Tentative Rulings for February 16, 2024
Department 6

To request oral argument, you must notify Judicial Secretary Charmaine Ligon at (760) 904-5722 and inform all other counsel no later than 4:30 p.m.

This court follows California Rules of Court, Rule 3.1308 (a) (1) for tentative rulings (see Riverside Superior Court Local Rule 3316). Tentative Rulings for each law & motion matter are posted on the Internet by 3:00 p.m. on the court day immediately before the hearing at https://www.riverside.courts.ca.gov/OnlineServices/TentativeRulings/tentative-rulings.php. If you do not have Internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

To request oral argument, no later than 4:30 p.m. on the court day before the hearing you must (1) notify the judicial secretary for Department 6 at (760) 904-5722 and (2) inform all other parties of the request and of their need to appear telephonically, as stated below. If no request for oral argument is made by 4:30 p.m., the tentative ruling **will become the final ruling** on the matter effective the date of the hearing. **UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.**

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1.

CVRI2202450	HIGAREDA VS ATLAS COPCO COMPRESSORS, LLC	MOTION TO COMPEL FURTHER RESPONSES TO DEMAND FOR PRODUCTION, SET NO. 2 BY ELISEO HIGAREDA

Tentative Ruling:

This is a personal injury lawsuit. On June 16, 2022, Plaintiff, Eliseo Higareda ("Plaintiff") filed a Complaint against Defendants, Atlas Copco Compressors, LLC and Atlas Copco

Compressors (together "Atlas"), as well as Buds Air Compressor Company ("Buds"), for negligence; negligent product liability; strict liability – design and manufacturing defect; strict liability – failure to warn; and res ipsa loquitor. In the Complaint, Plaintiff alleges he was employed by Champion Home Builders, Inc. dba Skyline Homes ("Skyline"), a manufacturer of modular homes. (Complaint at ¶ 11.) He worked at Skyline's jobsite, located at 499 W. Esplanade Avenue, San Jacinto, California (the "jobsite"). (Complaint at ¶ 11.) Skyline contracted with Defendants for the purchase and installation of products at the jobsite. (Complaint at ¶ 12.) The products provided by Defendants were defectively manufactured and/or designed. (Complaint at ¶ 13.) On August 17, 2020, a defective air compressor manufactured by Defendants exploded and caused its improperly installed receiver tank to fall on Plaintiff, injuring him. (Complaint at ¶¶ 14-15.)

On October 27, 2023, Plaintiff served requests for production of documents, set 2 ("RFPs") on Atlas. (Decl. of Howard Bruno ["Bruno Decl."] at ¶ 3, Ex. A; Decl. of Ruth Rasiah ["Rasiah Decl."] at ¶ 5.) These RFPs included requests seeking all purchase orders and all work orders related to transactions between Atlas and Buds. (Bruno Decl., Ex. A, nos. 77-78.) On November 19, 2023, Atlas served responses to the RFPs. (Bruno Decl. at ¶ 5, Ex. C; Rasiah Decl. at ¶ 6.) Plaintiff deemed the responses to RFP nos. 77 and 78 inadequate, and throughout December 2023, the parties met and conferred regarding Atlas' responses to the RFPs. (Bruno Decl. at ¶¶ 6-17; Rasiah Decl. at ¶¶ 8-15, 17.) On January 2, 2024, Atlas proposed limiting the scope of the RFPs, stating it would provide responses if the requests were limited to 10 years, as well as limited to transactions related to the types of equipment at issue in the lawsuit. (Bruno Decl., Ex. K.) Plaintiff rejected this limitation on the discovery sought, and this motion follows. (Bruno Decl. at ¶ 14, Ex. L.)

Plaintiff argues in the motion that he is entitled to further responses to the RFPs because under the broad discovery rules, he is entitled to discover an irrelevant matter as long as it might lead to admissible evidence. He argues the present case involves an industrial accident caused jointly by Atlas and Buds due to their failure to observe safety rules regarding air compression systems. Plaintiff argues that discovery thus far shows a relationship between Buds and Atlas, so Plaintiff is entitled to understand the full scope of that relationship regarding air compression equipment, including the history, changes in the relationship, key contract provisions, course of dealing, etc. He argues there is good cause for an order compelling further responses, because even after weeks of negotiation, Atlas still claims the requests are overbroad in time and scope and has proposed unacceptable limitations to discrete product lines, without explaining how the documents sought contain commercially sensitive and/or financial proprietary information. Plaintiff also seeks $7,250 in sanctions against Atlas.

In opposition, Atlas argues the motion should be denied because the requests raise privacy concerns and the documents sought are unnecessary in this lawsuit. The requests seek all purchase and work orders between Atlas and Buds, rather than being limited to the subject air tank or the products used at the Property on the day of the incident. Atlas argues that it properly raised privacy objections because the requests seek documents that include financial information that is unrelated and irrelevant to the transaction at issue in the case. Atlas states it also properly

objected that the requests were inappropriately unlimited as to time and scope, as there are no issues in the action that call into question the entire scope of the relationship between Atlas and Buds, Instead, the issue involves who was supposed to install the tank that allegedly fell on and injured Plaintiff. Atlas agreed to produce documents in response to the requests, so long as the requests were limited to 10 years and to only include the specific models of air compressors and receiver tanks involved in the lawsuit. Plaintiff refused, and instead filed this motion. Atlas argues its conduct was reasonable, and therefore, no sanctions should be imposed on it. Instead, due to Plaintiff's discovery abuses, Atlas seeks sanctions against Plaintiff and his counsel in the amount of $2,520.

In reply, Plaintiff mainly reiterates his arguments from the motion.

Analysis

Where responses to document requests have been timely served but are deemed deficient by the requesting party (e.g., the response is inadequate, incomplete, or evasive, or an objection in the response is without merit or too general), that party may file a motion to compel further responses. (C.C.P. § 2031.310.) The motion to compel further responses "shall set forth specific facts showing good cause justifying the discovery sought by the demand." (C.C.P. § 2031.310(b)(1); *Kirkland v. Superior Court (Guess? Inc.)* (2002) 95 Cal.App.4th 92, 98.) To establish "good cause," the burden is on the moving party to show both relevance to the subject matter (e.g., how the information in the documents would tend to prove or disprove some issue in the case) and specific facts justifying discovery (e.g., why such information is necessary for trial preparation or to prevent surprise at trial). (*Glenfed Develop. Corp. v. Sup. Ct. (National Union Fire Ins. Co. of Pittsburgh, Penn.)* (1997) 53 Cal.App.4th 1113, 1117.) Once good cause is established, the responding party has the burden to justify any objections made to document disclosure. (*Kirkland, supra,* 95 Cal.App.4th at 98.)

The issues in the case, as identified by the parties, relate to who was supposed to install the air compressor receiver tank that fell on Plaintiff, and who, did, in fact, install that tank. Yet the discovery requests ask for all purchase orders and work order for transactions between Atlas and Buds, purportedly to discover more information about the relationship between the Defendants. While the right to discovery is broad, Plaintiff has not established either (1) how the work orders and purchase orders between Atlas and Buds help prove or disprove any issue in the case, or (2) specific facts justifying the scope of these requests, i.e., why all of the purchase orders and work orders between Atlas and Buds are necessary for trial preparation in this case. It is unclear what, if any, information these documents could provide related to who installed (or should have installed) the receiver tank. Certainly, work order and purchase orders related to products not involved in the incident are unnecessary. Therefore, **Plaintiff has not established good cause to compel further responses to the discovery as written.**

Under the Code of Civil Procedure, courts have authority to limit discovery if the request is unduly intrusive, as it is here. (*Irvington-Moore, Inc. v. Superior Ct.* (1993) 14 Cal.App.4th 733, 743.) Atlas agreed to provide further responses and produce "10 years of purchase orders with all financial information redacted related to air tank receivers identified as LV400-165 or JB 930721, Samuel Pressure Vessel Group, MAWP-165psi, Part# CPU- L4039.50 and air compressors identified in the purchase order as GA37VSD+ P API 460V 60 and GA37P A 125 MEAF 460 60 GRAPH." (Bruno Decl., Ex. K.) This appears to be a reasonable limitation on the discovery. Accordingly, the motion is granted in part, and Atlas is ordered to provided further responses to RFP nos. 77 and 78, with the following limitations: the requests are limited as to time to 10 years, and the scope is limited to the models of air compressors and receiver tanks that are at issue in this lawsuit.

Additionally, C.C.P. § 2031.310(d) provides that "the court shall impose a monetary sanction … against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel

… unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." In the present case, Plaintiff was mostly unsuccessful on the motion, and further, the present motion was unnecessary because Atlas agree to respond to the RFPs with reasonable limitations (which Plaintiff rejected). Therefore, sanctions against Plaintiff and his counsel are appropriate. Notwithstanding, the total amount of requested sanctions – **$**2,520 – is excessive. Accordingly, sanctions are awarded in the reduced but reasonable amount of $690 (3 hours at $210/hour + $60 filing fee) against Plaintiff and his counsel.

Summary:

Grant the motion, in part. Order Atlas to provide further responses to RFP nos. 77 and 78, with the following limitations: the requests are limited as to time to 10 years, and the scope is limited to the models of air compressors and receiver tanks that are at issue in this lawsuit. Award sanctions in the amount of $690 against Plaintiff and his counsel.

2.

CVRI2300089	LANDINGHAM VS AMS GROUP LLC	MOTION TO COMPEL

Tentative Ruling:

Motion by Defendant AMS Group, LLC (1) to Compel Responses to Requests for Production, Special Interrogatories, Form Interrogatories and Admissions and (2) for Monetary Sanctions Against Plaintiff Richard Landingham was filed on 11/2/2023 and served on 11/6/2023 by regular mail giving notice of the motion and the hearing date. Any response would need to be filed and served 9 court days prior to the hearing (CCP 1005). The Court has not received any opposition to this motion. Accordingly, the motions are granted in all respects. Plaintiff is ordered to serve verified code compliant responses to the above-referenced discovery within 30 days of this order without objections. Defendant to provide the Court with orders for signature, filing and service.

3.

CVSW2306224	M. VS KOMROSKY	ANTI-SLAPP MOTION (SPECIAL MOTION TO STRIKE)
CVSW2306224	M. VS KOMROSKY	DEMURRER ON 1ST AMENDED COMPLAINT FOR OTHER COMPLAINT (OVER $25,000) OF MAE M. 1ST AMENDED COMPLAINT

Tentative Ruling:

This lawsuit challenges actions taken by the Board of Trustees (the "Board") for the Temecula Valley Unified School District (the "District") including Resolution No. 2022-23/21 enacted on December 13, 2022 (the "Resolution") and Board Policy 5020.01 enacted on August 22, 2023 (the "Policy"). Plaintiffs filed the original complaint on August 2, 2023 and the operative First Amended Complaint ("FAC") on October 13, 2023.

The Resolution bans "Critical Race Theory or other similar frameworks" in the classroom. In particular, the Resolution bans teaching of the following five elements of Critical Race Theory ("CRT"):

1. Racism is racial prejudice plus power, a concept that is often used to argue that (i) only individuals classified as "white" people can be racist because only "white"

people control society and (ii) individuals in ethnic minorities cannot be racist because they do not control society.

2. Racism is ordinary, the usual way society does business.

3. "Interest convergence" or "material determinism", according to which the incentive to move away from racist policies depends primarily on the self-interest of the oppressor class, i.e. "whites".

4. "Differential racialization", according to which the "dominant society racializes different minority groups at different times, in response to different needs such as the labor market";

5. The "voice-of-color" thesis, according to which merely "minority status … brings with it a presumed competence to speak about race and racism", a concept often used to discredit opposing arguments on the basis of the opposing person's race.

The Resolution also bans the following eight doctrines derived from CRT:

a. An individual, by virtue of his or her race or sex, is inherently racist and/or sexist, whether consciously or unconsciously.

b. Individuals are either a member of the oppressor class or the oppressed class because of race or sex.

c. An individual is inherently morally or otherwise superior to another individual because of race or sex.

d. An individual should be discriminated against or receive adverse treatment due to the individual's race or sex, or an individual should receive favorable treatment due to the individual's race or sex.

e. An individual, by virtue of his or her race or sex, bears responsibility for actions committed in the past or present by other members of the same race or sex.

f. An individual should feel discomfort, guilt, anguish or any other form of psychological distress on account of his or her race or sex.

g. Meritocracy or traits such as, but not limited to, a hard work ethic or the scientific method are racist or sexist or were created by members of a particular race to oppress members of another race.

h. The advent of slavery in the territory that is now the United States constituted the true founding of the United States, or the preservation of slavery was a material motive for independence from England.

(FAC, Ex. 1, pp. 2-3.) Plaintiffs allege the Resolution prohibits the teaching of topics required by State-mandated content standards. Although framed as a ban on CRT, the Board has allegedly used the term to censor concepts relating to race and systemic racism, sex and sex discrimination, gender identity, sexual orientation, diversity, equity and inclusion, implicit bias, culturally responsive education and social emotional learning. Plaintiffs allege teachers can be sanctioned for violating the Resolution, yet they cannot determine which topics of class instruction and discussion violate the Resolution. Plaintiffs allege the Resolution is unconstitutionally vague, has a chilling effect on teachers, impedes the free exchange of ideas in the classroom, discriminates on the basis of viewpoint, and discriminates on the basis of race, sexual orientation, gender identity and sex. (FAC, ¶¶ 2, 12, 13, 104-139.)

The Policy is a parental notification policy which requires, in part, the following:

1. Principal/designee, certificated staff, and school counselors, shall notify the parent(s)/guardian(s), in writing, within three days from the date any District employee, administrator, or certificated staff, becomes aware that a student is:

    (a) Requesting to be identified or treated, as a gender (as defined in Education Code Section 210.7) other than the student's biological sex or gender listed on the student's birth certificate or any other official records. This includes any request by the student to use a name that differs from their legal name (other than a commonly recognized diminutive of the child's legal name) or to use pronouns that do not align with the student's biological sex or gender listed on the student's birth certificate or other official records.

    (b) Accessing sex-segregated school programs and activities, including athletic teams and competitions, or using bathroom or changing facilities that do not align with the student's biological sex or gender listed on the birth certificate or other official records.

    (c) Requesting to change any information contained in the student's official or unofficial records

(FAC, Ex. 2, p. 2.) Plaintiffs allege the Policy forces District educators to "out" students who identify as transgender or gender nonconforming to their parents or guardians. (FAC, ¶¶ 2, 25.) Plaintiffs allege the Policy facially discriminates against transgender and gender nonconforming students, violates students' constitutional right to privacy, and may potentially endanger their well-being. (FAC, ¶¶ 140-150.)

Plaintiffs further allege the enactments of the Resolution and Policy are a result of concerted efforts by conservatives, including the Board majority, to impose their ideological viewpoints on students, and that the Board has wasted District resources by hiring a consultant known to deny systemic racism and by holding workshops on CRT by partisan commentators. Plaintiffs further allege the Board has censored social science and instructional materials, called for the removal from school libraries of books that express ideas with which members disagree, and fired a well-respected longstanding superintendent and wastefully spent District monies to search for her replacement. (FAC, ¶¶ 20-24.)

Plaintiff Temecula Valley Educators Association ("TVEA") is a local teachers' union and an affiliate of the California Teachers Association. Plaintiffs Amy Eytchison, Katrina Miles, Jennifer Scharf and Dawn Sibby are members of TVEA and are teachers in the District ("Teacher Plaintiffs"). Plaintiffs Mae M., Susan C., Gwen S., Carson L., David P., Violet B. and, Stella B. are students in the District ("Student Plaintiffs"). Plaintiff Rachel P. is David P.'s mother, and plaintiff Inez B. is Violet B. and Stella B.'s mother ("Parent Plaintiffs"). Defendants Joseph Komrosky, Jennifer Wiersma, Danny Gonzalez, Allison Barclay and Steven Schwartz are the five members of the Board.

The FAC contains the following causes of action:

Count I: Teacher Plaintiffs allege the Resolution violates Article I, § 7(a) of the California Constitution (void for vagueness)

Count II: Student Plaintiffs, Parent Plaintiffs and Teacher Plaintiffs allege the Resolution violates Article I, § 2(a) of the California Constitution (infringement of right to receive information)

Count III: Student Plaintiffs, Parent Plaintiffs and Teacher Plaintiffs allege the Resolution violates Article I, § 7 and Article IV, § 16(a) of the California Constitution (equal protection – infringement of the fundamental right to education)

Count IV: Plaintiffs Mae M., Susan C., Gwen S., Carson L. Violet B. Stella B. Inez B., Miles and TVEA allege the Resolution violates Article I, § 7 and Article IV, § 16(a) of the California Constitution (equal protection – intentional discrimination on the basis of race)

Count V: Plaintiff Gwen S. and TVEA allege the Resolution violates Article I, § 7 and Article IV, § 16(a) of the California Constitution (equal protection – intentional discrimination on the basis of sexual orientation, gender identity and sex)

Count VI: Individual Plaintiffs allege the Resolution violates Gov. Code § 11135 (discrimination)

Count VII: Teacher Plaintiffs and Parent Plaintiffs allege violation of CCP § 526a (unlawful expenditure of taxpayer funds)

Count VIII: Plaintiff Gwen S. and Teacher Plaintiffs allege the Policy violates Article I, § 7 of the California Constitution (equal protection – discrimination on the basis of gender identity, sexual orientation and sex)

Count IX: Plaintiff Gwen S. and Teacher Plaintiffs allege the Policy violates Article I, § 1 of the California Constitution (right to privacy)

Count X: Individual Plaintiffs allege the Policy violates California Education Code §§ 200 et. seq. (discrimination)

Anti-SLAPP Motion. Defendants now specially move to strike the FAC pursuant to CCP § 425.16 ("Anti-SLAPP"), arguing that Plaintiffs' action seeks to restrain and punish the Board's exercise of its constitutional right of freedom of speech. Defendants argue that the Board's collective enactment of the Resolution and the Policy are speech-related protected activity, and that the individual Board members' votes and statements made in the course of their deliberations at the school board meeting where the votes were taken also qualify as protected activity. Defendants further argue that Plaintiffs cannot demonstrate a probability of prevailing on any of its causes of action.

Plaintiffs oppose, arguing that the Anti-SLAPP statute does not apply because they satisfy the conditions of the public interest exemption under CCP § 425.17(b). Plaintiffs further argue that the action arises out of the Board's actions as a governmental body in enacting the Resolution and Policy, not the Board's or its members' speech. Plaintiffs contend they have shown probability of prevailing in this action and that they are entitled to a mandatory award of attorney fees and costs.

In the Reply, Defendants argue that the public interest exception under subdivision (b) of CCP § 425.17 is inapplicable pursuant to subdivision (d)(2) for "political work," and Plaintiffs are not entitled to attorney fees and costs because this motion is not frivolous. Defendants otherwise reiterate their moving arguments.

Demurrer. Defendants demur to each cause of action in the FAC under CCP § 430.10(e) for failure to state sufficient facts. Defendants argue that all causes of action fail because Plaintiffs only allege speculative harm, not a cognizable injury, such that they lack standing to sue. Defendants further argue that the Resolution is not vague and is reasonably related to legitimate pedagogical concerns, there are insufficient facts showing an intent to discriminate (based on race, gender or viewpoint) or facts showing wasteful expenditure of public funds, and plaintiffs have no protected privacy rights.

Plaintiffs oppose, arguing that all of the plaintiffs have standing and they allege sufficient facts to support each cause of action. In particular, Plaintiffs argue the Resolution is vague, restricts the

teaching of content mandated by California law, facially discriminates based on viewpoint, and disproportionately impacts minority, female and LGBTQ students and teachers. Plaintiffs further argue the Policy facially discriminates against transgender and violates students' protected privacy interests in their gender identity, and that the taxpayer action is properly alleged.

Defendants reiterate their arguments in the Reply.

Motion for Preliminary Injunction. Plaintiffs argue that they will prevail on the merits of their constitutional challenges to the Resolution under Counts I (void-for-vagueness), Count II (right to receive information) and Count III (fundamental right to education) and to the Policy under Count VIII (gender discrimination), and that Plaintiffs will suffer irreparable harm in the absence of an injunction. Plaintiffs' evidence includes various District policies, State-mandated content standards, meeting minutes and transcripts in connection with the enactments of the Resolution and Policy, declarations of the Plaintiffs, and declarations of multiple expert witnesses. In support of the motion, the Attorney General of California and the ACLU Foundation of Southern California each submitted an amicus curiae brief.

Defendants oppose the motion, arguing that Plaintiffs will not prevail because they lack standing to sue and cannot prove their claims because the Resolution is not vague, does not contravene the law, and has a legitimate pedagogical purpose, and the Policy does not discriminate against transgender and gender nonconforming students. Defendants argue the balance of harms weighs against injunctive relief. In support of the opposition, Defendants submit the declaration of defendant Joseph Komrosky. Chino Valley Unified School District submitted an amicus curiae brief in support of the opposition.

In the Reply, Plaintiffs argue they have standing to sue and otherwise reiterate their moving arguments.

Analysis:

I. Anti-SLAPP Motion

As a general rule, when a cause of action arises out of the furtherance of a defendant's right of petition or free speech in connection with a public issue, it is subject to a special motion to strike. (CCP § 425.16(b)(1).) Courts use a two-step evaluation to determine whether an action is a SLAPP suit subject to a special motion to strike. (*Navellier v. Sletten*, (2009) 29 Cal.4th 82, 88-89.) The moving party bears the initial burden of showing that the action falls within the class of suits subject to the special motion to strike. (*Wilcox v. Superior Court* (1994) 17 Cal.App.4th 809, 819.) "In the anti-SLAPP context, the critical point is whether the plaintiff's cause of action itself was based on an act in furtherance of the defendant's right of petition or free speech." (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78.) Once the defendant makes such a prima facie showing, the burden shifts to the plaintiff to establish a "probability" that it will prevail on whatever claims are asserted against the moving defendant. (CCP § 425.16(b).) The plaintiff must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment. (*Navellier*, *supra*, 29 Cal.4th at 89, 93.)

A. Arising from Protected Activity

The defendant has the burden of showing the plaintiff's lawsuit arises from protected activity. (CCP §425.16(e); *Equilon Enterprises v. Consumer Cause* (2002) 29 Cal.4th 53, 67.) A defendant may meet this burden by showing that the act which forms the basis for the plaintiff's suit was "(1) any written or oral statement or writing made before a legislative, executive or judicial proceeding, or any other official proceeding authorized by law; (2) any written or oral statement or writing made connection with an issue under consideration in such a proceedings or any other official proceeding authorized by law; (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; or (4) any other

conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with an issue of public interest." (CCP §425.16(e)(1)-(4); *Century 21 Chamberlain & Associates v. Haberman* (2009) 173 Cal.App.4th 1, 7.) "[I]n determining whether a cause of action arises from conduct protected by the anti-SLAPP law, the focus is on the wrongful, injurious acts or omissions identified in the complaint, and whether those acts or omissions come within the statute's description of protected conduct*."* (*Old Republic Const. Program Group v. Boccardo Law Firm, Inc.* (2014) 230 Cal.App.4th 859, 862.)

1. Individual Board Members' Speech

Defendants contend that the votes and comments of the individual board members prior to the enactment of the Resolution and Policy qualify as statements made before a legislative proceeding (subdivision (e)(1)) and/or statements made in connection with an issue under consideration by a legislative body (subdivision (e)(2)). (Motion, p. 6.)

If a claim refers to statements made in an official proceeding, the claim can be stricken under CCP § 425.16 only if the *speech itself* is the wrong complained of. (*Park v. Board of Trustees of Calif. State Univ.* (2017) 2 Cal.5th 1057, 1068-1072.) "If the core injury-producing conduct by the defendant that allegedly gave rise to the plaintiff's claim is properly described with only collateral or incidental allusions to protected activity, then the claim does not arise out of protected speech of petitioning activity." (*Young v. Tri-City Healthcare Dist.* (2012) 210 Cal.App.4th 35, 55.)

Here, Plaintiffs seek an Order declaring the Resolution and Policy are unconstitutional and unlawful, and enjoining the Board from implementing or enforcing them. (FAC, ¶ 5, ¶¶ 104-150, prayer for relief at pp. 64-65.) All of Plaintiffs' claims arise out of the Board's enactments of the Resolution and Policy, not statements of any of the individual board members. (FAC, ¶¶ 2-5.) Though the FAC includes statements and votes made by Board members in support of the Resolution and Policy and which support Plaintiffs' allegations of discriminatory animus (FAC, ¶¶ 11, 138-139, 142-144, 148), these allegations are incidental to the core injury-producing conduct – i.e., the enactments of the Resolution and Policy, and are "just evidence of liability or a step leading to some different act for which liability is asserted." (*Park, supra,* 2 Cal.5th at 1060.)

To the extent Defendants argue that the intentional discrimination claims (Counts IV, V, VI, VIII and X) rely, at least in part, on protected activity (e.g., statements and votes by Board members) such that those portions of the FAC must be stricken, the motion still fails. A motion to strike may be used to attack parts of a count as pleaded, e.g., when a complaint includes "mixed causes of action" that combine allegations of activity protected by the statute with allegations of unprotected activity. (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 383, 393.) In such instances, the moving party has "the burden of identifying the allegations susceptible to a special motion to strike. If a defendant wants the trial court to take a surgical approach, whether in the alternative or not, the defendant must propose where to make the incisions." (*Park v. Nazari* (2023) 93 Cal.App.5th 1099, 1109.) Here, Defendants' motion is directed at the entire complaint with no request in the alternative for narrower relief. Defendants failed to provide sufficient notice identifying what specific allegations in the FAC should be stricken. Thus, the Court need not contemplate whether any specific allegations must be stricken.

2. Board Enactments

Defendants next argue that the Board's collective enactments of the Resolution and Policy qualify for protection as a "speech-related" measure pursuant to subdivisions (e)(3) and (e)(4) of CCP § 425.16 because the Resolution "regulates speech regarding CRT concepts in TVUSD classrooms" and the Policy "regulates speech between TVUSD and parents regarding students' gender identities." (Motion, p. 5.) Defendants fail to cite to any authority that governmental actions regulating the content of speech by others constitutes protected activity within the meaning of the Anti-SLAPP statute.

The cases relied upon by Defendants do not affirmatively and conclusively support their position. In *San Ramon Valley Fire Protection District v. Contra Costa County Employees' Retirement Association* (2004) 125 Cal.App.4th 343 ("*San Ramon Valley*"), the plaintiff challenged a decision by the county board to assess $2.3 million in additional employer contributions to fund retirement benefits. The court determined the board's decision was not an act in furtherance of its right to petition or free speech within the meaning of Anti-SLAPP statute. The court noted that the board was not sued for "a government action which is speech-related," e.g., for example, an action by the Board "to authorize participation in a campaign to amend state pension laws, or to become actively involved in a voter initiative seeking such changes." (*Id.* at 357.) While this might suggest that a challenge to such speech-related enactments may potentially and hypothetically come within the protections of the anti-SLAPP statute, it was a moot point because the court determined the board's decision was *not* speech-related. The court's use of a hypothetical situation is mere dicta.

In *Hastings College Conservation Committee v. Faigman* (2023) 92 Cal.App.5th 323, the court also determined that the plaintiffs' claims did not arise from protected activity. The court noted that it is "an open question whether a challenge based on a speech-related enactment . . . may give rise to an anti-SLAPP motion," but determined it "need not decide that question here." (*Id.* at 333.)

Thus, neither *San Ramon Valley* nor *Hastings* even considered, much less hold, that "speech-related" enactments regulating the content of speech *of others* are protected activity.

3. Public Interest Exception

In any case, Plaintiffs persuasively argue that the public interest exemption under CCP § 425.17(b) applies. CCP § 425.17(b) provides that an action brought solely in the public interest or on behalf of the general public are exempt from § 425.16 provided that all of the following conditions are met: 1) plaintiff does not seek any relief greater than or different from the relief sought for the general public or a class of which plaintiff is a member (a claim for attorney fees does not constitute greater or different relief); (2) the action, if successful, would enforce an important right affecting the public interest, and would confer a significant benefit on the general public or a large class of persons; and (3) private enforcement is necessary and places a disproportionate financial burden on plaintiff in relation to his or her stake in the matter. Whether the public interest exemption applies is a threshold issue based on the allegations of the complaint and the scope of relief sought. (*People ex rel. Strathman v. Acacia Research Corp.* (2012) 210 Cal.App.4th 487, 498; *Tourgeman v. Nelson & Kennard* (2014) 222 Cal.App.4th 1447, 1459-1460.)

In this case, these three conditions are met. Plaintiffs do not seek relief greater than or different from the relief sought for the public, i.e., Plaintiffs seek declaratory relief that the Resolution and Policy are unconstitutional and unlawful, and an injunction prohibiting the Board from implementing the Resolution and Policy. (FAC, prayer for relief at pp.64-65.) The action, if successful, would fall within public policy goals, i.e., Plaintiffs seek to enforce constitutional rights to information, education, equal protection, privacy, etc. and to enjoin Defendants from continuing to violate constitutional and statutory provisions. Furthermore, private enforcement is necessary because no public entity has sought to enforce the constitutional rights at issue in this case and Plaintiffs do not seek any financial benefit from the lawsuit. (*See e.g.*, *Foundation for Taxpayer & Consumer Rights* (2005) 132 Cal.App.4th 1375, 1390 (action fell within public interest exemption under CCP § 425.17(b) where plaintiffs sought a declaration that a statute is invalid and unconstitutional, and an injunction to prevent the state from implementing or enforcing the statute); *Tourgeman, supra,* 222 Cal.App.4th at 1461 (conditions under CCP § 425.17(b) were satisfied where borrower brought a class and representative action against debt collectors

alleging violations of the Fair Debt Collection Practices Act). **Thus, this action is exempt from the Anti-SLAPP statute.**

Defendants argue that subdivision (b) of § 425.17 does not apply here pursuant to subdivision (d)(2) because the Board's enactments of the Resolution and Policy are "political" in nature. This argument lacks merit. Section 425.17(d)(2) provides that the public interest exemption of section 425.17(b) does not apply to "[a]ny action against any person or entity based upon the creation, dissemination, exhibition, advertisement, or other similar promotion of any dramatic, literary, musical, political, or artistic work," including movies, TV programs and newspaper or magazine articles. (CCP § 425.17(d)(2)(emphasis added); *Exline v. Gillmore* (2021) 67 Cal.App.5th 129, 138; *Sandlin v. McLaughlin* (2020) 50 Cal.App.5th 805, 824.) For example, in *Major v. Silna* (2005) 134 Cal.4th 1485, the court held that the defendant's political literature, in the form of letters and advertisements he distributed, constituted political work within the meaning of the statute, explaining that "political literature on candidate qualifications exemplifies '[t]he right to speak on political matters,' which is the 'quintessential subject' of constitutional free speech rights." (*Id.* at 1495-1496; *see also Sandlin v. McLaughlin*, *supra*, 40 Cal.App.5th 824 ("the creation and submission of candidate statements, which are by definition political writings, plainly fall within this exception.")

While the enactments of the Resolution and Policy might be "political" in nature, they are not political literature or speech subject to the exception. Plaintiffs' action does not arise out of the creation, dissemination or promotion of political work, as was the case in *Major* or *Sandlin*. Arguably, allegations regarding Board members' comments and statements made during their campaign and in support of the enactments might fall within subdivision (d)(2). However, as discussed above, these allegations are incidental to the core injury-producing conduct – i.e., the enactments of the Resolution and Policy. Defendants fail to cite to any competent authority that a legislative enactment itself constitutes protected activity within the meaning of the Anti-SLAPP statute. Indeed, if that were the case, every challenge to legislative enactment would be subject to the Anti-SLAPP motion.

Defendants have failed to meet their burden that the action arises from protected activity within the meaning of the Anti-SLAPP statute. **DENY the motion.**

B. Probability of Success

Because Defendants failed to meet their initial burden, the burden never shifts to Plaintiff to show probability of prevailing on the merits. Such arguments are thus, moot.

C. Attorney Fees

If the court finds a special motion to strike is "frivolous or is solely intended to cause unnecessary delay," it is required to award costs and reasonable attorney fees "pursuant to Section 128.5" to a "plaintiff prevailing on the motion." (CCP § 425.16(c); *Olive Properties v. Coolwaters Enterprises, Inc.* (2015) 241 Cal.App.4th 1169, 1177.) The reference to CCP § 128.5 means a court "must use the procedures and apply the substantive standards of CCP § 128.5 in deciding whether to award fees under the anti-SLAPP statute." (*Decker v. U.D. Registry Inc.* (2003) 105 Cal.App.4th 1382, 1392, superseded by statute on another ground; *Moore v. Shaw* (2004) 115 Cal.App.4th 182, 199 and fn 9.)

Under CCP § 128.5, a request for sanctions must be made by noticed motion, and separately from other motions or requests. (CCP § 128.5(c).) The moving party must also comply with a "safe harbor" waiting period, in which the motion cannot be filed until 21 days after it is served, to allow the opposing party to withdraw or correct the improper pleading within the 21-day period. (CCP § 128.5(f)(1).) Here, although Plaintiffs contend they complied with the safe harbor provision, Plaintiffs requested sanctions in the opposition, not by a separately filed motion.

Furthermore, Defendants' motion is not frivolous. CCP § 128.5(b) defines "frivolous" to mean "totally and completely without merit or for the sole purpose of harassing an opposing party." The determination that an anti-SLAPP motion is "totally and completely without merit" requires a finding that "any reasonable attorney would agree such motion is totally devoid of merit." (*Moore, supra,* 115 Cal.App.4th at 199.) Here, while Plaintiffs have shown the public exemption applies under CCP § 425.17(b), Defendants' arguments regarding protected activity under the Anti-SLAPP statute, including under § 425.18(d), are not totally devoid of merit as a reasonable attorney could have made those arguments. **DENY Plaintiff's request.**

II. Demurrer

A general demurrer lies where the pleading does not state facts sufficient to constitute a cause of action. (CCP § 430.10(e).) In evaluating a demurrer, the court gives the pleading a reasonable interpretation by reading it as a whole and all of its parts in their context. (*Moore v. Regents of University of California* (1990) 51 Cal. 3d 120, 125.) The court assumes the truth of all material facts which have been properly pleaded, of facts which may be inferred from those expressly pleaded, and of any material facts of which judicial notice has been requested and may be taken. (*Crowley v. Katleman* (1994) 8 Cal. 4th 666, 672.) However, a demurrer does not admit contentions, deductions or conclusions of fact or law. (*Daar v. Yellow Cab Company* (1967) 67 Cal. 2d 695, 713.) Facts appearing in exhibits attached to the complaint will also be accepted as true and, if contrary allegations appear in the complaint, will be given precedence. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal. App. 3d 593, 606.) If the complaint fails to state a cause of action, the court must grant the plaintiff leave to amend if there is a reasonable possibility that the defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal. 3d 311, 318.)

A. Meet and Confer Requirement

Defendants have satisfied their obligation to meet and confer in accordance with CCP § 430.41(a) and have filed an appropriate declaration in accordance with CCP § 430.41(a)(3).

B. Request for Judicial Notice

Defendants request judicial notice of federal regulations promulgated by the U.S. Department of Education. Judicial notice of this document is proper under Evid. Code § 452(b). GRANT.

C. Count I (void for vagueness – Cal. Const. art. I, § 7(a))

Teacher Plaintiffs allege the Resolution violates Article I, § 7(a) of the California Constitution and is void for vagueness. A person may not be deprived of life, liberty or property without due process of law. (Cal. Cont., art. I, § 7(a).) The void-for-vagueness doctrine, which derives from the due process concept of fair warning, bars the government from "enforcing a provision that 'forbids or requires the doing of an act that is so vague' that people of 'common intelligence must necessarily guess at its meaning and differ as to its application.' [Citations.]" (*People v. Hall* (2017) 2 Cal.5th 494, 500.) "A law is unconstitutionally vague if it fails to meet two basic requirements: (1) The regulations must be sufficiently definite to provide fair notice of the conduct proscribed; and (2) the regulations must provide sufficiently definite standards of application to prevent arbitrary and discriminatory enforcement." (*Snatchko v. Westfield LLC* (2010) 187 Cal.App.4th 469, 495.) Only a reasonable degree of certainty is required, however. [Citations.] If a reasonable and practical construction can be given, the law will not be held void for uncertainty." (*Ibid.*)

The Resolution states that the District values diversity, encourages culturally relevant and inclusive teaching practices, and condemns racism. The Resolution states Critical Race Theory ("CRT") is based on false assumptions, is fatally flawed, is a divisive ideology, assigns generational and racial guilt, violates equal protection laws and views social problems as racial

problems. The Resolution bans "Critical Race Theory or other similar frameworks" in the classroom and bans 13 concepts derived from CRT. (FAC, Ex. 1.)

Plaintiffs allege that the Resolution is vague because it fails to provide Teacher Plaintiff with fair notice of what it prohibits, i.e., the Resolution does not define the "other similar frameworks" it prohibits, leaving teachers to guess at what State and District mandated methods of inquiry may be prohibited, e.g., whether such frameworks include culturally responsive instruction, a widely accepted pedagogical approach mandated under California standards, or whether it bans the state-mandated one semester ethnic studies course centered on the historic struggles of communities of color, or whether certain topics of discussion of race in history, social science and language arts classes are banned. (FAC, ¶¶ 12-14, 111-118.) Plaintiffs further allege that Resolution provides no standards to guide its enforcement, leaving teachers "to guess at which topics they can teach and which questions they can answer." (FAC, ¶¶ 12, 156.) Plaintiffs allege the Resolution "imposes severe, even career-ending penalties on teachers" who run afoul of its prohibitions, even unknowingly. (FAC, ¶ 13.) These facts are sufficient to allege a claim for violation of Cal. Cont., art. I, § 7(a).

Defendants' arguments to the contrary are unpersuasive. They argue that the Teacher Plaintiffs allege facts that show they are, in fact, aware of what topics can and cannot be taught, having self-censored themselves in the classroom. (Demurrer, p. 5.) "Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked." (*Ketchens v. Reiner* (1987) 194 Cal.App.3d 470, 477 quoting *Grayned v. City of Rockford* (1972) 408 U.S. 104, 108-109.) The Teacher Plaintiffs allege that the ambiguity in the Resolution and uncertainties in enforcement have led them to censor state-mandated topics in their classroom out of fear of being disciplined. (FAC, ¶¶ 33-56.)

The Demurrer is **OVERRULE** as to this Cause of Action.

D. Count II (right to receive information - Cal. Const. art. I, § 2(a))

Student Plaintiffs, Parent Plaintiffs and Teacher Plaintiffs allege the Resolution violates Article I, § 2(a) of the California Constitution, which protects the freedom of speech. (Cal. Const., art. I, § 2(a).) The right to free speech under the California Constitution is more "definitive and inclusive" than that afforded by the First Amendment. (*Robins v. Pruneyard Shopping Center* (1979) 23 Cal.3d 899, 908; *Lopez v. Tulare Joint Union High Sch. Dist.* (1995) 34 Cal.App.4th 1302, 1327.) A school board's decision to restrict classroom materials as part of a curriculum implicates the balance between the students' First Amendment right to receive information and ideas, and the school board's authority in the management of school affairs. (*McCarthy v. Fletcher* (1989) 207 Cal.App.3d 130, 139-140; *Hazelwood Sch. Dist. V. Khulmeier* (1988) 484 U.S. 260, 266.) To survive a free speech challenge, a school board must show that its curricular decision "is reasonably related to legitimate educational concerns." (*McCarthy, supra,* 207 Cal.App.3d at 146.) Such a decision is not unfettered and "cannot be motivated by an intent to prescribe what shall be orthodox in policies, nationalism, religion, or other matters of opinion. [Citations.]" (*Ibid.*) For example, a "school board does not have the power to advance or inhibit a particular religious orthodoxy as a 'community value' no matter how prevalent or unpopular the orthodox view might be in the community." (*Id.* at 144.) Courts look beyond a policy's text to the "true motives" of school board members to answer a First Amendment challenge. (*Id.* at 147.)

In this case, Plaintiffs allege that the Resolution violates the free speech clause because it "restricts students' access to ideas and viewpoints on a partisan, sectarian, and discriminatory basis." (FAC, ¶ 160.) Plaintiffs allege the three newly elected Board members, whose campaign was backed by Christian conservatives, seek to impose their religious and ideological viewpoints on students. (FAC, ¶¶ 11, 14-16.) Plaintiffs allege how the Defendants passed the Resolution without considering its harm to students, in contravention of its own policies, and over widespread protests among educators, students and community members. (FAC, ¶¶ 17-19, 132-137.)

Plaintiffs further allege that the Resolution makes it impossible for teachers to provide instruction consistent with State academic standards. (FAC, ¶¶ 111-118.) These facts are sufficient to state a claim for violation of Cal. Const., art. I, § 2(a).)

Defendants argue that the text of the Resolution shows a legitimate pedagogical purpose, including that it "encourages culturally relevant and inclusive teaching practices," notes that "diversity" is to be honored and valued, and prohibits doctrines that teach moral superiority because of one's race or sex. (Demurrer, p. 6.) As discussed above, courts look beyond a policy's text to determine the "true motives" of school board members to answer a First Amendment challenge. (*McCarthy, supra,* 207 Cal.App.3d at 147.) Plaintiffs sufficiently allege that the Board's true purpose behind the Resolution is to impose its ideological viewpoints on students.

Defendants next argue there are insufficient facts to confer standing (Defendants argues lack of standing as to Counts II, III, IV, V, VI, VIII, and IX). "[S]tanding concerns a specific party's interest in the outcome of a lawsuit." (*Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241, 1247.) "To have standing, a party must be beneficially interested in the controversy; that is, he or she must have 'some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large.'" (*Holmes v. California Nat. Guard* (2001) 90 Cal.App.4th 297, 315.) "This interest must be concrete and actual, and must not be conjectural or hypothetical." (*Iglesia Evangelica Latina, Inc. v. S. Pac. Latin Am. Dist. Of the Assemblies of God* (2009) 173 Cal.App.4th 420, 445; *Associated Builders and Contractor, Inc. v. San Francisco Airports. Com.* (1999) 21 Cal.4th 352, 362.) The Student Plaintiffs have a concrete and actual interest in the controversy because they have a constitutional right to receive information and ideas, as discussed above.

Teacher Plaintiffs and Parent Plaintiffs assert third party standing. "As a general rule, a third party does not have standing to bring a claim asserting a violation of someone else's rights." (*People ex. rel. Becerra v. Superior Court* (2018) 29 Cal.App.5th 486, 499.) However, an exception to this general rule applies when "(1) the litigant suffers a distinct and palpable injury in fact thus giving him or her a concrete interest in the outcome of the dispute; (2) the litigant has a close relationship to the third party such that the two share a common interest; and (3) there is some hindrance to the third party's ability to protect his or her own interests." (*Id.* at 499-500; *see also Lewis v. Superior Court* (2017) 29 Cal.App.5th 57 (third-party standing is established where the litigant is "inextricably bound up with the activity the litigant wishes to pursue and when some "genuine obstacle" prevents the absent party from asserting his or her own interest).) There are sufficient facts showing Teacher Plaintiffs have a concrete interest in the outcome of this litigation because they are directly impacted by the Resolution's proscriptions on teaching, they share a common interest with their students in seeking to void the Resolution, and the students are unlikely to bring a claim if they are unaware of the Resolution's impact on their constitutional right to receive information. (FAC, ¶¶ 111-114, 156.)

Parent Plaintiffs (Rachel P. and Inez B.) do not have a concrete and actual interest in the controversy, and their own children are actually named Student Plaintiffs in this action (David P., Violet B. and Stella B.) It is unclear whether they bring their claims on their own behalf, or solely as guardian ad litem for their children. (Compare Caption of FAC with FAC at ¶¶ 88-100.) To the extent they assert their own claims, the demurrer is sustained.

OVERRULE as to Student Plaintiffs and Teacher Plaintiffs; **SUSTAIN** with leave to amend within 30 days as to Parent Plaintiffs to the extent they assert the claim on their own behalf.

E. Count III (right to education - Cal. Const. art. I, § 7, § 16(a))

Student Plaintiffs, Parent Plaintiffs and Teacher Plaintiffs allege the Resolution violates Article I, § 7 and Article IV, § 16(a) of the California Constitution because it infringes on their fundamental right to education. There is a fundamental right of equal access to public education, warranting

strict scrutiny of governmental action that is alleged to infringe on that right. (*Collins v. Thurmond* (2019) 41 Cal.App.5th 879, 896; *O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1465.) Strict scrutiny applies when the "disfavored class is suspect or the disparate treatment has a real and appreciable impact on a fundamental right or interest." (*Butt v. State of California* (1992) 4 Cal.4th 668, 685-686.) "A finding of constitutional disparity depends on the individual facts. Unless the actual quality of the district's program, viewed as a whole, falls fundamentally below prevailing statewide standards, no constitutional violation occurs." (*Id.* at 686-687.)

Here, Plaintiffs allege that "[b]y restricting the teaching and learning of content and disciplinary skills mandated under California's academic standards, the Board has denied, and continues to deny, Temecula students 'an education basically equivalent' to what students elsewhere in the State are receiving." (FAC, ¶ 165.) Specifically, they assert that the Resolution's vague and sweeping prohibitions are preventing Temecula educators from introducing, discussion and answering student questions about concepts set out in California's academic standards. (FAC, ¶¶ 13, 28, 38, 50-53, 107, 114, 117.) These allegations are sufficient to state a claim under Cal. Const. art. I, § 7 and § 16(a).

Defendants argue that there are insufficient facts showing the class of students share common characteristics other than the fact that they are allegedly harmed by the challenged act or law. This argument is unpersuasive. "In equal protection analysis, the threshold question is whether the legislation under attack somehow discriminates against an identifiable class of persons." (*Vergara v. State of California* (2016) 246 Cal.App.4th 619, 746.) To claim an equal protection violation, "group members must have some pertinent common characteristic other than the fact that they are assertedly harmed by a statute." (*Id.* at 644-645.) In *Vergara*, the plaintiffs alleged that a group of students were disadvantaged because they were assigned to grossly ineffective teachers. The court found that this group "is not an identifiable class of person sufficient to maintain an equal protection challenge" because whether students are assigned to grossly ineffective teachers is the result of random assignment, not a defining characteristic. (*Id.* at 648.) This case is distinguishable from *Vergara*. Where, as here, the complaint alleges discrimination of a class of students in a school district as compared to students outside the district, there is a sufficient identifiable class for purposes of equal protection analysis. (*Id.* at 647 (citing *Butt, supra,* 4 Cal.4th at 687.)

With regard to standing, there are sufficient facts to confer standing on Student Plaintiffs, who have a constitutional right of equal access to public education. For the same reasons set forth above under Count II, there are sufficient facts to confer third-party standing on Teacher Plaintiffs but not Parent Plaintiffs to the extent they assert this claim on their own behalf.

OVERRULE as to Student Plaintiffs and Teacher Plaintiffs; **SUSTAIN** with leave to amend within 30 days as to Parent Plaintiffs to the extent they assert the claim on their own behalf.

F. Counts IV and V (race, sex discrimination - Cal. Const. art. I, § 7, § 16(a))

Plaintiffs Mae M., Susan C., Gwen S., Carson L. Violet B. Stella B. Inez B., Miles and TVEA allege the Resolution violates the equal protection clause in Article I, § 7 and Article IV, § 16(a) of the California Constitution because it discriminates on the basis of race. Gwen S. and TVEA allege the Resolution also violates the equal protection clause because it discriminates on the basis of sexual orientation, gender identity and sex.

Proof of discriminatory intent or purpose is required to show a violation of the Equal Protection Clause. (*Village of Arlington Heights v. Metro. Hous. Dev. Corp.* (1977) 429 U.S. 252, 265.). California "relies on principles elucidated under the Fourteenth Amendment when considering its own Constitution's equal protection rights." (*Collins v. Thurmond* (2019) 41 Cal.App.5th 879, 892-893.)

"A racial classification, regardless of motivation, is presumptively invalid and can be upheld only upon an extraordinary justification. [Citation.] This rule applies as well to a classification that is ostensibly neutral but is an obvious pretext for racial discrimination." (*Personnel Adm'r of Massachusetts v. Feeney* (1979) 442 U.S. 256, 272.) "Classifications based upon gender, not unlike those based on race, have traditionally been the touchstone for pervasive and often subtle discrimination." (*Ibid.*) Factors in determining whether invidious discriminatory purpose was a motivating factor in a challenged action include evidence of disparate impact, historical background and sequence of events leading up to the decision, departures from the normal procedural sequence, and legislative or administrative history." (*Village of Arlington Heights, supra,* 429 U.S. at 266-268.)

Defendants argue that Plaintiffs failed to allege sufficient facts to establish intent to discriminate, and the Resolution does not explicitly discriminate between separate or distinct classifications of people because it applies to all students and the text of the Resolution belies any intent to discriminate including that the District "condemns racism."

In response, Plaintiffs point to allegations that the Resolution has a disproportionate impact on minority, female and LGBTQ students and teachers because the Resolution's vague and overbroad prohibitions suppress classroom discussion on topics such as systemic racism and discrimination and by censoring curricular material that reflects their identities, experiences and histories. (FAC, ¶¶ 22, 35, 36, 41-43, 47, 58, 66, 77, 78, 84-86, 91, 93-95, 93, 98-100, 122-125.) Plaintiffs allege the Resolution follows a history of educational segregation in Temecula and the Inland Empire, and numerous partisan and discriminatory legislation that began in 2020 as a backlash to widespread protests for racial justice. (FAC, ¶ 129, 131.) Plaintiffs allege prior to their election, three Board members made disparaging remarks about LGBTQ rights and transgenderism, and that Board has used CRT to censor concepts relating to race and systemic racism, sex and sex discrimination, gender identity, sexual orientation, diversity, equity and inclusion, implicit bias, culturally responsive education and social emotional learning. (FAC, ¶¶ 12, 15.) Plaintiffs further allege that the passage of Resolution was the product of a series of procedural and substantive irregularities. For example, Defendants violated their own bylaws and policies by failing to invite or review input from District administrators, teachers or staff, or consider the Resolution's impact on student outcomes. (FAC, ¶¶ 132-137.) Plaintiffs allege Defendants hired a consultant, who has made multiple statements denying the existence of systemic racism and employing pernicious racial stereotypes, to train staff on CRT. (FAC, ¶¶ 20, 21.)

Some of the allegations regarding disparate impact are speculative, i.e., the plaintiffs have "worries" or "fears" of the Resolution's impact in the classroom, the alleged "climate of hostility" appears a result of policy disagreements over CRT as opposed to discriminatory animus, and the procedural irregularities seem to be the result of the Board avoiding controversy.

However, Plaintiffs also allege that "the Resolution inflicts disproportionate harm on minority, female and LGBTQ students and teachers," that "[r]esearch overwhelmingly supports the academic and personal benefits to students of color, female students, and LGBTQ students from curriculum that reflects their identities, experiences, and histories, and that "research has found inclusive curricula essential to combatting harassment, discrimination, and bullying on the basis of race, gender and sexual orientation." (FAC, ¶¶ 122, 123, 125) While Defendants dispute that disparate impact has occurred, the facts as alleged must be accepted as true for the purposes of demurrer. At the pleading phase, the question is only whether the allegations constitute a cognizable cause of action, not whether the allegations will be proved or defeated by a defense to that claim. **Plaintiff alleges sufficient facts to state a claim, at least at the pleading stage.**

With regard to standing, there are sufficient facts to establish standing as to plaintiffs Mae M., Susan C., Gwen S. Carson L., Violet B.., who allege they are members of a protected class and students in the District (i.e., black, Hispanic, Asian, non-binary/queer). (FAC, ¶¶ 57, 64, 71, 83,

92, 97.) There are also sufficient facts to establish standing as to plaintiff Miles who is black and a teacher in the District. (FAC, ¶ 40.) These plaintiffs have an actual and concrete interest in the outcome of this claim.

Plaintiff TVEA properly assert associational standing. Associational standing exists when (a) the association's members would otherwise have standing to sue in their own right; (b) the interests the association seek to protect are germane to the organization's purpose and (c) neither claim asserted nor the relief requested requires the participation of individual members in the lawsuit. (*Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1004.) Here, TVEA alleges that it is a local teachers' union and affiliate of the California Teachers Association, and represents/advocates for teachers within the District. The interests TVEA seeks to protect are germane to its purpose in supporting teachers' jobs, i.e., TVEA alleges that "the Resolution has made it impossible for TVEA educators at every grade level to meet their professional obligations to their students and teach the concepts mandated under State law and District policy." (FAC, ¶¶ 26-32.) In addition, neither the claim asserted nor the relief requested requires the participation of TVEA members. The facts are sufficient to confer associational standing.

OVERRULE.

G. Count VI (discrimination - Gov. Code § 11135)

Student Plaintiffs, Parent Plaintiffs and Teacher Plaintiffs allege the Resolution and Policy violate Gov. Code § 11135, which prohibits discrimination "on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification . . . or sexual orientation" in any program or activity" that is funded or receives financial assistance by the State.

Defendants are correct that this claim is barred under the holding in *Collins v. Thurmond* (2019) 41 Cal.App.5th 879. In *Collins*, the plaintiffs brought multiple constitutional and statutory equal protection claims against local- and state-level defendants alleging that the high school's disciplinary program was biased against minority students. The court held that the plaintiffs could not maintain a claim under Gov. Code § 11135 because "educational equity claims" are excluded from the scope of § 11135. The court analyzed the statutory framework of Gov. Code § 11135 et. seq. and determined that "it is apparent that the Legislature intended to remove such claims from the scope of Government Code section 11135" particularly where "multiple constitutional and statutory provisions exist to remedy educational equity claims," such as the equal protection clause and Ed. Code § 200. (*Collins, supra,* 41 Cal.App.5th at 905.) Like in *Collins*, Plaintiffs' § 11135 claim is plead in the alternative to their equal protection claims and Ed. Code § 200 claim, which is predicated on the same facts supporting discrimination (i.e., disparate impact). (FAC, ¶¶ 178-184.)

Plaintiffs argue that *Collins* "expressly limited its analysis to plaintiffs' section 11135 claim against State-level defendants, deliberately excluding local-level defendants." (Opposition, p. 8.) While only the claims against the state-level defendants were at issue on appeal, the court's analysis and holding relating to the scope of § 11135 had nothing to do with defendants' status as state defendants. Rather, the court analyzed the statutory framework of § 11135 et. al. and the Legislative intent in excluding "educational equity claims" with no mention of the fact the defendants were state-level as opposed to local-level. (*Collins, supra,* 41 Cal.App.5th at 902-903.) Plaintiffs make a distinction without a difference. **SUSTAIN without leave to amend.**

H. Count VII (unlawful expenditure - CCP § 526a)

Teacher Plaintiffs and Parent Plaintiffs allege unlawful expenditure funds under CCP § 526a. This statute establishes the right of a taxpayer plaintiff to maintain an action against any officer of a local agency to obtain a judgment restraining or preventing illegal wasteful expenditure of public funds. (CCP § 526a(a).) A taxpayer action must involve "actual or threatened expenditure of public

funds" including citing to "specific facts for a belief that some illegal expenditure or injury to the public fisc is occurring or will occur." (*County of Santa Clara v. Superior Court* (2009) 171 Cal.App.4th 119, 130.)

Plaintiffs allege that Defendants illegally expended public monies to "administer a system of education that contravenes the California Constitution and California discrimination statutes," including implementing the Resolution and Policy. (FAC, ¶ 188; see also FAC, ¶¶ 151-183.) Plaintiffs challenge specific expenditures by Defendants to implement the Resolution, including the payment of $15,000 in public monies to retain Christopher Arend as a consultant and the hiring a partisan panel on CRT. (FAC, ¶¶ 20-21.) Allegations that "defendants are authorizing funds that they know are being illegally used by their recipients, that illegality arising, at a minimum, from a violation of the equal protection clause" are sufficient to state a taxpayer claim. (*Collins, supra,* 41 Cal.App.5th at 911.) **OVERRULE**.

I. Count VIII (sex discrimination - Cal. Const. art. I, § 7)

Plaintiff Gwen S. and Teacher Plaintiffs allege the Policy violates the equal protection clause under Article I, § 7 of the California Constitution because it discriminates against transgender and gender nonconforming students. Under the equal protection clause, the court considers first whether a classification affects two or more similarly situated groups in an unequal manner. (*Taking Offense v. State* (2021) 66 Cal.App.5th 696, 724.) Discrimination based on gender, including gender identity, is suspect and subject to strict scrutiny. (*Catholic Charities of Sacramento, Inc. v. Superior Court* (2004) 32 Cal.4th 527, 564; *Taking Offense v. State, supra,* 66 Cal.App.5th at 725-726.) Policies that discriminate against protected classes are invalid unless the government establishes not only that it has a compelling interest that justifies the law, but that the distinctions drawn by the law are necessary to further its purpose. (*Kasler v. Lockyer* (2000) 23 Cal.4th 472, 480.)

Here, the Policy requires written disclosure to parents or guardians when any District staff or employee learns that a student 1) requests to be identified or treated as a gender that differs from the student's biological sex or the gender listed on the student's birth certificate; 2) is accessing sex-segregated school programs and activities, including athletics, or using a bathroom for a gender that differs from the student's biological sex or the gender listed on the student's birth certificate; and 3) requests to change any information contained in the student's records. (FAC, ¶¶ 2, 25, 141, Ex. 2 at ¶¶ 1(a)-(c).) Plaintiffs allege the Policy is facially discriminatory against transgender and gender nonconforming students by singling them out for adverse treatment. (FAC, ¶¶ 140-141.) Plaintiffs further allege facts that support Defendants' intent to discriminate including comments by Board members regarding transgenderism during the public comment of the Policy. (FAC, ¶ 142-143.) These facts are sufficient for pleading purposes.

Defendants points to the text of the Policy which indicates that it was implemented to foster open and positive relationships between parents/guardians and students "that promote the best outcomes for pupils' academic and social-emotional distress" and to seek parental involvement in important medical decisions regarding their children. (FAC, Ex. 2, p. 1.) Whether Defendants can meet their burden to withstand strict scrutiny is beyond the purview of the demurrer.

With regard to standing, Plaintiffs Gwen S. alleges sufficient facts establishing standing. Plaintiff Gwen S. alleges that she identifies as a non-binary and queer person, and is the co-leader of the Gender and Sexuality Alliance Club, which provides community support for LGBTQ students. (FAC, ¶¶ 71, 72.) With regard to the Policy, she alleges: "I want to be able to disclose [my gender identity] at my own will." (FAC, ¶ 74.) These facts show Gwen S. has an actual and concrete interest in the outcome of this litigation.

There are also sufficient facts showing Teacher Plaintiffs have third-party standing to assert claims on behalf of their students. They are directly impacted by this lawsuit because the Policy

puts the onus on them to provide the parental notification, they share a common interest with transgender and gender nonconforming students in not disclosing this information without the student's consent; and transgender and nonconforming students who do not want to be "outed" to their parents are unlikely to bring this lawsuit, particularly for minors who will need their parents' participation in the lawsuit. (FAC, ¶¶ 141-149.)

OVERRULE.

K. Count IX (right to privacy - Cal. Const. art. I, § 1)

Plaintiff Gwen S. and Teacher Plaintiffs allege the Policy violates their right to privacy under Article I, § 1 of the California Constitution. To state a claim for violation of a constitutional right to privacy, the plaintiff must allege 1) a legally protected privacy interest; 2) reasonable expectation of privacy under the circumstances, and (3) a serious invasion of the privacy interest. (*Sheehan v. San Francisco 49ers, Ltd.* (2009) 45 Cal.4th 992, 998.) Children "have fundamental interests of their own that may diverge from the interests of the parent." (*American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307 (holding that a minor who is pregnant has a constitutionally protected privacy interest and a statute requiring pregnant minors to secure parental consent or judicial authorization before obtaining abortion violated that right to privacy.)

Plaintiffs allege students have a privacy right to their gender identity "which is central to a student's personhood, life trajectory, and bodily autonomy" (FAC, ¶ 150), a reasonable expectation of privacy given the anti-LGBTQ climate (FAC, ¶¶ 71-74, 144-47, 149-50), and the Policy denies students the ability to disclose their gender identity on their own and forces students to "suppress their gender identities to avoid being outed." (FAC, ¶¶ 74, 149.)

Furthermore, for the same reasons set forth above under Count VIII, there are sufficient facts showing Plaintiff Gwen S. and Teacher Plaintiffs have standing to pursue the claims on behalf of transgender and gender non-conforming students. **OVERRULE**.

L. Count X (discrimination - Ed. Code §§ 200 et. seq.)

Individual Plaintiffs (i.e., Student Plaintiffs, Parent Plaintiffs and Teacher Plaintiffs) allege the Policy violates Ed. Code §§ 200 et. seq. because it discriminates against transgender and gender nonconforming students. Ed. Code § 220 prohibits discrimination on the basis of gender, gender identity or gender expression "in any program or activity conducted by an educational institution that receives, or benefits from state financial assistance, or enrolls pupils who receive state student financial aid." The elements of liability in connection with students' equal protection claims against school officials are the same elements that apply in an action under Title IX of the Education Amendments of 1972, which prohibits sex discrimination by recipients of federal funding. (*Donovan v. Poway Unif. School District* (2008) 167 Cal.App.4th 567, 596-608 (analyzing § 220 claim under elements of peer sexual orientation harassment for Title IX).) Discrimination under Title IX is a term that covers a wide range of intentional unequal treatment and has broad reach, including claims for disparate treatment, sexual harassment, retaliation, etc. (*Jackson v. Birmingham Bd. of Educ.* (2005) 544 U.S. 167, 173-173.)

The parties confusingly discuss the elements of a claim for harassment, even though Plaintiffs do not allege a harassment claim. Rather, Plaintiffs' Ed. Code § 220 claim is premised on the same facts underlying their discrimination claim under the equal protection clause. (FAC, ¶¶ 140-149, 193, 194, 202.) As discussed above, Plaintiffs adequately allege discrimination based on gender and gender identity under Count VIII. This claim survives for the same reason. **OVERRULE**.

Summary:

DENY the anti-SLAPP motion; DENY Plaintiffs' request for attorney fees.

SUSTAIN the demurrer as to Count VI and SUSTAIN the demurrer as to Parent Plaintiffs (Rachel P. and Inez B.) for Counts II and III for lack of standing, but only to the extent they assert claims on their own behalf (as opposed to as guardian ad litem for student plaintiffs); Otherwise, OVERRULE the demurrer. GRANT Defendants' request for judicial notice.

5.

CVSW2306224	M. VS KOMROSKY	MOTION FOR PRELIMINARY INJUNCTION

Tentative Ruling:

Unfortunately, the Court has been unable to complete a tentative decision in the time between our last hearing two weeks ago and today. Although the Court has read all the briefing, the Court is still in the process of completing its tentative. The Court expects to have a tentative completed as early as Tuesday, February 20 by 3:00 PM. If counsel would like to appear either in person or via Zoom, the Court will discuss possible dates to continue the hearing on the Preliminary Injunction.

6.

RIC2000420	MASAOKA VS AMERICAN MINI STORAGE-SECOND STREET-LLC	MOTION FOR ORDER FOR SANCTIONS CCP 128.5 BY AMERICAN MINI STORAGE-SECOND STREET-LLC, AMERICAN R.V AND BOAT STORAGE, RICHARD FELL

Tentative Ruling:

Under C.C.P. § 128.5(a), "[a] trial court may order a party, the party's attorney, or both, to pay the reasonable expenses, including attorney's fees, incurred by another party as a result of actions or tactics, made in bad faith, that are frivolous or solely intended to cause unnecessary delay." "'Frivolous' means totally and completely without merit or for the sole purpose of harassing an opposing party." C.C.P. § 128.5(b)(2). "Whether an action is frivolous is governed by an objective standard: any reasonable attorney would agree it is totally and completely without merit. [Citation.] There must also be a showing of an improper purpose, i.e., subjective bad faith on the part of the attorney or party to be sanctioned." *Levy v. Blum* (2001) 92 Cal.App.4th 625, 635. To find that a party or counsel acted in bad faith, the court does not have to find an evil motive. *In re Marriage of Sahafezadeh-Taeb & Taeb* (2019) 39 Cal.App.5th 124 138. Bad faith can be found, even if the actions are technically correct, if they are taken for an improper purpose. *Id*. A safe harbor provision must be complied with before a motion for sanctions under C.C.P. § 128.5 can be filed. C.C.P. § 128.5(f).

This motion for Sanctions is unopposed. The motion was filed on 12/28/2023. Proof of Service shows that Plaintiffs were given notice of the motion and the hearing date by electronic mail on 12/28/2023. Any opposition to the Motion for Sanctions would have to be filed no later than 9 court days prior to the hearing on the motion. As of 2/14/2024 the court has not received any opposition to the motion.

Accordingly, the Court grants this unopposed motion and issues sanctions as to both Plaintiffs jointly and severally in the reduced amount of $3,480. $380 per hour for 2 hours to review all 5 motions for reconsideration, 2 hours for preparation of all 5 oppositions, 2 hours for preparing this motion for sanctions, and 3 hours for appearances at all hearings for the above-referenced, and $60 for the filing fee for a total of $3,480 payable within 60 days of service of notice of ruling.

Proposed order has been signed and ordered filed. Defendant is ordered to give notice of ruling.