.* 1092. GSA filed suit
20 against Visalia Unified School District under 42 U.S.C. § 1983, due to an alleged
21 "homophobic environment within VUSD and possibly retaliatory harassment." *Id.*
22 The Court found that, not only did GSA have standing to sue on behalf of its
23 members, but also had direct standing to sue VUSD, stating:

24 GSA Network's purpose is to end intolerance, discrimination,
25 harassment, and violence in schools, directed at member gay and
26 lesbian students, and those perceived to be gay or lesbian. Those
27 goals are directly frustrated by Defendants' alleged policies of
transferring gay or lesbian students, and ignoring complaints
regarding the safety, harassment, and discrimination against gay and
lesbian students, and those perceived to be gay or lesbian. [...] GSA

1 Network has suffered an injury in fact sufficient to confer direct
2 standing; it has committed resources to advance goals which are
3 thwarted by the alleged policies of the VUSD.

4 *Id.* at 1106.

5 Here, FESB is a non-profit organization “formed to advocate for fair
6 education policies in the Santa Barbara Unified School District and in Santa
7 Barbara County that benefit all Americans educated in the Santa Barbara Unified
8 School District, through among other methods, lobbying, grass roots organizing,
9 community outreach, legal actions and education.” (Complaint ¶ 11.) The
10 discriminatory instruction and practices of SBUSD and JCCC alleged in the
11 Complaint, thwart FESB’s goals of advocacy for and establishing educational
12 policies in SBUSD that benefit all Americans, as a significant portion of the
13 students in the district are directly discriminated against on the basis of their race,
14 sex and/or religion. FESB has thus been required to use its resources to prosecuting
15 the instant lawsuit to correct and challenge these policies by SBUSD and JCCC.
16 Accordingly, FESB has suffered an injury in fact and has direct standing.²

17 Consequently, FESB also has direct and association standing to assert Counts
18 I, II and III and JCCC’s Motion to Dismiss should be denied.

19 **B. FESB’s Count IV For Violation Of California Education Code §**
20 **220 States A Valid Claim**

21 California Education Code § 220 prohibits public schools from
22 discriminating on the basis of race, ethnicity, gender and religion, stating:

23 _____
24 ² As to Count III for violation of Government Code § 11135, FESB and its
25 members have standing to sue under this statute as “citizens and taxpayers seeking
26 enforcement of laws in which there is an identified public as well as private interest
27 [namely] maintaining a system of taxpayer-funded public education which is free of
the destructive influence of discrimination, harassment and bullying.” *Hector F. v.*
El Centro Elementary School Dist., 227 Cal. App. 4th 331, 334 (2014) (Father had
standing to sue school district on behalf of both himself and school age son for,
among other things, violation of California Government Code § 11135, under
public interest exception to general rule requiring direct beneficial interest in
outcome of litigation).

1 “No person shall be subjected to discrimination on the basis of
 2 disability, gender, gender identity, gender expression, nationality, race
 3 or ethnicity, religion, sexual orientation, or any other characteristic
 4 that is contained in the definition of hate crimes set forth in Section
 5 422.55 of the Penal Code, including immigration status, in any
 6 program or activity conducted by an educational institution that
 7 receives, or benefits from, state financial assistance, or enrolls pupils
 8 who receive state student financial aid.”

9 Cal. Educ. Code § 220. To prevail on a claim for violation of California Education
 10 Code § 220, the plaintiff must prove the following elements: “(1) he or she suffered
 11 severe, pervasive and offensive harassment, that effectively deprived plaintiff of the
 12 right of equal access to educational benefits and opportunities; (2) the school district
 13 had actual knowledge of that harassment; and (3) the school district acted with
 14 deliberate indifference in the face of such knowledge.” *Donovan v. Poway Unified*
 15 *Sch. Dist.*, 167 Cal. App. 4th 567, 579 (2008). JCCC does not dispute that the
 16 Complaint satisfies element (2). Instead, JCCC argues that the Complaint does not
 17 sufficiently allege elements (1) and (3). JCCC again is incorrect.

18 First, JCCC incorrectly argues FESB has failed to allege that students
 19 suffered “severe, pervasive and offensive harassment.” Here, as recited in detail
 20 above, FESB has alleged that JCCC and SBUSD instruct teachers and students that
 21 “White People,” “Men” and “Christian People” purportedly “target” “People of
 22 Color,” “Women,” and “All Other [religions],” that “the success of students in so-
 23 called ‘privileged’ groups [i.e. Caucasians, Christians, males] is due solely to their
 24 ‘unearned access to resources . . .’, and that Caucasian students are segregated into
 25 separate instructional sessions where they are instructed that only “white people”
 26 can be racist and that *all* white people are racist, whether they are conscious of it or
 27 not. (Complaint ¶¶ 19-23, Ex. B pp. 15, 17, 19.) These discriminatory actions and
 28 teachings cause Caucasian, Christian and/or male students to believe they are
 inherently flawed based on their race, religion or sex. FESB also has alleged that

1 racial animosity within the school toward Caucasian students has increased with
2 anti-White graffiti appearing in the school and anti-White racial slurs being directed
3 toward Caucasian teachers and students. (*Id.* ¶¶ 27, 34, 37, 41, 42, 47, 49.) This
4 constitutes “severe, pervasive and offensive harassment” and the first element is
5 properly pled.

6 Second, JCCC incorrectly argues FESB has failed to allege that SBUSD
7 acted with “deliberate indifference” to being made aware of these discriminatory
8 actions. The Complaint alleges that these problems were brought directly to the
9 SBUSD School Board’s attention at the September 11, 2018 and October 9, 2018
10 Board Meetings in connection with their consideration of the new four-year contract
11 with JCCC. (Complaint ¶¶ 28-31.) As alleged in the Complaint, SBUSD ignored
12 the concerns expressed, refused to allow parents of SBUSD students to even view
13 JCCC’s teaching materials and refused to consider any other service providers other
14 than JCCC to conduct the so-called “inclusivity training.” (*Id.* ¶¶ 30-31.)

15 Thus, FESB has sufficiently pled deliberate indifference by SBUSD and
16 JCCC in response to their actual knowledge of the discriminatory teachings and
17 actions.

18 **C. The Court Has Supplemental Jurisdiction Over Count VI For**
19 **Violation Of Public Contract Code § 20111**

20 JCCC argues that the Court does not have subject matter jurisdiction over
21 FESB’s California Public Contract Code § 20111 claim, for two reasons. First,
22 JCCC argues that no supplemental jurisdiction exists over this claim because FESB
23 has not specifically cited to 28 U.S.C. § 1367 in its Complaint. Second, JCCC
24 argues that no supplemental jurisdiction exists because this claim is not part of the
25 same case or controversy as the remaining claims. These arguments fail as well.

26 First, the existence of supplemental jurisdiction does not hinge on the
27 talismanic recitation of certain code sections, but rather on the actual facts as pled in
the Complaint. *See Andrus v. Charlestone Stone Prod. Co. Inc.*, 436 U.S. 604, 608

1 n. 6 (1978) (“Nor does it matter that the complaint does not in so many words assert
 2 § 1331(a) as a basis of jurisdiction, since the facts alleged in it are sufficient to
 3 establish such jurisdiction and the complaint appeared jurisdictionally correct when
 4 filed.”); *see also Radici v. Associated Ins. Companies*, 217 F.3d 737, 740 (9th Cir.
 5 2000) (same). The fact that the Complaint does not specifically reference 28 U.S.C.
 6 § 1367 as a basis for this Court’s jurisdiction over Count VI is of no moment.

7 Second, JCCC’s argument that Count VI does not arise under the same “case
 8 or controversy” as the remaining claims for purposes of supplemental jurisdiction is
 9 not correct. Supplemental jurisdiction is conferred by 28 U.S.C. § 1367(a), which
 10 provides “...in any civil action of which the district courts have original
 11 jurisdiction, the district courts *shall have* supplemental jurisdiction over all other
 12 claims that are so related to claims in the action within such original jurisdiction
 13 that they form part of the same case or controversy under Article III of the United
 14 States Constitution.” 28 U.S.C. § 1367(a) (emphasis added.) “A state law claim is
 15 part of the same case or controversy when it shares a ‘common nucleus of operative
 16 fact’ with the federal claims and the state and federal claims would normally be
 17 tried together.” *Bahrapour v. Lampert*, 356 F.3d 969, 978 (9th Cir. 2004). In
 18 deciding whether to exercise supplemental jurisdiction, “the ultimate inquiry for the
 19 courts [is] whether the assertion of pendent jurisdiction ‘best accommodate[s] the
 20 values of economy[,], convenience, fairness and comity.” *Executive Software N.
 21 Am., Inc. v. U.S. Dist. Court for the N. Dist. Of Cal.*, 24 F.3d 1545, 1555-56 (9th
 22 Cir. 1994).

23 FESB’s Count VI for breach of Public Contracts Code § 20111 alleges that
 24 SBUSD improperly failed to let its diversity training program for public bidding *to*
 25 *allow for contracting with a non-discriminatory provider* and, instead, executed the
 26 JCCC Contract despite being made expressly aware of the discriminatory nature
 27 and content of JCCC’s teaching and materials and the numerous conflicts of interest
 between JCCC and SBUSD. (Complaint ¶¶ 28-31, 64-72.) The facts alleged are

1 inextricably intertwined with FESB's federal discrimination claims (Counts I and
2 II) of which this Court has original jurisdiction. SBUSD's failure and refusal to let
3 the JCCC Contract for public bidding in violation of Public Contracts Code §
4 20111, despite actual knowledge of JCCC's discriminatory actions, establishes
5 SBUSD's deliberate indifference to such discrimination. This is a key factor in the
6 42 U.S.C. § 2000d (Count I) and 42 U.S.C. § 1983 (Count II) analyses.

7 The claims have the same common nucleus of facts in that all the claims
8 concern: (1) the JCCC Contract; (2) the unlawful discrimination arising from the
9 services provided pursuant to the JCCC Contract; (3) whether the JCCC Contract is
10 void as a matter of law for failure to have been submitted for public bidding and for
11 being the basis of teachings which illegally discriminate; and (4) the damages
12 arising from the services provided pursuant to the JCCC Contract.

13 FESB alleges that the contract should have been submitted for public bidding
14 to allow for contracting with a provider who, unlike JCCC, would provide non-
15 discriminatory services. (*Id.* ¶¶ 28-31, 66-72.) If for example, SBUSD were to let
16 the contract for bidding to other providers who violate the same federal statutes, and
17 contract with such a provider, then SBUSD's conduct in furtherance of § 20111
18 would bring us right back to square one in violation of the United States
19 Constitution. Issues, arguments and evidence concerning the letting of a contract
20 for the particular services in question – unconscious bias training and diversity
21 training (especially given what is alleged to have occurred to date), fall squarely
22 within the analysis and arguments to be made in support of the pending federal
23 claims. And, issues, arguments and evidence concerning the Defendants'
24 discriminatory conduct in violation of Counts I and II, arise in part, from the
25 manner in which Defendants' mishandled their obligations pursuant to § 20111,
26 with SBUSD unilaterally contracting with an organization that discriminates *per se*
27 in violation of federal and state anti-discrimination law.

1 Consequently, a common nucleus of fact exists between these claims, and
2 FESB’s Count VI for Breach of Public Contracts Code § 20111 is inextricably
3 intertwined with its federal discrimination claims (Counts I and II). *United Mine*
4 *Workers of America v. Gibbs*, 383 U.S. 715, 725 (1966) (“[I]f considered without
5 regard to their federal or state character, a plaintiff’s claims are such that he would
6 ordinarily be expected to try them all in one juridical proceeding, then, assuming
7 substantiality of the federal issues, there is power in the federal courts to hear the
8 whole”); *see also e.g. Woodrow v. Satake Family Tr.*, 2006 WL 2092630 (N.D. Cal.
9 July 27, 2006) (plaintiffs filed fair housing action against defendants for
10 discrimination and retaliation and court exercised supplemental jurisdiction over
11 defendant’s state law counterclaim for breach of lease and failure to pay rent); *Buttz*
12 *v. Mohsenin*, 2016 WL 1462135 (N.D. Cal. Apr. 14, 2016) (plaintiff filed FDCPA
13 and RFDCPA action against defendant and court exercised supplemental
14 jurisdiction over defendant’s breach of contract counterclaim).³

15 In sum, the assertion of pendent jurisdiction in this case best accommodates
16 the values of economy, convenience, fairness and comity. *Executive Software N.*
17 *Am., Inc., supra*. Each of the claims should be tried together.

18 ///

19 ///

21
22 ³ JCCC’s citation to *Tranik Enters. Inc. v. AuthenticWatches.com, Inc.*, 2016
23 WL 11002491 (C.D.Cal. Oct. 28, 2016) is inapposite. In *Tranik*, the plaintiff’s
24 (Tranik) claims centered around violations of the Lanham Act and other unfair
25 competition laws connected to watches. The defendant (Fulda) attempted to
26 counterclaim against the plaintiff for misrepresentations based on a series of
27 transactions in which the Fulda purchased watches from Tranik under the belief that
Tranik was an authorized dealer, suffering harm. *Id.* at *1-2. The *Tranik* court
found that these two claims were entirely unrelated: Tranik’s claims for unfair
competition were entirely distinct from the earlier transactions between Tranik and
Fulda, and thus denied supplemental jurisdiction. *Id.* at *3.

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V. CONCLUSION

For the foregoing reasons, FESB respectfully requests that the Court deny JCCC's Motion to Dismiss in its entirety.

Respectfully submitted,

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