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U.S. DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GAY-STRAIGHT ALLIANCE NETWORK	)	CIV F 00-6616 OWW LJO
and GEORGE LOOMIS,)	
	)	MEMORANDUM OPINION AND
Plaintiffs,	)	ORDER RE: DEFENDANT'S
	)	MOTION TO DISMISS FOR
v.	)	FAILURE TO STATE A CLAIM;
	)	INDEFINITE STATEMENT;
VISALIA UNIFIED SCHOOL DISTRICT,	)	MOTION TO STRIKE; PARTIAL
by and through its Board of	)	SUMMARY JUDGMENT AND/OR
Education; CARLYN LAMBERT,	)	SUMMARY ADJUDICATION OF
Superintendent; LINDA GONZALES,	)	ISSUES
former Superintendent; BOB)	
CESENA, Principal; GIG STEVENS,)	
Assistant Principal, JUAN)	
GARCIA; and Does 1-25,)	
inclusive,)	
)	
Defendants.)	

I. INTRODUCTION

Defendants' move to dismiss Plaintiffs First Amended complaint for failure to state a claim, indefinite statement, to strike portions of the complaint and for summary adjudication of issues. See Doc. 10. Jurisdiction is invoked under 28 U.S.C. §§ 1331 and 1343. See Doc. 8, ¶19. Supplemental jurisdiction is invoked under 28 U.S.C. § 1367(a). See *id.* Oral argument was held March 19, 2001.

1 II. BACKGROUND

2 A. Gay-Straight Alliance Network

3 1. Purpose and Membership

4 Plaintiff, GAY-STRAIGHT ALLIANCE NETWORK ("GSA Network"), is
5 a youth-led, non-profit organization made up of gay, lesbian,
6 bisexual, transgender and heterosexual students, as well as
7 supportive adults, who are dedicated to eliminating homophobia
8 and intolerance in schools. See Doc. 8, ¶7. The GSA Network is
9 headquartered in San Francisco and has an office in Fresno,
10 California. See *id.* GSA Network's Fresno office monitors
11 homophobia and intolerance in Central Valley schools, including
12 schools within the Defendant, VISALIA UNIFIED SCHOOL DISTRICT
13 ("VUSD"). See *id.* The GSA Network has devoted significant
14 monetary and staffing resources to addressing the problems of
15 discrimination, harassment, and homophobia in VUSD schools
16 through its Fresno office. See *id.*, ¶10.

17 The GSA Network primarily fights homophobia and intolerance
18 in schools by empowering gay, lesbian, bisexual, transgender and
19 heterosexual members in high schools to form and maintain local,
20 school-based, student-run clubs called "GSAs". See *id.*, ¶8. The
21 GSA Network also encourages members to form community-based GSAs
22 made up of students and supportive community members. See *id.*
23 One-hundred fifty (150) GSA clubs in Northern California and the
24 Central Valley are presently registered with the GSA Network.
25 See *id.* The GSA Network connects these school- and community-
26 based GSAs to each other and to community resources in order to:
27 foster safe environments for student members; educate student
28 members and the school community about homophobia, gender

1 identity, and sexual orientation issues; and fight intolerance,
2 discrimination, harassment, and violence in schools. *See id.*

3 Members of the GSA Network in Fresno and Visalia have formed
4 a community-based GSA club in the Fresno area. *See id.*, ¶10.
5 It's members include current and prospective students at Golden
6 West High School and other schools within the VUSD. *See id.*, ¶9.
7 Some of these students are interested in forming a school-based
8 GSA at Golden West or other high schools within the VUSD. *See*
9 *id.* These students have not done so, however, because of the
10 alleged homophobic environment within the VUSD and possible
11 retaliatory harassment. *See id.*, ¶65. Heterosexual youth and
12 adults, including parents of children who attend or plan to
13 attend VUSD, also belong to the GSA Network. *See id.*, ¶9.

14 2. Hostile Environment

15 It is alleged that openly gay students are subject to severe
16 verbal and physical harassment and suffer physical and emotional
17 damage from Defendants' allegedly hostile environment. *See id.*,
18 ¶64. Heterosexual students are deprived of an environment that
19 is free from hostility directed toward students who are gay or
20 lesbian or who are perceived to be gay or lesbian. *See id.*, ¶66.

21 Harassment and discrimination is alleged to be a fact of
22 life for gay or lesbian students, or those perceived as gay or
23 lesbian, attending schools within the VUSD, including Golden West
24 High School. *See id.*, ¶22. These students have been repeatedly
25 called "faggot", "queer", and other anti-gay epithets on campus
26 and in the classrooms, sometimes in the presence of teachers.
27 *See id.*, ¶¶22, 27. One gay student allegedly confronted his
28 teacher after class about students making loud, derogatory, anti-

1 gay comments in class. *See id.*, ¶23. The teacher told the
2 student that he did not hear the comments and refused to do
3 anything about them. *See id.*

4 Gay or lesbian students, or those perceived as gay or
5 lesbian, have been spit upon by other students on the campus of
6 Golden West. *See id.*, ¶27. Former Golden West students,
7 perceived to be gay, have had food, pencils, erasers, and
8 textbooks and other objects thrown at them. *See id.* One gay
9 student was almost hit by a car driven by another student who was
10 actively trying to run him down. *See id.* One student directed a
11 death threat to a gay student at Golden West. *See id.* Golden
12 West students have also allegedly spray-painted the word "Fag" on
13 a pickup truck of another student. *See id.*

14 One gay student at Golden West was attacked on campus by
15 students yelling "fag", "queer" and other derogatory terms. *See*
16 *id.*, ¶28. When the student fought back, Golden West
17 administrators broke up the fight and led the gay student away in
18 handcuffs. *See id.* That student did not return to Golden West.
19 *See id.*

20 Students are allegedly afraid to associate themselves with
21 any openly gay students on campus for fear of being verbally and
22 physically assaulted. *See id.*, ¶29. Students who are gay or
23 lesbian experience chronic psychological injury from the
24 harassment at school each day. *See id.* One gay student suffers
25 from insomnia and lies awake each night reviewing the harassment
26 he suffered during the day and worrying about what might happen
27 tomorrow. *See id.* Students skip classes in order to avoid
28 harassment. *See id.* As a result, their grades suffer, they fail

1 classes, and they contemplate dropping out of school. *See id.*

2 Some gay students fear asking the administration for help
3 for fear of retaliation. *See id.*, ¶41. Other gay or lesbian
4 students have complained repeatedly to Golden West teachers and
5 administrators about the hostile climate on campus, but to no
6 avail. *See id.* Parents have also attempted to intervene;
7 however, the VUSD has not acted. *See id.*, ¶42.

8 3. Teacher and Administrator Involvement

9 Teachers and administrators have allegedly participated in,
10 and perpetuated the taunting and harassment of gay or lesbian
11 students. *See id.*, ¶31. One teacher has made anti-gay comments
12 in class; Plaintiffs believe that other such incidents may have
13 occurred with other teachers. *See id.* Administrators have
14 allegedly mocked or ignored students who have requested relief
15 from the anti-gay harassment. *See id.* One Golden West office
16 worker allegedly posts anti-gay comments on a bulletin board in
17 the school office. *See id.*

18 VUSD allegedly does not fund, sponsor, endorse, or promote
19 any organization, support group, or program that provides support
20 to student victims of anti-gay harassment. *See id.*, ¶35. No gay
21 student group or school-based organization comprised of gay and
22 straight members exists within the VUSD. *See id.*

23 VUSD allegedly has a policy designed to deter gay or lesbian
24 students from being open about their sexual orientation and
25 freely associating with one another. *See id.*, ¶36. VUSD also
26 allegedly has no policy to ensure that its schools are safe for
27 gay or lesbian students, or those perceived as gay or lesbian.
28 *See id.*, ¶37. VUSD's current policy is allegedly inadequate in

1 preventing students from taunting, harassing, and assaulting
2 other gay or lesbian students, or those perceived as gay or
3 lesbian. *See id.*

4 VUSD teachers, counselors, and administrators are allegedly
5 not trained in how to assist student victims of anti-gay
6 harassment. *See id.*, ¶38. VUSD's alleged practice has been to
7 ignore any harassment and refuse to make any attempts to stop
8 students and teachers from perpetrating any further acts of
9 harassment. *See id.*

10 4. Independent Study Program

11 VUSD administrators and counselors allegedly force victims
12 of anti-gay harassment into independent study programs, adult
13 schools, or other alternative educational programs in order to
14 isolate these students from their peers. *See id.*, ¶46. Other
15 times, administrators and counselors encourage, convince, or
16 allow gay or lesbian students, or those perceived as gay or
17 lesbian, to leave school altogether. *See id.* Once these
18 students have been effectively transferred from their classrooms
19 into alternative education programs, they lose their ability to
20 participate in extracurricular activities, receive an inadequate
21 education, and limit their college opportunities. *See id.*, ¶64.

22 Under the independent study programs ("ISP"), students study
23 independently, and meet with a teacher for a one-hour class once
24 a week. *See id.*, ¶47. The ISP is a non-college preparatory
25 academic track designed for students with extremely difficult
26 home lives, seriously disabilities, substance abuse problems, or
27 dire financial needs. *See id.* ISP students are ineligible for
28 participation in extracurricular activities. *See id.* The ISP is

1 not educationally equivalent to classroom education at Golden
2 West; it was not designed to, and does not, address any of the
3 needs of anti-gay harassment victims. *See id.*

4 Some gay and lesbian students have sought entrance to the
5 ISP to avoid harassment by peers and teachers at Golden West.
6 *See id.*, ¶48. These students have been deliberately encouraged
7 to do so by school officials. *See id.* The students are
8 sometimes promised by counselors that the ISP will help end their
9 harassment. *See id.* One former guidance counselor advised a gay
10 student to get a job so that she could place him in an ISP to
11 "get him out" of Golden West. *See id.*

12 B. George Loomis

13 Plaintiff, GEORGE LOOMIS, was enrolled in schools within the
14 VUSD, including Golden West High School, until sometime around
15 January 2000. *See id.*, ¶13.

16 Defendant, VISALIA UNIFIED SCHOOL DISTRICT ("VUSD"), is a
17 public school district that controls and operates Golden West
18 High School and other public schools in the Visalia area. *See*
19 *id.*, ¶14. Defendants, LINDA GONZALES, former VUSD Superintendent
20 of Schools; CARLYN LAMBERT, Acting VUSD Superintendent of
21 Schools; BOB CESENA, Principal of Golden West High School; GIG
22 STEVENS, Assistant Principal of Golden West High School; and JUAN
23 GARCIA, teacher at Gold West High School, are individuals who
24 worked during the relevant time period as employees for the VUSD.
25 *See id.*, ¶15.

26 Mr. Loomis allegedly endured pervasive harassment while he
27 was at Golden West from 1996 to about January 2000. *See id.*,
28 ¶24. Once students at Golden West suspected that Mr. Loomis was

1 gay, they began taunting and harassing him. *See id.* In the
2 spring semester of Mr. Loomis' junior year (1998-99), some of his
3 classmates in Advance Placement ("AP") Biology class called him
4 "faggot" and "queer" in front of the entire class. *See id.* Mr.
5 Loomis' teacher would often laugh along with the students who
6 were harassing Mr. Loomis and not reprimand these students. *See*
7 *id.*

8 Students in Mr. Loomis' choir class would also taunt Mr.
9 Loomis with yells of "fag", "queer", "homo" and "joto" (Spanish
10 for "homo"). *See id.*, ¶25. One male student taunted Mr. Loomis
11 by rubbing Plaintiff's leg in a sexually suggestive manner,
12 embarrassing Mr. Loomis with this unwanted touching. *See id.*
13 Students in Mr. Loomis' choir class would also threaten and
14 harass other students by calling them "fag" or "faggot". *See*
15 *id.*, ¶25. Mr. Loomis' choir teacher observed these activities
16 and took no action. *See id.*

17 Mr. Loomis was harassed by students in his student
18 leadership class. *See id.*, ¶26. One student accused Mr. Loomis
19 of having an affair with the male teacher of the class who was
20 perceived by many students to be gay. *See id.*

21 Teachers and classes of students openly discussed their
22 views that Mr. Loomis was gay during a science and English class
23 in spring of 1999. *See id.*, ¶32. Mr. Loomis had not revealed to
24 anyone at Golden West that he was gay, much less to these
25 particular teachers from whom Mr. Loomis had not taken a class.
26 *See id.*

27 1. Comment by Mr. JUAN GARCIA

28 In October 1999, Defendant, JUAN GARCIA, Mr. Loomis' Spanish

1 II teacher noticed the ear ring Mr. Loomis was wearing. *See id.*,
2 ¶33. Mr. Garcia stated to the class: "There are only two types
3 of guys who wear ear rings - pirates and faggots - and there
4 isn't any water around here." *See id.* The entire class laughed
5 at Mr. Garcia's remarks; Mr. Loomis was shocked, angry, and
6 upset. *See id.* Mr. Loomis was also upset and embarrassed when
7 Mr. Garcia repeated the comment in English to make sure that
8 everyone could understand it. *See id.* Students increasingly
9 harassed Mr. Loomis after this incident, calling Mr. Loomis
10 "pirate", "fag" and "faggot". *See id.*

11 In October 1999, Mr. Loomis went to the principal of Golden
12 West, Defendant, ROBERT CESENA, and told him what Mr. Garcia
13 said. *See id.*, ¶43. Mr. Cesena told Mr. Loomis that it was
14 "inappropriate" for Mr. Loomis to "go over Mr. Garcia's head",
15 that he should talk to Mr. Garcia, and that he would take no
16 further action. *See id.*

17 Mr. Loomis took Mr. Cesena's suggestion and went to Mr.
18 Garcia and asked him not to make further anti-gay comments in
19 class. *See id.*, ¶44. Mr. Garcia responded by laughing at Mr.
20 Loomis. *See id.* The following week, Mr. Garcia repeatedly
21 called Mr. Loomis a "pirate" and repeated the same comment Mr.
22 Loomis asked Mr. Garcia not to repeat ("There are only two types
23 of guys who wear ear rings"). *See id.*

24 In October 1999, after Mr. Garcia repeatedly aired his
25 "pirates and faggots" remark at Golden West, Mr. Loomis went to
26 the school psychologist at Golden West, and spoke with her about
27 how the harassment was making him feel. *See id.*, ¶49. Mr.
28 Loomis informed her that the harassment was negatively affecting

1 his ability to learn and function at Golden West. *See id.* The
2 Golden West psychologist suggested that things might be better
3 for Mr. Loomis if he removed himself from full-time attendance at
4 Golden West to attend the Independent Study Program ("ISP"). *See*
5 *id.*

6 2. Switching to the Independent Study Program

7 Officials at Golden West did not mention that switching to
8 ISP would have a harmful adverse impact on Mr. Loomis'
9 extracurricular activities, his decision to attend college, and
10 his future overall. *See id.*, ¶50. The school psychologist told
11 Mr. Loomis that she was planning on meeting with Assistant
12 Principal, Defendant, GIG STEVENS, later that day, and that she
13 would suggest to Mr. Stevens that the school transfer Mr. Loomis
14 to ISP. *See id.* The psychologist told Mr. Loomis that although
15 she recommended ISP, school officials would not protect him from
16 being tormented even then. *See id.*

17 Mr. Loomis later met with his guidance counselor, Ms. Cuca
18 Atherton, to discuss whether ISP was a good idea for him. *See*
19 *id.*, ¶51. Ms. Atherton explained to Mr. Loomis that she had
20 already discussed the ISP program with Mr. Loomis' psychologist,
21 and that she also thought it was in Mr. Loomis' best interests to
22 enroll in the ISP. *See id.* She explained that, although most
23 ISP students were required to demonstrate to the school
24 administration that they had a financial need to work at least
25 forty (40) hours a week and demonstrate proof of employment, the
26 school "wouldn't worry about this requirement" in Mr. Loomis'
27 case. *See id.* Instead, without any reference to the financial
28 status of Mr. Loomis or his family, Ms. Atherton told Mr. Loomis

1 to go home and have his guardian sign a form declaring that his
2 family had a "financial need" for him to enroll in the ISP. See
3 *id.*

4 That same day, Mr. Stevens called Mr. Loomis into his office
5 and advised Mr. Loomis that he had spoken with Mr. Loomis'
6 guidance counselor and psychologist, and that they all agreed
7 that Mr. Loomis should enroll in the ISP. See *id.*, ¶52.

8 Although Mr. Loomis' guardian, Ms. Donna Wothe, was worried how
9 the program might look to university admissions officers, Mr.
10 Loomis and his guardian officially signed the papers enrolling
11 him in the ISP sometime in mid-October 1999. See *id.*, ¶53.

12 VUSD officials knew that Mr. Loomis was heavily involved in
13 extracurricular activities at Golden West and that Mr. Loomis
14 intended to pursue higher education. See *id.*, ¶54. While Mr.
15 Loomis was at Golden West, he was a member of the Gifted and
16 Talented Education program (GATE) and aspired to attend the
17 University of California at Berkeley to study pre-medicine and
18 eventually go to medical school. See *id.* Mr. Loomis was also a
19 member of the track and cross-country teams, sang in the school
20 choir, and was one of a select group of students who were chosen
21 to enroll in an exclusive student leadership class based on the
22 recommendation of one of his teachers. See *id.*

23 In Mr. Loomis' junior year, he was chosen to be a student
24 representative on the VUSD Board of Education. See *id.* Mr.
25 Loomis' guidance counselor, Ms. Atherton told Plaintiff that he
26 could continue to serve as a student representative while
27 attending ISP. See *id.*, ¶55. When Mr. Loomis attempted to
28 attend a VUSD Board of Education meeting, he found that he had

1 been replaced by another student. *See id.* Mr. Loomis was then
2 told that ISP students could not serve on the Board. *See id.*
3 Mr. Loomis was also unable to participate in extracurricular
4 programs which he was led to believe he could still participate
5 in. *See id.*, ¶56. Mr. Loomis planned to interview with
6 recruiters from the University of California at Berkeley, but
7 they refused to talk to him after learning he was in ISP. *See*
8 *id.*

9 3. Ms. Sarah Karam Sproles; Mr. GIG STEVENS

10 In November 1999, Plaintiff was working at his part-time job
11 in a camera store. *See id.*, ¶39. Ms. Sarah Karam Sproles, a
12 Golden West school counselor entered the store with a friend.
13 *See id.* While in the store, Ms. Sproles turned to her friend and
14 said, "That boy is a faggot." *See id.* It is unclear whether Mr.
15 Loomis heard the remark directly or was told about Ms. Sproles'
16 alleged remark. Mr. Loomis was stunned, outraged and hurt. *See*
17 *id.* When Mr. Loomis later confronted Ms. Sproles at her office
18 at Golden West, Ms. Sproles initially denied making the statement
19 at all. *See id.* She later admitted making the statement;
20 however, she claimed that she was talking about another Golden
21 West student, whom she was counseling. *See id.* That student
22 also happened to be in the camera store at the same time as Mr.
23 Loomis. *See id.*

24 While Mr. Loomis was confronting Ms. Sproles, the Assistant
25 Principal, Defendant, GIG STEVENS, walked into Ms. Sproles'
26 office. *See id.*, ¶59. For no apparent reason, Ms. Sproles
27 stated, "This is George Loomis and he is gay." *See id.* Mr.
28 Stevens stated mockingly to Mr. Loomis in a high-pitched

1 effeminate voice, "Well, George, why didn't you say that. Why
2 didn't you say, 'My name is George and I am gay?'" *See id.* Mr.
3 Loomis felt humiliated. *See id.*

4 Mr. Loomis told Mr. Stevens and Ms. Sproles that he did not
5 feel safe attending Golden West High School, and asked Mr.
6 Stevens whether he would make some effort to ease the harassment
7 that Mr. Loomis was receiving from other students while he
8 attended his ISP class. *See id.* Each week, many students called
9 him "fag" and "faggot" and at least on one occasion spit on him.
10 *See id.*, ¶58. Mr. Stevens refused to help, and told Mr. Loomis
11 that if he did not feel safe then he should give up high school
12 altogether and attend adult school. *See id.* Mr. Stevens then
13 waved Mr. Loomis' ISP papers in his face and told Mr. Loomis that
14 he was in breach of his ISP contract because he had missed two
15 days of ISP class. *See id.*

16 Mr. Loomis told Mr. Stevens that he would not come onto the
17 Golden West campus unless he was assured that he would be safe
18 from teacher and student harassment. *See id.*, ¶60. Mr. Stevens
19 told Mr. Loomis that he could not promise him that the school
20 would be safe for him. *See id.* Mr. Loomis stopped attending
21 Golden West altogether. *See id.*, ¶61. To the best of Mr.
22 Loomis' knowledge, no credit was given for his ISP work. *See id.*

23 4. Ms. LINDA GONZALES

24 Between October and December 1999, Mr. Loomis tried to
25 contact, then-VUSD Superintendent, Defendant, LINDA GONZALES, to
26 discuss the constant harassment Mr. Loomis was receiving. *See*
27 *id.*, ¶45. Ms. Gonzales did not return any of Mr. Loomis' phone
28 calls. *See id.* In December 1999, Mr. Loomis went to Ms.

1 Gonzales' office but was informed she was not in that afternoon.
2 See *id.* Mr. Loomis related to Ms. Gonzales' assistant the
3 conditions of harassment he was facing at Golden West. See *id.*
4 Ms. Gonzales' assistant promised to pass these notes to Ms.
5 Gonzales. See *id.* Mr. Loomis did not receive a response from
6 Ms. Gonzales. See *id.*

7 5. Further Injuries and Illness

8 By January 2000, Mr. Loomis was suffering chronic stress-
9 related illnesses and was diagnosed as hypo-glycemic. See *id.*,
10 ¶62. Mr. Loomis lost both his jobs in January 2000 because he
11 was missing work as a result of stress-related events at Golden
12 West. See *id.*

13 When the Fresno Bee published an article about Mr. Loomis
14 and his harassment at Golden West, teachers photocopied the
15 article and distributed it to students in class. See *id.*, ¶41.
16 One teacher made a remark to a class to the effect that "Well, we
17 can't talk about religion, but we can talk about this faggot
18 boy." See *id.* Throughout the spring 2000 semester, other
19 teachers revealed private facts about Mr. Loomis' life in trying
20 to explain why he might be "troubled". See *id.*

21 C. Plaintiff's First Amended Complaint

22 Plaintiffs assert eight (8) claims. See Doc. 1. Plaintiffs
23 first six federal claims are brought under 42 U.S.C. § 1983. See
24 *id.* Plaintiff, GSA NETWORK, asserts Equal Protection [First
25 Claim], Procedural Due Process [Third Claim], and Substantive Due
26 Process [Fifth Claim] violations of the Fourteenth Amendment by
27 Defendants, VUSD, by and through its Board of Education, and
28 Carlyn Lambert, Bob Cesena, an Gig Stevens in their official

1 capacities. *See id.*

2 Plaintiff, GEORGE LOOMIS, asserts Equal Protection [Second
3 Claim]; Procedural Due Process [Fourth Claim]; and Substantive
4 Due Process [Sixth Claim] violations of the Fourteenth Amendment
5 against Defendants, Linda Gonzales, Bob Cesena, Gig Stevens, and
6 Juan Garcia in their individual capacities. *See id.*

7 Mr. Loomis asserts state law violations of the California
8 Education Code [Seventh Claim] against Defendants VUSD, Linda
9 Gonzales, Bob Cesena, Gig Stevens and Juan Garcia in their
10 individual capacities. *See id.* Mr. Loomis asserts violation of
11 the Unruh Civil Rights Act [Eighth Claim] by Defendants Linda
12 Gonzales, Bob Cesena, Gig Stevens and Juan Garcia in their
13 individual capacities. *See id.*

14 Plaintiffs pray for a declaratory relief stating that GSA
15 Network's rights are being violated; an injunctive relief
16 ordering Defendants to halt their allegedly unconstitutional and
17 unlawful acts; an award of compensatory damages and punitive
18 damages to Mr. Loomis; attorneys fees and costs. *See id.*
19 Plaintiffs demand a jury trial. *See id.*

20 21 III. LEGAL STANDARD

22 A. Motion to Dismiss for Failure to State a Claim

23 A motion to dismiss for failure to state a claim under
24 Federal Rule of Civil Procedure 12(b)(6) is disfavored and rarely
25 granted: A dismissal for failure to state a claim is appropriate
26 only where it appears, beyond a doubt, that the plaintiff can
27 prove no set of facts that would entitle it to relief. *Morley v.*
28 *Walker*, 175 F.3d 756, 759 (9th Cir. 1999); *see also Conley v.*

1 Gibson, 355 U.S. 41, 45-46 (1957). All allegations of material
2 fact in the complaint are taken as true and construed in the
3 light most favorable to [the] plaintiff. See *Enesco Corp. v.*
4 *Price/Costco Inc.*, 146 F.3d 1083, 1085 (9th Cir. 1998).

5 A district court is not entirely limited to considering
6 facts in the complaint. Facts subject to judicial notice may be
7 considered on a motion to dismiss. See *Mullis v. United States*
8 *Bankruptcy Ct.*, 828 F.2d 1385, 1388 (9th Cir. 1987). For
9 example, matters of public record may be considered, including
10 pleadings, orders, and other papers filed with the court or
11 records of administrative bodies. See *Shaw v. Hahn*, 56 F.3d
12 1128, 1129 n.1 (9th Cir. 1995). Conclusions of law, conclusory
13 allegations, unreasonable inferences, or unwarranted deductions
14 of fact in a complaint need not be accepted. See *Western Mining*
15 *Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981). Documents
16 attached to the complaint are part of the complaint and may be
17 considered on a motion to dismiss. See *Durning v. First Boston*
18 *Corp.*, 815 F.2d 1265, 1267 (9th Cir. 1987); see also *Branch v.*
19 *Tunnell*, 14 F.3d 449, 453 (9th Cir. 1994) ([A] document is not
20 'outside' the complaint if the complaint specifically refers to
21 the document and if its authenticity is not questioned.).

22 **B. Motion to Dismiss for Indefinite Statement**

23 Federal Rule of Civil Procedure 12(e) provides:

24 If a pleading to which a responsive pleading is
25 permitted is so vague or ambiguous that a party cannot
26 reasonably be required to frame a responsive pleading,
27 the party may move for a more definite statement before
28 interposing a responsive pleading. The motion shall
point out the defects complained of and the details
desired. If the motion is granted and the order of the
court is not obeyed within 10 days after notice of the
order or within such other time as the court may fix,

1 the court may strike the pleading to which the motion
2 was directed or make such order as it deems just.

3 A Rule 12(e) motion is proper only if the complaint is so
4 indefinite that the defendant cannot ascertain the nature of the
5 claim being asserted. See *Famolare, Inc. v. Edison Bros. Stores,*
6 *Inc.*, 525 F.Supp. 940, 949 (E.D. Cal. 1981). The Court must deny
7 the motion if the complaint is specific enough to apprise
8 defendant of the substance of the claim being asserted. See
9 *Bureerong v. Uyawas*, 922 F.Supp. 1450, 1461 (C.D. Cal. 1996).
10 The Court should also deny the motion if the detail sought by a
11 motion for more definite statement is obtainable through
12 discovery. See *Beery v. Hitachi Home Electronics (America),*
13 *Inc.*, 157 F.R.D. 477, 480 (C.D. Cal. 1993).

14 C. Motion to Strike

15 A court "may order stricken from any pleading any
16 insufficient defense or any redundant, immaterial, impertinent or
17 scandalous matter." Fed. R. Civ. P. 12(f). A motion to strike
18 under Rule 12(f) should be denied unless it can be shown that no
19 evidence in support of the allegation would be admissible, or
20 those issues could have no possible bearing on the issues in the
21 litigation. See *Pease & Curren Refining v. Spectrolab*, 744
22 *F.Supp.* 945, 947 (C.D. Cal. 1990), abrogated on other grounds by
23 *Stanton Rd. Assocs. v. Lohrey Enters.*, 984 F.2d 1015 (9th Cir.
24 1993); *LeDuc v. Kentucky Central Life Ins. Co.*, 814 F.Supp. 820,
25 830 (N.D. Cal. 1992). A motion to strike is limited to
26 pleadings. *Sidney-Vinstein v. A.H. Robins Co.*, 697 F.2d 880, 885
27 (9th Cir. 1983).
28

1 IV. ANALYSIS

2 A. Judicial Notice

3 "A judicially noticed fact must be one not subject to
4 reasonable dispute in that it is either (1) generally known
5 within the territorial jurisdiction of the trial court or (2)
6 capable of accurate and ready determination by resort to sources
7 whose accuracy cannot reasonably be questioned." Fed. R. Evid.
8 201(b). "A court shall take judicial notice if requested by a
9 party and supplied with the necessary information." Fed. R.
10 Evid. 201(d). Often judicially noticed facts consist of matters
11 of public record, such as prior court proceedings, *see, e.g.,*
12 *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1198 (9th Cir. 1988)
13 or administrative materials, *see, e.g., Barron v. Reich*, 13 F.3d
14 1370, 1377 (9th Cir. 1994).

15 In this case, Defendants request judicial notice of
16 certified copies of official records showing the registration of
17 the VISALIA UNIFIED SCHOOL DISTRICT with the Roster of Public
18 Agencies. *See* Doc. 14. These records are maintained by the
19 Tulare County Recorder's office and the California Secretary of
20 State. *See id.* Copies of these documents have been supplied as
21 Exhibits "A" and "B". *See* Doc. 12, Ex. "A"; Doc. 16, Ex. "B".

22 Exhibit A contains a filed and stamped copy of the State of
23 California , Roster of Public Agencies Filing, showing the
24 Visalia Unified School District is registered pursuant to
25 California Government Code Section 53051. *See* Doc. 12, Ex. "A".
26 The copy has been filed and certified by the Tulare County Clerk-
27 Recorder on December 18, 1998 and most recently on February 1,
28 2001. *See id.*

1 Exhibit B contains three copies of documents from the State
2 of California, showing the Visalia Unified School District is
3 registered with the Roster of Public Agencies. See Doc. 12, Ex.
4 B. Each of the three documents have been filed and certified by
5 the Office of the Secretary of State of the State of California
6 on December 17, 1998; December 21, 1999; and December 22, 2000.
7 See *id.*

8 Defendants have requested judicial notice and supplied the
9 necessary documents. Defendants' request for judicial notice of
10 certified copies of official records maintained by the Tulare
11 County Recorder's office and the California Secretary of State
12 showing the registration of the VISALIA UNIFIED SCHOOL DISTRICT
13 with the Roster of Public Agencies, is GRANTED.

14 B. GSA Network Standing

15 The doctrine of standing "requires careful judicial
16 examination of a complaint's allegations to ascertain whether the
17 particular plaintiff is entitled to an adjudication of the
18 particular claims asserted." *Allen v. Wright*, 468 U.S. 737, 752,
19 104 S.Ct. 3315, 3325, 82 L.Ed.2d 556 (1984). "In essence the
20 question of standing is whether the litigant is entitled to have
21 the court decide the merits of the dispute or of particular
22 issues." *Warth v. Seldin*, 422 U.S. 490, 498, 95 S.Ct. 2197,
23 2204, 45 L.Ed.2d 343 (1975).

24 "[W]hether an association has standing to invoke
25 the court's remedial powers on behalf of its members
26 depends in substantial measure on the nature of the
27 relief sought. If in a proper case the association
28 seeks a declaration, injunction, or some other form of
prospective relief, it can reasonably be supposed that
the remedy, if granted, will inure to the benefit of
those members of the association actually injured.
Indeed, in all cases in which we have expressly

1 recognized standing in associations to represent their
2 members, the relief sought has been of this kind."

3 *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S.
4 333, 343 (1977) (quoting *Warth*, 422 U.S. at 515). An association
5 has standing to bring an action when:

6 "(a) its members would otherwise have standing to
7 sue in their own right; (b) the interests it seeks to
8 protect are germane to the organization's purpose; and
9 (c) neither the claim asserted nor the relief requested
10 requires the participation of individual members in the
11 lawsuit."

12 *Hunt*, 432 U.S. at 343; *International Union, United Auto.*,
13 *Aerospace & Agricultural Implement Workers v. Brock*, 477 U.S.
14 274, 282 (1986). The first two *Hunt* criteria satisfy Article
15 III's "case or controversy" requirement, while the third is
16 merely prudential, promoting only administrative convenience and
17 efficiency. See *Ecological Rights Foundation v. Pacific Lumber*
18 *Company*, 230 F.3d 1141, 1147 fn.6 (9th Cir. 2000). Courts have
19 generally found the second prong, or germaneness test, to be
20 undemanding. See *Presidio Golf Club v. National Park Service*,
21 155 F.3d 1153, 1159 (1998); *Humane Soc'y of the United States v.*
22 *Hodel*, 840 F.2d 45, 58 (D.C.Cir. 1988).

23 "For purposes of ruling on a motion to dismiss for want of
24 standing, both the trial and reviewing court must accept as true
25 all material allegations of the complaint, and must construe the
26 complaint if favor of the complaining party.'" See *Desert*
27 *Citizens Against Pollution*, 231 F.3d at 1178 (quoting *Graham v.*
28 *Federal Emergency Management Agency*, 149 F.3d 997, 1001 (9th Cir.
1998) (quoting *Warth*, 422 U.S. at 501)).

1. Immediate or Threatened Injury

To meet *Hunt*'s first prong, the "association must allege

1 that its members, or any one of them, are suffering immediate or
2 threatened injury as a result of the challenged action of the
3 sort that would make out a justiciable case had the members
4 themselves brought suit.'" *Hunt*, 432 U.S. at 342 (quoting *Warth*,
5 422 U.S. at 511). Individual members would have standing in
6 their own right under Article III if they have suffered an
7 "injury in fact" that is concrete and particularized, actual and
8 imminent, the injury is fairly traceable to the challenged action
9 of the defendant; and it is likely, as opposed to merely
10 speculative, that the injury will be redressed by a favorable
11 decision. See *Ecological Rights Foundation*, 230 F.3d at 1147,
12 citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).
13 A mere "abstract concern", *Simon v. Eastern Kentucky Welfare*
14 *Rights Organization*, 426 U.S. 26, 40 (1976), or "special
15 interest" in a public issue, *Sierra Club v. Morton*, 405 U.S. 727,
16 739 (1972), is legally insufficient to confer standing.

17 a. Injury in Fact

18 GSA Network asserts that it has members who are current and
19 prospective students at Golden West High School and other high
20 schools within the VUSD. GSA Network asserts that its members
21 have been spit on, threatened, their property damaged, attacked,
22 harassed by students and teachers and administrators, and
23 actively encouraged to transfer from the normal high school
24 curriculum, in effect denying them a free public education. GSA
25 Network alleges that its members have repeatedly complained to
26 VUSD teachers, administrators, and counselors about how the
27 homophobic environment at Golden West and other VUSD schools was
28 interfering with their learning experience and safety. VUSD

1 administrators and teachers are alleged to have deliberately
2 ignored these students' pleas for help, or actively sought the
3 transfer of such students to an ISP or adult alternative program.
4 GSA alleges it has spent money and used staff to try to combat
5 discrimination and harassment of its members in VUSD schools.
6 ¶ 10.

7 The harms sought to be redressed by GSA Network on behalf of
8 its members to redress deprivation of education rights are
9 currently suffered by GSA members and will continue to be
10 suffered by GSA Network members absent relief. Accepting as true
11 these allegations, GSA Network alleges injury in fact that
12 is "immediate or threatened" injury to itself and its members
13 sufficient to confer associational standing. Defendants' motion
14 to dismiss for failure to state a claim for lack of standing as
15 to the GSA Network is DENIED.

16 Defendants' caselaw

17 Defendants' reliance on *United Public Workers v. Mitchell*,
18 330 U.S. 75 (1947), for the proposition that GSA Network must
19 suffer some harm before asserting the rights of its members is
20 misplaced. The "injury in fact" requirement for associational
21 standing is "immediate or threatened injury". See *Hunt*, 432 U.S.
22 at 342; *Warth*, 422 U.S. at 511.

23 Defendant's reliance on *Hunt* and *Alaska Wildlife Alliance v.*
24 *Jensen*, 108 F.3d 1065, 1068 (9th Cir. 1977), is similarly
25 misplaced. Contrary to Defendants' assertions, Plaintiffs need
26 not allege that a statute is unconstitutional as a prerequisite
27 to standing. See *Desert Citizens Against Pollution*, 231 F.3d at
28 1177 (plaintiff need not allege non-compliance with statute or

1 regulation). "Applying this type of categorical rule runs
2 counter to precedent recognizing that standing is a highly case-
3 specific endeavor, turning on the precise allegations of the
4 parties seeking relief." *Id.*, quoting *National Wildlife Fed'n v.*
5 *Hodel*, 839 F.2d 694, 703-04 (D.C.Cir. 1988). "Standing is based
6 upon the nature of the injury alleged and whether a favorable
7 decision would redress the injury." *Id.*

8 *Warth* also does not support Defendants' assertion that GSA
9 Network's members have not suffered a cognizable injury in fact.
10 Defendants' rely on *Warth* for essentially two propositions: (1)
11 "when the asserted harm is a 'generalized grievance' shared in
12 substantially equal measure by all or a large class of citizens,
13 that harm alone normally does not warrant the exercise of
14 jurisdiction", and (2) a "plaintiff must generally assert his own
15 legal rights and interests, and cannot rest his claim to relief
16 on the legal rights or interests of third parties." *Warth*, 422
17 U.S. at 499.

18 In *Warth*, the petitioner association sought to represent the
19 interests of taxpayers or persons of low or moderate income. See
20 *id.*, at 512. The Supreme Court found petitioners' grievances too
21 general in nature to allow the organization to have standing. See
22 *id.*, at 515-516.

23 Here, the verbal harassment, physical threats, humiliation
24 by peers and teachers are allegedly suffered only by gay or
25 lesbian students, and those perceived to be gay or lesbian.
26 These alleged harms do not affect all or a large class of
27 citizens, but rather a small, but cognizable minority. The harm
28 suffered of being called a "fag", "faggot", "homo", or similar

1 opprobriations is not a "generalized grievance" shared in
2 substantially equal measure by all or a large class of citizens",
3 but a particular harm suffered by gay or lesbian students, or
4 those perceived to be gay or lesbian.

5 Defendants' argument that GSA Network has attached its
6 claims to co-Plaintiff, George Loomis's, is also misplaced. The
7 alleged harms suffered by GSA Network members include one gay
8 student being nearly hit by a car driven by another student
9 trying to run him down. See Doc. 8, ¶27. Another student
10 allegedly directed a death threat to a gay student member at
11 Golden West. See *id.* Golden West students allegedly spray-
12 painted the word "Fag" on a pickup truck of another student. See
13 *id.* These students are allegedly called "faggot", "queer", and
14 other anti-gay epithets repeatedly in the presence of teachers.
15 See *id.*, ¶22. Administrators allegedly mock or ignore students
16 requesting relief from anti-gay harassment. See *id.*, ¶31. One
17 school office worker at Golden West allegedly posts anti-gay
18 comments on a school-office bulletin board. See *id.* Gay and
19 lesbian students are encouraged to transfer out of Golden West
20 into ISP programs. See *id.*, ¶48. GSA Network has allegedly
21 spent money trying to address these issues and devote staff time
22 to working with alleged victims. These alleged harms suffered to
23 its members and to the Network are separate and distinct from
24 those harms asserted by Mr. Loomis. GSA Network has not
25 attempted to assert the legal rights of Mr. Loomis.

26 "In all cases in which the Supreme Court denied standing
27 because the injury was too speculative there was either little
28 indication in the record that the plaintiffs had firm intentions

1 to take action that would trigger the [challenged action], or
2 little indication in the record that, even if plaintiffs did take
3 such action, they would be subjected to the [challenged action]."
4 *Associated General Contractors of California, Inc. v. Coalition*
5 *For Economic Equity*, 950 F.2d 1401, 1407 (9th Cir. 1991)
6 (discouragement from participating in city-mandated bidding
7 process for government contract combined with firm intentions to
8 participate in bidding process satisfies "immediate and
9 threatened" harm for associational standing requirement); cf.
10 *City of Los Angeles v. Lyons*, 461 U.S. 95, 101-05, 103 S.Ct.
11 1660, 1664-67, 75 L.Ed.2d 675 (1983) (plaintiff previously
12 subjected to police stranglehold lacked standing to seek
13 injunctive relief absent showing he was likely to be exposed to
14 future police brutality); *O'Shea v. Littleton*, 414 U.S. 488, 497,
15 94 S.Ct. 669, 676-77, 38 L.Ed.2d 674 (1974) (plaintiffs
16 challenging alleged discriminatory bail setting, jury selection,
17 and sentencing lacked standing to seek injunction because no
18 showing that they were likely to be arrested and subjected to the
19 challenged practices); *Golden v. Zwickler*, 394 U.S. 103, 108-09,
20 89 S.Ct. 956, 959-60, 22 L.Ed.2d 113 (1969) (plaintiff lacked
21 standing where previously convicted for distributing anonymous
22 handbills in past election campaign, plaintiff was "most
23 unlikely" to be subjected to statute in future lacked standing to
24 seek declaratory relief for future campaigns).

25 Here, the GSA Network alleges its members wish to form a GSA
26 club on the Golden West campus but are afraid to do so for fear
27 of retaliation, humiliation, and further harassment from peers,
28 teachers, administrators and counselors. See Doc. 8, ¶65. The

1 allegations of discrimination and harassment are that the conduct
2 and hostile environment is continuing. Such allegations,
3 construed most favorably to the complainant, establish the active
4 intent to form a GSA Network club on the Golden West campus or
5 other VUSD campuses, and the immediate threat of harm to all
6 students who would join and participate in such a club. Evidence
7 may prove otherwise, however, on this motion the assertions are
8 taken as true.

9 **b. Redressability**

10 In determining standing for an association, a federal
11 plaintiff must show only that a favorable decision is likely to
12 redress his injury, not that a favorable decision will inevitably
13 redress his injury. *See Desert Citizens Against Pollution*, 231
14 F.3d at 1178.

15 In this case, GSA Network seeks declaratory relief claiming
16 that the Defendants' acts "violate the Fourteenth Amendment to
17 the Constitution of the United States, California Education Code
18 Sections 200 *et. seq.*, and Civil Code Section 51 *et seq*"; and
19 that such rights must be respected and protected. *See Doc. 8*,
20 35:14-18. GSA Network also asks for an injunction ordering
21 Defendants to take action and to develop policies to alleviate
22 the allegedly hostile and intolerant environment in public
23 schools within the VUSD. *See id.*, 35:19-22. GSA Network asks
24 for injunctive relief to stop Defendants alleged coercion of
25 students; harassment on the basis of their sexual orientation;
26 their diversion into alternative educational programs and ISPs;
27 requiring defendants to implement mandatory training programs for
28 VUSD faculty and staff on issues relating to diversity,

1 homophobia, and means of intervention; creating policies for
2 teachers and administrators for dealing with students who have
3 been harassed or discriminated against on the basis of actual or
4 perceived sexual orientation; and conducting assemblies in VUSD
5 high schools for all students, teachers, and administrators on
6 diversity, homophobia and tolerance. *See id.*, 35:23-36:17.

7 A declaratory judgment or preliminary injunction in GSA
8 Network's favor could likely alleviate the alleged harassment and
9 discrimination against gay and lesbian students, as well as those
10 perceived to be gay or lesbian. Gay and lesbian students would
11 be more likely to attend class full time; teachers and
12 administrators would be more responsive to illegal harassment and
13 discrimination against gay or lesbian students. A decision in
14 GSA Network's favor is likely to redress the alleged injuries
15 suffered by it and its members.

16 Plaintiff, GSA network has shown that "its members, or any
17 one of them, are suffering immediate or threatened injury as a
18 result of the challenged action of the sort that would make out a
19 justiciable case had the members themselves brought suit."

20 2. Organization's Purpose

21 GSA Network alleges its purpose as "a youth-led nonprofit
22 organization made up of gay, lesbian, bisexual, transgender and
23 heterosexual students and supportive adults who are dedicated to
24 eliminating homophobia and intolerance in schools." *See* Doc. 8,
25 ¶7. "GSA Network primarily fights homophobia and intolerance in
26 schools by empowering gay, lesbian, bisexual, transgender and
27 heterosexual members in high schools to form and maintain local,
28 school-based, student-run clubs, called 'GSAs,' in high schools

1 throughout California." *See id.*, ¶8. The staff in the regional
2 offices of GSA network connect these school- and community based
3 GSAs to each other and to community resources in order to foster
4 safe environments for student members; educate the student
5 members and the school community about homophobia, gender
6 identity, and sexual orientation issues; and fight intolerance,
7 discrimination, harassment, and violence in schools." *See id.*

8 GSA Network's purpose is to end intolerance, discrimination,
9 harassment, and violence in schools, directed at gay and lesbian
10 students, and those perceived to be gay or lesbian. *See id.*,
11 ¶¶7-8. The interests GSA Network seeks to protect are the rights
12 of its members, other gay and lesbian students, and those
13 perceived to be gay or lesbian, within the VUSD. *See id.* In
14 addition, the GSA Network seeks to protect those students'
15 safety, and to end the taunts, humiliation and discrimination by
16 students, teachers, counselors and administrators within the
17 VUSD. *See id.* The interests the GSA Network seeks to protect
18 are germane to the organization's purpose of fighting
19 intolerance, homophobia, and discrimination against gay and
20 lesbians in schools.

21 3. Individual Member Participation

22 The participation of individual members is not required when
23 the claims proffered and relief requested do not demand
24 individualized proof on the part of an association's members.
25 *See Associated General Contractors of California, Inc.*, 950 F.2d
26 at 1408; cf. *United Union of Roofers v. Insurance Corp. of*
27 *America*, 919 F.2d 1398, 1400 (9th Cir. 1990) (denying standing
28 because individual Union members will have to participate at the

1 proof of damages stage) with *Alaska Fish & Wildlife Fed'n v.*
2 *Dunkle*, 829 F.2d 933, 938 (9th Cir. 1987) (allowing standing
3 because the organization sought declaratory and prospective
4 relief rather than money damages; thus, its members need not
5 participate directly in the litigation). Lack of actual or
6 potential conflict among an association's members is not required
7 to satisfy *Hunt's* third prong. See *Coalition For Economic*
8 *Equity*, 950 F.2d at 1408-1409.

9 In this case, GSA Network has asked only for declaratory and
10 injunctive relief, no prayer for compensatory or punitive damages
11 is asserted. See Doc. 8, 35:14-36:17. No money damages are
12 requested by GSA Network; its members need not participate
13 directly in the litigation. See *Alaska Fish & Wildlife Fed'n*,
14 829 F.2d at 938. GSA Network satisfies *Hunt's* third prong.

15 4. GSA Network Direct Standing

16 Direct standing is shown where the defendants' practices
17 have "perceptibly impaired" the organizational plaintiff's
18 ability to provide the services it was formed to provide. See
19 *Havens Realty Corporation v. Coleman*, 455 U.S. 363, 378-379
20 (1982) (petitioners' alleged practices found to perceptibly
21 impair plaintiff's ability to provide counseling and referral
22 services for low- and moderate-income home seekers, with the
23 consequent drain on the organization's resources); *El Rescate*
24 *Legal Servs., Inc. v. Executive Office of Immigration Review*, 959
25 F.2d 742, 748 (9th Cir. 1992) (standing found where defendant's
26 alleged policies frustrate plaintiff's declared goals and require
27 the organization to expend resources in representing members they
28 otherwise would spend in other ways).

1 Here, GSA Network's purpose is to end intolerance,
2 discrimination, harassment, and violence in schools, directed at
3 member gay and lesbian students, and those perceived to be gay or
4 lesbian. See *id.*, ¶¶7-8. Those goals are directly frustrated by
5 Defendants' alleged policies of transferring gay or lesbian
6 students, and ignoring complaints regarding the safety,
7 harassment, and discrimination against gay and lesbian students,
8 and those perceived to be gay or lesbian. The GSA Network has
9 allegedly devoted significant monetary and staffing resources to
10 address the problems of alleged discrimination, harassment, and
11 homophobia in VUSD schools through its Fresno office. See *id.*,
12 ¶10. GSA Network has suffered an injury in fact sufficient to
13 confer direct standing; it has committed resources to advance
14 goals which are thwarted by the alleged policies of the VUSD.

15 Defendants argue that before GSA Network can have direct
16 standing, it must first form a club on a VUSD campus. See Doc.
17 24, 8:6-8. Defendants' proposed requirement is unsupported by
18 the case law; Plaintiff's need only show that defendant's alleged
19 policies frustrate the goals of the organization seeking standing.
20 See *Havens Realty Corporation*, 455 U.S. at 378-379; *El Rescate*
21 *Legal Servs., Inc.*, 959 F.2d at 748. Defendants' motion to
22 dismiss Plaintiff, GAY-STRAIGHT ALLIANCE NETWORK, for lack of
23 direct standing, is DENIED.

24 C. State Law Claims; California Tort Claims Act

25 Defendants allege that Plaintiff Loomis' seventh and eighth
26 causes of action should be "stricken and/or summarily adjudicated
27 in favor of defendants" because Loomis did not present a
28

1 government tort claim prior to filing his lawsuit. See Doc. 11
2 at 10.

3 Under the California Tort Claims Act (Cal. Gov't Code §§ 900
4 et seq.), no suit for money or damages may be brought against a
5 public entity until a written claim has been presented to the
6 public entity, and either has been acted upon or is deemed to
7 have been rejected. See *Alliance Financial v. City and County of*
8 *San Francisco*, 64 Cal.App.4th 635, 641 (1998) citing Cal. Gov't
9 Code §§ 905, 945.4. "[T]he purpose of the claims statutes is to
10 provide the public entity sufficient information to enable it to
11 adequately investigate claims and to settle them, if appropriate,
12 without the expense of litigation." *Phillips v. Desert Hospital*
13 *District*, 49 Cal.3d 699, 705 (1989). "The act should not be
14 applied to snare the unwary where its purpose has been satisfied,
15 consequently courts employ a test of substantial rather than
16 strict compliance in evaluating whether a plaintiff has met the
17 demands of the claims act." ¹ *Elias v. San Bernardino County*
18 *Flood Control District*, 68 Cal.App.3d 70, 74 (1977) (internal
19

20 ¹ Note to OWW: Earlier cases, including *Elias*, held that one
21 of the functions of the claims act was to apprise the
22 governmental body of "imminent" legal action so that it
23 could investigate and evaluate the claim and, where
24 appropriate, avoid litigation by settling meritorious
25 claims." See *Elias*, 68 Cal.App.3d at 74. Defendants could
26 assert that, because the January 11, 2000 letter indicated
27 that Plaintiff would be filing a "Government Code Claim
28 prior to filing a lawsuit," Defendants were not apprised
that legal action was imminent. See Doc. 20, Ex. "A". 6
Alliance Financial, interpreting the California Supreme
Court's decision in *Phillips*, held that it is unnecessary to
notify the public entity that a lawsuit is "imminent,"
provided the communication notifies the public entity that a
claim has accrued, and that the claimant intends to enforce
it. See *Alliance Financial*, 64 Cal.App.4th at 647.

1 citations omitted), see also *Phillips*, 49 Cal.3d at 705; *Alliance*
2 *Financial*, 64 Cal.App.4th at 641.

3 If a document does not substantially comply with
4 section 910 but nonetheless "discloses the existence of a 'claim'
5 which, if not satisfactorily resolved, will result in a lawsuit
6 against the entity," such document constitutes a "claim as
7 presented" or "defective claim" triggering the notice and defense
8 waiver provisions of the Act, sections 910.8, 911, 911.3. See
9 *Phillips v. Desert Hospital District*, 49 Cal.3d 699, 707-09
10 (1989). "While falling short of placing an affirmative duty on
11 public entities to obtain the information deemed necessary to
12 investigate incidents and to determine whether settlement is
13 appropriate," the notice and defense waiver provisions "furnish a
14 strong incentive to do so by sanctioning a public entity that
15 fails to ask the claimant for such information." See *id.* at
16 711. "Thus if a public entity receives a document that alerts it
17 to the existence of a claim and the possibility of a lawsuit but
18 fails to comply substantially with sections 910 and 910.2, the
19 purposes of the act are best served by requiring the public
20 entity to notify the claimant of the nature of the claim's
21 insufficiencies or lack of timeliness or else waive, by operation
22 of sections 911 and 911.3, its defenses based on those
23 deficiencies.

24 1. Substantial Compliance with Claims Act

25 Under Government Code section 910, a claim must show (1) the
26 "name and post office address of claimant," (2) the address to
27 which notices are to be sent, (3) the "date, place and other
28 circumstances of the occurrence or transaction which gave rise to

1 the claim asserted," (4) a general description of the
2 indebtedness, obligation, injury, damage or loss incurred," (5)
3 the "name or names of the public employee or employees causing
4 the injury, damage or loss," and (6) the amount claimed if it
5 totals less than \$10,000; if the amount claimed exceeds ten
6 thousand dollars (\$10,000), no dollar amount shall be included in
7 the claim. "However, it shall indicate whether the claim would
8 be a limited civil case." Cal. Gov't. Code § 910.

9 "When a public entity receives a document which contains the
10 information required by section 910 and is signed by the claimant
11 or [his] agent as required by section 910.2, the public entity
12 has been presented with a "claim" under the act, and must act
13 within 45 days or the claim is deemed to have been denied.

14 (§912.4) Once a claim is denied or deemed to have been denied,
15 the claimant may then proceed to file a lawsuit." *Phillips*, 49
16 Cal.3d at 707.

17 All six Section 910 claim requirements are addressed in a
18 January 11, 2000 letter entitled "Notification of Discrimination
19 of Student George S. Loomis," mailed to Robert Cesena, the
20 Principal of Golden West High School with a copy to Linda
21 Gonzalez, Superintendent, Visalia Unified School District. See
22 Doc. 20, Ex. "A". (1) The letter identifies Plaintiff George
23 Loomis as senior year student previously enrolled at Visalia
24 Unified's Golden West High School. It also provides the address
25 of his attorney. A statement of the address of claimant's
26 counsel substantially complies with the requirement that
27 claimant's address be given. See *Cameron v. City of Gilroy*, 104
28 Cal.App.2d 76 (1951). (2) The letter requests any response be

1 directed to the attorney's office. (3) The letter identifies
2 several circumstances giving rise to Loomis' claim including a
3 September, 1999 incident in which Loomis' Spanish II teacher, Mr.
4 Garcia, told the following "joke," allegedly directed at Loomis,:
5 "There are 2 kinds of guys who wear earrings. Pirates and
6 faggots, and there is no water around here." A second incident
7 described in the notification letter concerned the remark, "He's
8 a faggot." allegedly made by Ms. Sarah Kharmam, Golden West High
9 School Counselor, and overheard at Loomis' place of employment in
10 November, 1999. (4) The letter provides a general description
11 of injury as a "lost right to attend regular classes, falling
12 behind in his class work and his college career has been
13 potentially disrupted." It describes the alleged indebtedness or
14 damage as "medical, counseling, and legal fees necessitated by
15 the actions of District employees." (5) Mr. Garcia, Ms. Kharam,
16 and Mr. Stephens, Golden West's Vice Principal, were identified
17 as public employees causing injury to Mr. Loomis. (6)
18 Plaintiff indicates that the amount of the claim exceeds \$10,000.
19 See Doc. 18 at 17. Thus, no dollar amount needed to be included
20 in the claim. See Cal. Gov't. Code § 910(f).

21 While the letter does not expressly state whether the claim
22 "would be a limited civil case," it does provide sufficient
23 information to indicate that it will not be. California Code of
24 Civil Procedure (C.C.P.) § 580(b) provides that a permanent
25 injunction is a type of "relief that may not be granted in a
26 limited civil case." See Cal. Code Civ. Proc. §580. Loomis'
27 claim letter demanded reinstatement to a suitable independent
28 study program to allow completion of high school graduation

1 requirements. If granted, this relief would be in the form of a
2 permanent injunction. See Doc. 20, Ex. "A" at 3. Plaintiff's
3 letter provided sufficient information to establish that
4 Plaintiff's claim would not qualify as a limited civil case. See
5 *Ridge v. Boulder Creek High Sch. Dist.*, 60 Cal.App.2d 453
6 (1943) (claimant substantially complied where sufficient
7 information was supplied to ascertain required information with
8 modest effort.)

9 The January 11, 2001 letter provides all of the information
10 required under section 910, Plaintiff has substantially complied
11 with the claims requirement of the California Tort Claims Act.

12 Defendants do not dispute that the contents of the letter
13 substantially complied with the requirements of Section 910.
14 Rather, they argue alternatively that (a) because the Plaintiff
15 did not intend the letter to be a "claim," no tort claim was
16 filed; (b) Plaintiff failed to affirmatively allege compliance
17 with the claims presentation requirement; and (c) Plaintiff
18 failed to allege facts showing the applicability of a recognized
19 exception or excuse for non-compliance. See Doc. 11 at 9.

20 a. Plaintiff's Government Tort Claim

21 Defendants maintain that Plaintiff Loomis never filed a tort
22 claim. Defendants argue that the January 11, 2000 letter
23 threatening to file a government tort claim² cannot constitute
24

25 ² Plaintiff's January 11 letter states: "Along with this
26 notification to you, my client has instructed me to initiate
27 the following additional steps: . . . Prepare and file a
28 Government Code Claim prior to filing a lawsuit."
Defendants argue the only possible interpretation of this
statement is that the present letter demand is not a
government tort claim.

1 substantial compliance with the claim presentment requirement
2 because "by his own admission" Plaintiff's former attorney did
3 not intend the letter to be a government tort claim. See Doc. 24
4 at 10. However, Plaintiff's subjective intent is irrelevant.
5 See *Phillips*, 49 Cal.3d at 709-10.

6 In *Phillips*, Plaintiff's attorney sent a notice of intention
7 to commence an action based on a health care provider's alleged
8 professional negligence under C.C.P. § 364 to a public hospital.
9 The hospital argued that plaintiffs could never have intended
10 their 364 notice to function as a claim for purposes of the act
11 because, by plaintiffs' own admission, they were not aware of the
12 hospital's status as a public entity. See *id.* at 709. The
13 Supreme Court held:

14 Implementation of the purposes of the claim
15 presentation requirements - to require public entities
16 to manage and control claims and to encourage timely
17 investigation and settlement to avoid needless
18 litigation - depends not on a claimant's state of mind
19 but rather on the information imparted to the public
20 entity. Thus the relevant inquiry is not into
21 plaintiffs' subjective intent but whether their 364
22 notice disclosed to the hospital that they had a claim
23 against it which, if not satisfactorily resolved, would
24 result in their filing a lawsuit. See *id.*³

25 *Phillips* was unconcerned with the possibility that an
26 "improperly captioned document could have an unintended legal
27

28 ³ Because it did not state the amount sought in damages as
required by the applicable version of section 910,
Plaintiff's 364 notice did not substantially comply with
section 910. See *Phillips*, 49 Cal.3d at 708, n.7.
However, the hospital was required to treat Plaintiff's
defective claim as a "claim as presented" triggering the
notice and defense-waiver provisions of sections 910.8, 911
and 911.3 because the notice alerted the hospital to the
existence of a claim and the possibility of a lawsuit. See
id. at 711.

1 effect" stating, "it is settled that the caption or title of a
2 notice does not diminish its legal effect as a claim. *See id.*
3 710-711. The Supreme Court apparently reasoned that, as long as
4 the 364 notice apprised the hospital of the claim and possibility
5 of a lawsuit, the purposes of the claim requirement were
6 satisfied, and the hospital could not be prejudiced by
7 Plaintiff's failure to identify the notice as a government tort
8 claim. *See id.* The hospital was on notice of the claim, could
9 investigate, and respond, as contemplated by the policy of the
10 tort claims statute.

11 In *Wheeler v. County of San Bernardino*, the court similarly
12 held that if the "requisite information is in fact given, it is
13 not essential that it be given with the intention of complying
14 with the claims statute." *Wheeler v. County of San Bernardino*,
15 76 Cal.App.3d 841, 847 (1978). The plaintiff in *Wheeler*
16 petitioned the county for leave to file a late claim. *See id.*
17 at 845. Attached to the petition were a proposed claim, and
18 declarations attempting to justify failure to file the claim
19 within the statutory time frame. *See id.* Although the county
20 treated these documents as a petition to file a late claim,
21 rather than a claim, the Appeals Court found they were
22 "sufficient to put the county on notice of plaintiff's intentions
23 and contentions," and held that *Wheeler* satisfied the claim
24 presentation requirements. *See id.* at 847.

25 Under *Phillips* and *Wheeler*, Plaintiff's January 11, 2000
26 letter satisfies the claim presentment requirement of the Act.
27 The letter, entitled "Notification of Discrimination of Student
28 George S. Loomis," was not intended by Plaintiff's attorney to be

1 a "government tort claim." However, the letter alerted the
2 district to the existence of a claim and the possibility of a
3 lawsuit.

4 The District was well aware Mr. Loomis was presenting a
5 claim and its response to Plaintiffs allegations in its letter
6 dated January 26, 2000, demonstrate it denied (rejected) the
7 claim. See Doc. 12, Ex. "C". "[A]fter an investigation of the
8 issues involved," the District asserted that Ms. Karam's remarks
9 were not directed at Mr. Loomis. See *id.* The District confirmed
10 that Mr. Garcia made the statement reported in Plaintiff's
11 letter. See *id.* Based on its investigation, the District
12 characterized the complained of behavior as: "allegedly
13 whispering to a friend that another person might be gay and/or
14 ... telling a sexually offensive joke in a classroom setting."
15 See *id.* The District determined it was not appropriate to settle
16 the claims, because by its "reading of the law," this conduct did
17 "not constitute an actionable tort." See *id.* The District
18 concluded that it would "not be offering to pay Mr. Loomis'
19 medical or counseling expenses, nor his legal fees." See *id.*
20 Exalting substance over form compels the conclusion that the
21 District treated the plaintiff's demand letter as a claim and
22 denied it. This benefitted defendant by shortening the
23 limitations period to file a complaint in court.

24 Plaintiff's January 11, 2000 letter satisfies the purpose of
25 the claims statute by providing the District with sufficient
26 information to investigate Loomis' claims, and determine whether
27 settlement was appropriate. See *Phillips*, 49 Cal.3d at 705.
28 The information provided in the letter substantially complied

1 with the requirements of section 910 to enable the District to
2 determine it would not settle Mr. Loomis' claims and to reject
3 any settlement of his demands. Plaintiff's intent in submitting
4 the letter is irrelevant. *See id.* at 709; *Wheeler*, 76 Cal.App.3d
5 at 847. Defendant's failure to "interpret" Plaintiff's letter as
6 a claim because it was not labeled a claim does not diminish its
7 effectiveness. The letter was "sufficient to put the [District]
8 on notice of plaintiff's intentions and contentions." *Wheeler*,
9 76 Cal.App.3d at 847. Plaintiff's Letter constitutes a "claim"
10 presented to Visalia Unified School District, which the District
11 rejected, for purposes of the California Tort Claims Act.

12 Defendants were afforded additional time to submit legal
13 authorities following oral argument. They did not do so.

14
15 b. Affirmative Allegation of Compliance with Claims
Presentation Requirement

16 Defendants maintain that Plaintiffs do not affirmatively
17 allege compliance with the claims-presentation requirement or
18 facts showing the applicability of a recognized exception or
19 excuse for noncompliance. *See* Doc. 11 at 9. *citing* C.A.
20 *Magistretti Co. v. Merced Irrig. Dist.*, 27 Cal.App.3d 270 (1972).

21 The First Amended Complaint states "Plaintiff, George Loomis
22 provided notice of his claims to VUSD in January, 2000." *See*
23 Doc. 8 at 5. This notice refers to the January 11 letter which
24 fulfilled the Tort Claims Act's claim requirements. Because
25 Plaintiffs alleged provision of notice, and the notice
26 constituted a claim under the Act, Plaintiffs affirmatively
27 alleged compliance with the claims-presentation requirements.

28 ///

1 c. Exemption or Excuse for Non-compliance

2 Plaintiffs also allege, in the alternative, exemption from
3 the claims requirements because Defendants failed to comply
4 substantially with Sections 946.4 and 53051 of the California
5 Government Code. See Doc. 8 at 5, Doc. 18 at 19. Under section
6 946.4, failure to present a timely claim to a public agency is
7 not a bar to an action if the agency failed to make a timely
8 filing of the information statement required by section 53051.
9 See Cal. Gov't. Code §§ 946.4, 53051.

10 Judicial notice is taken that Visalia Unified has filed
11 information statements with both the County of Tulare and State
12 of California. See Doc. 12, Ex. "A"; Doc. 14, Ex. "B".
13 Plaintiff's maintain that there were changes in the composition
14 of the Board and Superintendent that were not reflected in these
15 statements at the time of Plaintiff's claim or 70 days
16 thereafter. They further maintain that summary judgment is
17 inappropriate because Plaintiffs have not been afforded an
18 opportunity to conduct discovery as to the District's substantial
19 compliance with this registration requirement.

20 It is unnecessary to resolve this issue. Because Plaintiff
21 Loomis substantially complied with the claims presentation
22 requirement, Plaintiff need not establish an exemption therefrom.
23 Defendants' motion to dismiss for failure to state a claim,
24 Plaintiff, GEORGE LOOMIS', Seventh and Eighth causes of action is
25 DENIED. Defendants' motion to strike and summarily adjudicate
26 Plaintiff, GEORGE LOOMIS', Seventh and Eighth causes of action is
27 DENIED.

28 ///

1 D. Punitive Damages

2 Under Section 1983, punitive damages are proper "either
3 when a defendant's conduct was driven by evil motive or intent,
4 or when it involved a reckless or callous indifference to the
5 constitutional rights of others." *Davis v. Mason County*, 927
6 F.2d 1473, 1485 (9th Cir. 1991) (citing *Smith v. Wade*, 461 U.S.
7 30, 56 (1982)). For state civil rights claims, the standard for
8 punitive damages is the same for claims brought under Section
9 1983. See *Smith*, 461 U.S. at 48-49. A public entity cannot be
10 sued under Section 1983 as a matter of law for punitive damages.
11 See *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981);
12 *Ruvalcaba v. City of Los Angeles*, 167 F.3d 514, 523 (9th Cir.
13 1999).

14 1. VISALIA UNIFIED SCHOOL DISTRICT

15 Defendant, VUSD, is a public entity. See *id.*, ¶14. VUSD
16 cannot be sued for punitive damages under Section 1983.
17 Plaintiffs' prayer for punitive damages against Defendant,
18 VISALIA UNIFIED SCHOOL DISTRICT, under Section 1983 is STRICKEN.

19 Mr. Loomis' Seventh state law claim is also against the VUSD
20 for violation of California Education Code sections 200, 220,
21 233.5, and 262.4. See *id.*, 32:10-12. The "Enforcement"
22 provision states in relevant part:

23 "Persons who have filed a complaint, pursuant to
24 this chapter, with an educational institution shall be
25 advised by the educational institution that civil law
26 remedies, including, but not limited to, injunctions,
restraining orders, or other remedies or orders may
also be available to complainants."

27 Cal. Edu. Code §262.3(b). Because the enforcement provision
28 does not limit the type of remedies allowed to a complainant,

1 Defendants' motion to dismiss Plaintiff, GEORGE LOOMIS', prayer
2 for punitive damages against Defendant, VISALIA UNIFIED SCHOOL
3 DISTRICT, for Mr. Loomis' Seventh state law claim is DENIED.

4 2. LINDA GONZALES

5 Here, Plaintiff alleges that between October and December
6 1999, Mr. Loomis attempted to contact, then-VUSD Superintendent,
7 Defendant, LINDA GONZALES, to discuss the constant harassment Mr.
8 Loomis was receiving. See Doc. 8, ¶45. Ms. Gonzales did not
9 return any of Mr. Loomis' phone calls. See *id.* In December
10 1999, Mr. Loomis went to Ms. Gonzales' office but was informed
11 she was not in that afternoon. See *id.* Mr. Loomis related to
12 Ms. Gonzales' assistant the conditions of harassment he was
13 facing at Golden West. See *id.* Ms. Gonzales' assistant promised
14 to pass these notes to Ms. Gonzales. See *id.* Mr. Loomis has not
15 received a response from Ms. Gonzales. See *id.* Ms. Gonzales is
16 sued under Section 1983 and the Unruh Civil Rights Act. See Doc.
17 8, 35:13-36:25.

18 It appears unclear whether defendant's conduct was driven by
19 evil motive or intent, or involved a reckless or callous
20 indifference to Plaintiff's constitutional rights. Defendants'
21 motion to strike Plaintiff, GEORGE LOOMIS', prayer for punitive
22 damages against Defendant, LINDA GONZALES, DENIED.

23 Plaintiffs' claim for punitive damages against defendant,
24 Gonzales, is sufficiently specific to give her notice of the
25 basis for which punitive damages are sought; i.e., reckless
26 disregard of state required duties resulting in violation of
27 plaintiff's constitutional rights or malice in ignoring
28

1 plaintiff's efforts to seek her intervention in redressing his
2 claims.

3 Plaintiffs' punitive damage claim is not immaterial,
4 impertinent, or irrelevant to the claims alleged, Defendants'
5 motion to strike Plaintiffs' punitive damage claim against
6 Defendant, LINDA GONZALES, is DENIED.

7
8 V. CONCLUSION

9 For the reasons stated above:

10 1. Defendants' request for judicial notice of certified
11 copies of official records maintained by the Tulare County
12 Recorder's office and the California Secretary of State showing
13 the registration of the VISALIA UNIFIED SCHOOL DISTRICT with the
14 Roster of Public Agencies, is GRANTED.

15 2. GSA Network has made a sufficient showing for
16 associational standing; Defendants' motion to dismiss for failure
17 to state a claim is DENIED.

18 3. Defendants' motion to dismiss Plaintiff, GAY-STRAIGHT
19 ALLIANCE NETWORK, for lack of direct standing, is DENIED.

20 4. Defendants' motion to dismiss for failure to state a
21 claim, Plaintiff, GEORGE LOOMIS', Seventh and Eighth state law
22 claims is DENIED.

23 5. Defendants' motion to strike and summarily adjudicate
24 Plaintiff, GEORGE LOOMIS', Seventh and Eighth state law claims is
25 DENIED.

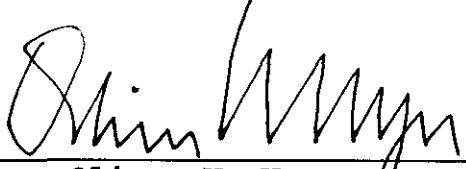
26 6. GSA Network's prayer for punitive damages against
27 Defendant, VISALIA UNIFIED SCHOOL DISTRICT, under Section 1983 is
28 STRICKEN.

1 7. Defendants' motion to strike Plaintiff, GEORGE LOOMIS',
2 prayer for punitive damages against Defendant, LINDA GONZALES, is
3 DENIED.

4 8. Plaintiffs' claim for punitive damages against Ms.
5 Gonzalez is not so indefinite that the defendants cannot
6 ascertain the nature of the claim being asserted. Plaintiffs'
7 punitive damage claim is not immaterial, impertinent, or
8 irrelevant to the claims alleged. Defendants' motion to dismiss
9 Plaintiffs' punitive damage claim against Defendant, LINDA
10 GONZALES, is DENIED.

11
12 SO ORDERED.

13
14 DATED: March 28, 2001

15
16 
17 Oliver W. Wanger
18 UNITED STATES DISTRICT JUDGE
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United States District Court
for the
Eastern District of California
March 29, 2001

* * CERTIFICATE OF SERVICE * *

1:00-cv-06616

Loomis

v.

Visalia Unified Dist

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on March 29, 2001, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

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Jack L. Wagner, Clerk

BY: *n.l. Staryk*
Deputy Clerk