

1 on the basis of nationality, race, ethnicity, or religion, and to be free from harassment or a hostile
2 learning environment created by such discrimination.

3 2. The claims stated here arise out of a pattern of conduct engaged in by Berkeley
4 Unified School District (“BUSD”) which resulted in the use of instructional materials (“the
5 Materials”) in at least one ethnic studies course during the 2023-2024 academic year—although all
6 or some of it was used in other 9th grade ethnic studies courses and it is understood that BUSD intends
7 to continue using those Materials—that explicitly and at length discriminate against Jewish and
8 Israeli students and families. They teach, as fact, a wildly biased, inaccurate, and distorted view of
9 the Arab-Israeli conflict. A person who knew nothing about Israel and her neighbors other than what
10 is in the Materials could not possibly come away from exposure to this curriculum believing anything
11 other than that the creation and continued existence of the State of Israel as a Jewish state—the
12 explicit command of the United Nations in 1947—is wrong, illegitimate, and unjust.

13 3. This is, on information and belief, Defendants’ goal: not to provide its BUSD school
14 students with a fact-based, objective education about the Middle East, but instead to feed them a
15 deliberately biased set of false facts and intentional omissions about Middle East history in general
16 and the current Israel-Hamas conflict specifically, so that BUSD students will hold one set of
17 opinions and will believe that certain clearly false things are true, and to reject and oppose other
18 beliefs and facts which are true, but which Defendants oppose. In particular, the only conceivable
19 purpose served by using the Materials is to induce BUSD students to believe that the existence of the
20 Jewish State of Israel is illegitimate and that all opposition to that state, including specifically the
21 commission of terrorist acts such as the rape, torture and murder of Jewish Israelis is justified.

22 4. This is a gross abuse of the public school system. It creates a hostile learning
23 environment which denies to Jews and to Israelis equal access to the educational facilities of the
24 state. It also abuses the rights of other Californians, who are denied the opportunity to learn actual
25 facts, and in an environment free from discrimination against Jews and Israelis.

26 5. It is therefore a clear violation of California law barring discrimination on the basis
27 of nationality, religion, and ethnicity, and barring the creation of a hostile learning environment.

28

PARTIES

1
2 6. Plaintiff YOSSEI FENDEL is a resident of Berkeley, California. He is Jewish, a dual
3 citizen of the United States and of Israel, and a Zionist. Plaintiff’s son is a student who was in the 9th
4 grade at Berkeley High School during the 2023-2024 academic year, and he also shares each of these
5 identities and commitments.

6 7. Defendant Ana Vasudeo, who is sued in her official capacity, is a director and is the
7 president of the BUSD Board of Education. Upon information and belief, Defendant Vasudeo is a
8 resident of Alameda County.

9 8. Defendant Ka’Dijah Brown, who is sued in her official capacity, is a director and is
10 the vice president of the BUSD Board of Education. Upon information and belief, Defendant
11 BROWN is a resident of Alameda County.

12 9. Defendant Jennifer Shanoski, who is sued in her official capacity, is a director and is
13 the clerk of the BUSD Board of Education. Upon information and belief, Defendant Shanoski is a
14 resident of Alameda County.

15 10. Defendant Mike Chang, who is sued in his official capacity, is a director of the BUSD
16 Board of Education. Upon information and belief, Defendant Chang is a resident of Alameda County.

17 11. Defendant Laura Babitt, who is sued in her official capacity, is a director of the BUSD
18 Board of Education. Upon information and belief, Defendant Babitt is a resident of Alameda County.

19 12. Defendant Enikia Ford Morthel, who is sued in her official capacity, is the
20 Superintendent of BUSD. Upon information and belief, Defendant Ford Morthel is a resident of
21 Alameda County.

22 13. Defendant Chris Albeck, who is sued in his official capacity, is the BUSD Director of
23 Curriculum and Instruction. Upon information and belief, Defendant Albeck is a resident of Alameda
24 County.

25 14. Defendant Jill Hoogendyk, who is sued in her official capacity, is the Associate
26 Superintendent of BUSD. Upon information and belief, Defendant Hoogendyk is a resident of
27 Alameda County.

28

1 and hostile false facts about Jews and the Jewish State, thereby ensuring an ever-rising tide of
2 antisemitism within, and ultimately beyond, BUSD.

3 **I. THE MATERIAL BERKELEY USED IN THE CLASSROOM DISCRIMINATES**
4 **AGAINST THE JEWISH BELIEF IN, AND THE SHARED ANCESTRAL**
5 **COMMITMENT TO, ZIONISM, AND AGAINST ISRAELI NATIONALITY**

6 22. The Materials, which are attached hereto as Exhibit A¹ are intentionally false, biased,
7 and designed to indoctrinate rather than teach. They deny, ignore and/or denigrate the Jewish
8 commitment to Jewish peoplehood, nationhood and self-determination which is, and has been for
9 over two thousand years, a central feature of Jewish religious belief, of shared Jewish ancestry and
10 national identity. They discriminate facially against Israeli national identity, and therefore directly
11 against FENDEL and his son, who are Israeli nationals.

12 23. Among the plethora of false statements, omissions, distortions and displays of obvious
13 bias against Israel and the Jewish people, the following are just a sample:

- 14 a. The Materials define **anti-Zionism** as the “belie[f] in a future where
15 all people on the land live in freedom, safety and equality” (Exhibit
16 A.6 at 2) (emphasis added).
- 17 b. The Materials define Hamas as “leading armed resistance against
18 Israel for decades” and as the entity that “controls one of the two
19 major political parties in Palestine,” while its formal status as a
20 terrorist organization under U.S. law, as well as the law of many
21 other nations, is described as merely an opinion “consider[ed]” by
22 some nations (Exhibit A.6 at 2).
- 23 c. The Materials ignore Hamas’s Charter, which proclaims that all of
24 the territory which is now Israel is consecrated to Islam and that all
25 non-Muslims who live on such territory must do so “under the wing
26 of Islam.”
- 27 d. The Materials grotesquely minimize the atrocities committed on
28 October 7, 2023, by Hamas as an “attack” in which over a thousand
Jews “were killed” – without saying by whom, how, why, and with
what intent, all of which information is available to a diligent

¹ Exhibit A consists of the following six documents:

29	A.1	Lesson 1 slide deck	18 pp.
30	A.2	Lesson 1 add'l loose slide	1 p.
31	A.3	Lesson 2 slide deck	16 pp.
32	A.4	Lesson 2 add'l loose slides	5 pp.
33	A.5	Lesson 3 slide deck	50 pp.
34	A.6	Vocabulary List	<u>5 pp.</u> 95 pp.

1 education professional, yet all of which was deemed by Defendants
2 and their agents as unimportant information to provide to BUSD
3 schoolchildren (Exhibit A.5 at 4-5).

4 e. The Materials describe the origination of the Hamas-Israel war by
5 saying that “the Hamas attack unfolded,” when “on Saturday
6 morning, Hamas fired thousands of rockets and sent fighters into
7 Israel in a surprise attack. Israel responded with a deadly
8 bombardment of the blockaded coastal enclave and declared a state
9 of war” (Exhibit A.5 at 7). The Materials thus make no mention of
10 the Hamas “fighters” slaughtering hundreds and hundreds of
11 civilians, incinerating entire families including babies and elderly
12 members. The statement that the Israeli attacks were “deadly” while
13 no such statement about Hamas’s assault on Israel is obviously—at
14 the very least—incomplete. In addition, Hamas declared war when
15 it seized power in Gaza in 2006 and a legal state of war has existed
16 between Gaza and Israel since then. That state of war, as a matter of
17 international war, justifies Israel’s blockade of Gaza, which is
18 imposed to prevent the importation of weapons. None of these facts
19 is mentioned in the allegedly “educational” Materials provided to
20 Berkeley ninth graders.

21 f. Consistent with the Materials’ categorical refusal to acknowledge
22 that Israel has any justification for any military action against
23 Hamas, they offer the following comparison of “Consequences of
24 War” for Gazans and Israelis (Exhibit A.5 at 14):

Consequences of war	
Gazans	Israelis
<ul style="list-style-type: none">• No water• No hospitals function in Northern Gaza• Only 9/36 hospitals function in Southern Gaza• No food• No electricity• Humanitarian aid was/is being blocked	<ul style="list-style-type: none">• Ceremonies like funerals, weddings, and religious events are on hold• Cities are largely shut down• Travel advisories in multiple countries warn against travel. More difficult to travel in and out of the region

25 This list ignores – and therefore in effect denies—Hamas’s rape,
26 murder and torture of Israelis, its taking of hundreds of hostages,
27 its—and Hezbollah’s and Iran’s –launch of thousands of missiles at
28 Israeli citizens, virtually daily, for months. The obviously false
premise of this chart is that Hamas’s unprovoked attacks on Israel
are irrelevant events, and that “war” started, for no reason, on
October 13, 2023, when Israel began to enter Gaza.

- 1 g. The discussion in the Materials about October 7 makes no mention
2 of the fact that Hamas members and their supporters raped Israeli
3 women and men, some of whom were raped to death, or that Hamas
4 terrorists burned whole families alive, as well as mutilated bodies of
5 both the living and the dead victims.
- 6 h. The Materials state that 5,000 Israelis reside in Gaza (Exhibit A.6 at
7 3). That is a complete lie (as implicitly acknowledged in Exhibit A.1
8 at 9). The Materials thus affirmatively deny the indisputable truth
9 which should be known by schoolchildren studying this issue, that
10 in 2005, nearly two decades ago, Israel removed every single Jew—
11 living and dead—from the Gaza Strip so that Gazans could rule
12 themselves, without interference from Israel, even though Israel had
13 acquired the right to be in Gaza as the result of a defensive war
14 begun against Israel by Arab armies in 1967.
- 15 i. The Materials contain nothing about Hamas officials publicly
16 announcing that they intended to commit more attacks exactly like
17 that of October 7 until the Jewish state ceases to exist.
- 18 j. The Materials equate Hamas’s taking of innocent civilians as
19 hostages who are held in conditions which violate all applicable
20 norms of international law, and dozens of whom have been tortured,
21 killed and/or serially raped – with Israel’s detention of Arabs
22 arrested for criminal acts (Exhibit A.5 at 41), even though those
23 Arabs:
- 24 i. are held in prisons which are routinely visited by
25 international humanitarian organizations including the Red
26 Cross,
 - 27 ii. are detained under conditions which fully comply with
28 international law (many of whom have completed entire
undergraduate and graduate degree programs while in
prison, have regular family visits, and frequently have access
to television),
 - iii. are sentenced to prison only after they have been
 - 1. charged with crimes,
 - 2. provided with defense counsel,
 - 3. subjected to a trial before a neutral factfinder, and
 - 4. found guilty of committing violent crimes up to and
including mass murder,
 - 5. whose responsibility for these criminal acts is
publicly proclaimed and celebrated by the
Palestinian Authority, which pays monthly stipends
to the families of these people, the amount of which
rises with the gravity of the harm they inflicted on

1 Jews, with the highest amounts being paid to the
2 families of Arabs convicted of murdering Jews.

- 3 k. The Materials falsely define Zionism to be a concept that originated
4 in the late 19th century (Exhibit A.6 at 2), even though this assertion
5 flatly and falsely denies the Jewish religious and ethnic commitment
6 to the return of the Jewish people to the land of Israel which, as more
7 fully alleged below, has defined Jewish belief, Jewish ethnic and
8 ancestral identity, and Jewish culture for well over two thousand
9 years.
- 10 l. The Materials falsely define as “Palestinians” all Arabs who have
11 ever lived in this region (Exhibit A.1 at 10), even though Palestinian
12 nationalism did not exist until the middle of the 20th century. That is
13 why, in 1947, when the United Nations partitioned the region of
14 Palestine, it directed the creation of a “Jewish” and an “Arab” – not
15 a “Palestinian” state. U.N. Resolution 181.
- 16 m. The Materials falsely claim (Exhibit A.6 at 3), that “56% of the
17 land” of Palestine went to the Jewish State when in fact, of the
18 original territory comprising the Palestine Mandate included
19 Transjordan—i.e. territory to the east of the Jordan River—which
20 constituted over half of the Mandate’s total territory, which was
21 subsequently severed and granted to the country which is now
22 Jordan. It also ignores the reality that roughly 60% of the land
23 allotted to the Jewish State under the U.N. partition plan consisted
24 of desert (the Negev).
- 25 n. The Materials ascribe all responsibility for Hamas’s continued
26 holding of Israeli hostages to the Israeli government (Exhibit A.5 at
27 42), and do not disclose that Hamas has rejected every ceasefire and
28 hostage exchange offer made to it including every single one offered
by the United States.
- o. The Materials report that South Africa has charged Israel with
genocide in the International Criminal Court (Exhibit A.5 at 39), but
shockingly do not disclose that the Court has not found that Israel’s
actions constitute genocide.
- p. The Materials report on the amount of aid provided to Israel by the
United States (Exhibit A.5 at 32), but not on the amount of aid
provided to Gaza by the United States, or the fact that the annual
amount per capita given to the two entities is identical
(approximately \$310 per person).
- q. The Materials quote accusations that Israel is committing
“genocide” in Gaza (Exhibit A.5 at 39), while omitting the following
fact: Civilian casualties in the war between Israel and Hamas are,
depending on whose figures are used for Arab casualties, between
1-1.5 to 1. By comparison, in the U.S. battle in Mosul, Iraq—a city
not honeycombed with tunnels used exclusively by enemy forces—
the ratio was 2.5 civilians killed for each enemy combatant.

1 [https://www.newsweek.com/israel-has-created-new-standard-urban-warfare-why-will-no-one-admit-it-opinion-](https://www.newsweek.com/israel-has-created-new-standard-urban-warfare-why-will-no-one-admit-it-opinion-1883286)

2 [1883286](https://www.newsweek.com/israel-has-created-new-standard-urban-warfare-why-will-no-one-admit-it-opinion-1883286) (discussion of combatant/civilian casualty ratios by John
3 W. Spencer, Chair of Urban Warfare Studies at the Modern War
4 Institute, U.S. Military Academy at West Point).

- 4 r. The Materials ignore the basic and indisputable facts of this region's
5 history, including the facts that
- 6 i. No Palestinian nation has ever existed in the territory which
7 is now the State of Israel or anywhere else.
- 8 ii. Jews constituted the majority population in this region for
9 over a millennium until they were overtaken in population
10 by Christianity in the fifth century. JEM: The Jewish
11 people—so named because of their indigeneity to Judea—
12 created a civilization and two multi-centuries-enduring
13 sovereign commonwealths. After the collapse of the
14 Roman Empire and then the Islamic capture of the region,
15 the area was governed by a series of groups—Umayyids,
16 Abbasids, Fatamids, Mamluks, Ottomans, and even the
17 British—but none was ever “Palestinian.”²
- 18 s. Islam, spread by the sword from Medina to Mecca and then up
19 through the fertile crescent to reach as far as west as the gates of
20 Vienna after the death of Mohammad, only attained any connection
21 to the land which is now Israel after the Jewish people had already
22 been present in that place for over a millennium and a half.
- 23 t. The Materials purport to prove Palestinian indigeneity and that
24 Palestinian land was taken away from the Palestinians and given to
25 the Jews for their Homeland after the Holocaust of World War II
26 (Exhibit A.1 at 10). In fact, however, Palestine was always a region,
27 not a country, and Palestinians had never had sovereignty in this
28 place. These facts – unmentioned, and effectively denied, in the
Materials, are necessary to understand the short quotation by the
Materials, from the Balfour Declaration (Exhibit A.6 at 3), that
Britain supported “the establishment in Palestine of a national home

22 ² Before the State of Israel was created by the United Nations in 1947, the territory was controlled by the British Mandate,
23 pursuant to the directive of the League of Nations. Before that, for four hundred years, it was part of the sovereign territory
24 of the Ottoman Empire. Before that, for approximately another three hundred years, it was controlled by the Mamluks.
25 Before that, control over the territory went back and forth between Muslim and Christian armies; at no point during this
period (or any period in history) was there any such thing as a “Palestinian” army, as there had never been any such thing
as a sovereign country called Palestine. The most famous and effective leader of these Muslim armies was Salah a’Din,
who was not even an Arab—he was a Kurd.

26 Islam only attained any control over the territory now embraced by the State of Israel after the death of Mohammad,
27 which occurred in the year 632. By that year the Jewish people had had sovereignty over that territory for approximately
28 a thousand years; had gained it twice and lost it twice, and then, in the year 70 CE, begun a two thousand year long
process of yearning for its reestablishment; and had, as an expression of that yearning, created a civilization that had
spread around the world whose canonical texts, rituals and ethnic and ancestral identity were, as they remain today,
focused on the return of Jews as a sovereign people to the land of Israel.

1 for the Jewish people.” The reality is that no land was taken from
2 Palestinians and given to the Jews, by the British Mandate or by the
United Nations.

3 u. But Jews had been violently expelled from the region long before,
4 and although Jews throughout history attempted to return, such
5 efforts were frequently resisted with violence. That, and the fact that
6 during the Ottoman Empire Jews and other non-Muslims were
7 subjected to a special tax and were treated and considered to be a
8 lower status than Muslims, are at least two significant reasons for
Arabs constituting the majority of the population in the region
known as Palestine prior to the United Nations grant of nation status
to the Jewish State of Israel. These facts, however, are not
mentioned in the Materials.

9 v. While the Materials here at issue provide abundant information
10 suggesting that Israel’s actions in Gaza are morally wrong (see
11 Exhibit A.5 at 5, 7-16, 19, 33-35, 41, 44, 46, and 48), they provide
12 no information expressing the perspective of Israel’s government or
its people, who believe that Israel’s actions in Gaza are moral, legal
and indeed necessary, a view also held by many non-Israeli Jews
and many non-Jews.

13 w. The Materials charge Israel with destroying ostensibly non-military
14 buildings in Gaza (Exhibit A.5. at 12-13), but make no mention of
15 the repeatedly verified facts that Hamas uses homes, schools,
16 mosques and hospitals as launching grounds for missiles, as
17 command and control centers, and hiding places for its fighters, or
18 as storage locations for military matériel. There is no mention of the
over 500 kilometers of tunnels built by Hamas, used exclusively by
Hamas fighters, which run underneath virtually the entirety of Gaza,
turning every nonmilitary building above the tunnels into a civilian
shield for these military resources.

19 24. The Materials here at issue disclose none of these material facts to students, who are
20 given the Materials ostensibly so they can learn objective truths about the region and its peoples and
21 then form their own judgments about what opinions they should hold regarding the dispute that now
22 unfolds there: indeed, that is the essential purpose of public education.

23 25. The Materials only include representations of anti-Israel members of Congress
24 (Exhibit A.3 at 10 and Exhibit A.5 at 33-34), despite the fact that most members of Congress are not
25 anti-Israel, and then after presenting only the anti-Israel side asks students to speculate as to why
26 more politicians don’t express similar views.

1 26. The Materials make extensive reference to the United Nations without once
2 mentioning that hundreds of UN staff—specifically those in UNRWA—have been found to have ties
3 with Hamas with over a dozen having participated directly in the October 7 massacre.

4 27. Throughout the Materials, students are invited explicitly to identify emotionally with
5 Gazans, all of whom are presented as innocent civilians, and to empathize with their suffering, and
6 to blame Israel exclusively for all such suffering. (See subparagraphs 23(v)-(w), supra). In the
7 Materials students are never prompted to identify emotionally with Israelis, or to consider whether
8 the rape, incineration, mutilation, and murder of Jewish Israelis by Hamas might be acts whose
9 morality should be questioned, or whether the Gazan victims were in harm’s way because Hamas
10 refuses to provide shelters for civilians, uses Gaza civilians, their homes schools, mosques and
11 hospitals as human shields, or because Hamas started this war.

12 **II. BERKELEY REFUSED TO ALLOW FENDEL TO SEE THE MATERIAL**
13 **BEING TAUGHT TO HIS SON AND HIS SON’S CLASSMATES UNTIL AFTER**
14 **IT HAD ALREADY BEEN USED.**

15 28. In November of 2023 FENDEL learned of the intention of Alex Day, a BUSD Ethnic
16 Studies teacher who taught one of the classes in which Plaintiff’s son was a student, to teach about
17 “Palestine,” and about Israel’s status as a “colonial power.” Day is, on information and belief, a
18 member of the national Coalition for Liberated Ethnic Studies, an organization devoted to, among
19 other things, teaching that Zionism is a form of Western imperialism; that the creation of the State of
20 Israel is an exercise in white supremacy; and that Israel’s creation and its continued survival are
21 effected by genocide and apartheid.

22 29. FENDEL learned about Day’s intention because Day announced it at a BUSD School
23 Board public hearing which was attended by many of the Defendants. Having heard this teacher
24 assert his intentions, FENDEL became concerned that the material that would be used to teach his
25 son, and his son’s classmates, about this subject would be biased—in part because teaching as a fact
26 that Israel is a colonial power means teaching that the Jewish state and its Jewish citizens are invaders
27 to the land of Israel and that the Jewish people have no claim to that territory.

28 30. FENDEL immediately began attempting to learn what would be taught in this class.
Defendants, acting not only through Mr. Day but also through Day’s superiors at Berkeley High

1 School and even through various BUSD administrators, led FENDEL on a many months' long chase
2 the sole purpose of which was to prevent him from finding out what would be taught to his son and
3 his son's classmates on this subject—either to prevent FENDEL permanently from even learning the
4 content, or at least to prevent him from learning the content until after that content had already been
5 inflicted on FENDEL's son and his son's classmates. This wild goose chase forestalled FENDEL
6 from being able to prevent or at least sound the alarm about the dissemination of false and harmful
7 instructional to BUSD students. It also prevented FENDEL from properly preparing his son for the
8 lies and distortions he and his classmates would be encountering in class.

9 31. The paragraphs that follow in this Complaint lay out each step in that lengthy chase
10 because they demonstrate both the Defendants' consciousness that the substance of the Materials had
11 to be hidden from FENDEL, and their insistence, and that of their agents, on using the Materials
12 without any public review. Defendants' employees' efforts to bar FENDEL from learning what
13 would be taught in his son's classroom included: cancelled appointments, postponed appointments,
14 failures to respond to simple questions, pretense that simple questions were ambiguous and so could
15 not be answered or required clarification, and numerous other intentional obfuscations and evasions
16 whose sole effect—and therefore, on information and belief, whose sole purpose—was to delay or
17 altogether prevent Plaintiff from seeing the Materials that would be used by Defendants to teach
18 FENDEL's son and his son's classmates about FENDEL's, and his son's, native country and
19 Homeland.

20 32. On November 15, 2023, FENDEL attended a (BUSD) school board meeting, where
21 he listened to his son's teacher, Alex Day, discuss his desire to teach about Palestine. During his
22 remarks, Day implied that Israel is a colonialist power and indicated his firm intention to share his
23 personal views on Israel's supposed colonialism with his students. This expression of biased
24 perspectives by an educational professional heightened Plaintiff FENDEL's concerns about the
25 BUSD learning environment and the potential for indoctrination within the classroom.

26 33. On November 16, 2023, the day after the school board meeting, FENDEL initiated
27 communication with Mr. Day hoping to discuss his concerns about teaching on what was referred to
28 as Israel/Palestine. Mr. Day responded fourteen days later, on November 30, 2023, declining

1 FENDEL’s invitation to meet and discuss the issue informally. Instead, Mr. Day expressed a
2 preference for conversing over email. FENDEL replied on the same day, but Mr. Day did not respond
3 until thirteen days later, on December 18, 2023.

4 34. By December 18, 2023 email, Day informed FENDEL: “In January, I’m going to be
5 running a 3 day curriculum on Israel and Palestine that is a cross-district collaboration with history
6 teachers outside of my department, and has been vetted by district admin for determining whether it
7 adheres to district policy. In that curriculum, we do not have the time to delve into the complex topic
8 of colonialism, and do not address it in these lessons.” (Exhibit B). As it turned out, this last sentence
9 was false. The Materials explicitly discuss and purport to define and teach children about “settler
10 colonialism” (Exhibit A.6 at 4).

11 35. On December 19, 2023, FENDEL responded to Day asking to see the curriculum. Day
12 replied to FENDEL the following day, December 20, 2023, stating: “I’m feeling that sharing this
13 curriculum is a little bit above my paygrade, so I’m deferring to Chris Albeck— who’s in charge of
14 curriculum in BUSD—who I’m cc’ing here.” A copy of FENDEL’s December 19 request and Day’s
15 December 20 denial is attached (Exhibit C).

16 36. FENDEL emailed Defendant Albeck directly on December 21, 2023, and January 9,
17 2024, both times requesting a link to review the curriculum to which Day had referred. Copies of the
18 emails are attached (Exhibit D).

19 37. Albeck emailed back on January 9, 2024. Instead of answering FENDEL’s clear
20 request for access to the curriculum, he asked to “schedule a call” so Albeck could “better understand
21 your [i.e., FENDEL’s] inquiry” (Exhibit E).

22 38. FENDEL responded the same date, supplying his phone number. The two agreed to
23 meet in Albeck’s office on January 11, 2024. During the January 11, 2024 meeting, Defendant Albeck
24 told FENDEL that he was “looking into” getting a link sent to FENDEL for the entire “Israel-
25 Palestine” curriculum.

26 39. Defendant Albeck claimed that the curriculum was developed internally by BUSD
27 teachers and then submitted to his office for approval to ensure compliance with district guidelines.
28 He admitted that the initial draft of the curriculum had been rejected by his office for failing to meet

1 these standards. However, after some purported revisions, he now conveniently asserted that the
2 current iteration of the curriculum adheres to district standards.

3 40. Defendant Albeck told FENDEL that while he continued looking into getting a link
4 to the Material made available for FENDEL, they could together review the curriculum on Albeck's
5 laptop.

6 41. The first two slides of the Materials addressed ground rules. But by the third or fourth
7 slide FENDEL observed what he saw as a clear red flag. That slide had columns of "Things that are
8 okay to say" and "Things that are not okay to say". In the column under "THINGS THAT ARE
9 OKAY TO SAY" were statements that demonize Israel such as "This is genocide" or "This is
10 apartheid". There were no statements that similarly demonized or even criticized Palestinians or
11 Arabs in the "OKAY TO SAY" column. But in the "NOT OKAY TO SAY" column were "jokes
12 about terrorism" or "jokes about suicide bombing." FENDEL informed Defendant Albeck that the
13 slide implied that any claims about, for example, Palestinian terrorism, must be a joke, and that by
14 explicitly categorizing statements that demonize Israel as "OKAY," the slide implicitly encouraged
15 such statements.

16 42. The very next slide of the Materials that Defendant Albeck showed FENDEL
17 contained vocabulary terms deemed relevant to the lessons. Terms on the list included "genocide,"
18 "apartheid," "settler colonialism," all in the context of terms for Israel. The word "terrorism" was not
19 on the list. After viewing just the first two or three substantive slides of the Materials FENDEL
20 understand that those Materials were designed to place all culpability on Israel and that Palestinian
21 responsibility would either be erased or greatly minimized.

22 43. FENDEL asked Defendant Albeck to explain how the Material did not, at the very
23 least, violate BUSD's policy regarding the teaching of Controversial Issues,³ which requires that
24

25 ³ BUSD's Controversial Issues policy 6144 calls on "teachers to ensure that all sides of a controversial issue are
26 impartially presented, with adequate and appropriate factual information. Without promoting any political, religious,
27 social, historical, or economic point of view, the teacher should help students separate fact from opinion and warn them
28 against drawing conclusions from insufficient data."

The Policy continues: "The teacher may not use his/her position to forward his/her own historical, religious, political,
economic or social bias."

1 when teaching such issues the material presented must be balanced and that teachers' own political
2 opinions must not be promoted. Defendant Albeck's response was that the Materials were created by
3 a "diverse set of voices." And then FENDEL was told they were out of time and the meeting was
4 over. FENDEL was given no further access to the Materials.

5 44. On January 16, FENDEL emailed Defendant Berkeley High School Principal Juan
6 Raygoza with a formal written demand to see all curricular materials. Defendant Albeck and Day
7 were copied on the email. On January 17, FENDEL emailed Defendant Enikia Ford Morthel, BUSD
8 Superintendent, and Defendant Jill Hoogendyk, Associate Superintendent, demanding to see the
9 curriculum, copying Raygoza, Albeck, and Day. Copies of these emails are attached (Exhibits F and
10 G).

11 45. On January 18, 2024, Defendant Raygoza notified FENDEL that the district refused
12 to provide him with online access to the Materials. FENDEL responded by requesting a hard copy.
13 On the same date, Defendant Raygoza replied: "Mr. Albeck is available to meet with you and review
14 the curriculum if you would like. That is what we are offering to you, not sending or printing out the
15 entire curriculum." A copy of this January 18 email chain is attached (Exhibit H).

16 46. As the BUSD teachers and administrators must know, FENDEL was entitled to access
17 the Material pursuant to Education Code § 49091.10(a), which states that such material "shall be
18 compiled and stored by the classroom instructor and made available **promptly** for inspection by a
19 parent." (emphasis added) But still the saga continued.

20 47. On January 18, 2024, FENDEL emailed a Public Records Act (PRA) request to the
21 BUSD Public Information Office. The request sought "a copy of this Israel-Palestine curriculum. I
22 am also requesting to see all communication to or from Mr. Alex Day, Mr. Chris Albeck, or Mr. Juan
23 Raygoza regarding the development of this curriculum, or any other discussion of it." A copy of the
24 emailed request is attached (Exhibit I).

25
26
27 <https://simbli.eboardsolutions.com/Policy/ViewPolicy.aspx?S=36030527&revid=TzfgXblCCt8WnARk49rptA==&ptid=amIgtZiB9plushNj16WXhfiOQ==&secid=ruE8yj8gaZHBkLjNHWmKZw==&PG=6&IRP=0&isPndg=false>

1 48. Also on January 18, FENDEL met with Alex Day over Zoom, explaining his concerns
2 that the Material was biased against Israel and asking Day not to use it.

3 49. On January 19, Defendant Albeck agreed to meet with FENDEL on January 24;
4 however, on January 24, Defendant Albeck canceled the meeting.

5 50. Also on January 24, the BUSD Public Information Office responded to FENDEL's
6 January 18 PRA request, stating: "We estimate that we can begin producing responsive, disclosable
7 records in 30 days." A copy of the January 24 PRA response is attached (Exhibit J).

8 51. FENDEL expressed his concerns about the lack of access and suspicions of anti-Israel
9 prejudice in the Materials to the BUSD school board—each one of whom are Defendants in this
10 action—during a January 24 board meeting, and followed up in writing the next day, January 25,
11 2024 (Exhibit K). Given the circumstances, FENDEL asked the board not to allow the Materials to
12 be taught.

13 52. On January 30, Defendant Jennifer Shanoski, a BUSD school board member emailed
14 FENDEL: "As a teacher, I am slightly confused by your request. Curriculum refers to a lot of things
15 - books, worksheets, lesson plans, discussion topics, etc. Some of those things are tangible and can
16 be provided while others are not. What, precisely, are you asking for? Textbooks, manuals, films, etc
17 as described in Ed. Code? If I can understand better what you are asking for then I am happy to follow
18 up. Please note, however, that the district has received a number of requests and must manage them
19 in the order they are received (which might extend the timeline)." (Exhibit L).

20 53. FENDEL responded to Defendant Shanoski: "[T]o make things clearer, see this email
21 from Mr. Day from Dec 18, in which he references a "curriculum." I have been requesting access to
22 this "curriculum" since Dec 19. The impression I've been given is that this is a collection of electronic
23 files. But as noted, I have not yet been afforded the ability to review it and Mr. Day has told me that
24 he is being prohibited by Chris Albeck (Director of Curriculum for BUSD) from sharing these
25 materials with me." (Exhibit M).

26 54. On January 31, Shanoski emailed FENDEL: "I have been assured that the documents
27 being used in your child's classroom will be provided... I will be sure to follow up if you don't receive
28 the information in the next few days." (Exhibit N).

1 55. As of February 8, FENDEL had received no curricular materials, and he notified
2 Shanoski of that. (Exhibit N).

3 56. On February 9, Defendant Shanoski responded by email as follows: “I did check in
4 on your request and have learned that because legal coun[se]l has become involved, the process for
5 sharing documentation will be impacted and I will not be able to comment further.” A copy of
6 Shanoski’s February 9 email is attached (Exhibit O).

7 57. By letter dated February 5, 2024, The Deborah Project, as counsel for FENDEL,
8 emailed BUSD demanding the production of the curricular materials FENDEL had requested and
9 giving the school district ten days to provide the Materials. The letter further cautioned BUSD of
10 FENDEL’s intent to take legal action to enforce his rights to the Materials if the school district failed
11 in its duty to produce them. A copy of the February 5, 2024, demand letter is attached (Exhibit P).

12 58. On February 26, 2024, FENDEL received an email from Yesenia Rodriguez on behalf
13 of Alex Day. The full text of the email stated: *Ethnic Studies Unit Please see the note below from
14 our Ethnic Studies teacher, Mr. Day.

15 Dear Hive families,

16 We are writing today as a team of 9th Grade Ethnic Studies teachers who
17 are beginning our units on the conflict in Palestine and Israel.

18 As an Ethnic Studies department, we have opted in to present the three
19 BUSD-vetted lessons on the recent heartbreaking conflict and tragedy in
20 Palestine and Israel. We hope to educate our students on this urgent current
21 event with data and facts. We also hope to aid students in combating hate
22 against fellow community members far and wide on the sole basis of their
23 identity. We stand united against Islamophobia, anti-Arab racism, and
24 antisemitism. This curriculum was co-created with a variety of educators,
25 and many throughout the BUSD communities have examined it.
26 Additionally, we have maintained multiple perspectives throughout to
27 ensure all experiences are acknowledged in our classroom.

28 We take our responsibility as Ethnic Studies teachers very seriously and
understand the deep trust that it takes to send your kids to school and have
them learn about issues near and dear to your heart. Families of every
identity do this each day—whether it’s related to anti-Black racism, the
indigenous experience, immigrant rights, or the challenges in the LGBTQ+
communities. The conflict in Israel and Palestine has been treated with the
same degree of sensitivity, humanity, and research and is in line with
Berkeley High’s Mission to educate and inspire all students in a safe,
respectful, and supportive environment.

1 Thank you for your continued support and please don't hesitate to reach out
2 as questions or concerns arise. **Please keep in mind that we're not at**
3 **liberty to share the curriculum directly with families, as per the**
4 **practice we use with ALL curriculum**, but we hope you ask your kids
5 about what they're learning and engage alongside them as they make sense
6 of this complex world. Warmly, Universal 9th Grade Ethnic Studies
7 Teachers*

8 The February 26 email is attached (Exhibit Q) (emphasis added).

9 59. That is, in complete defiance of state law and BUSD policy, Day and other ethnic
10 studies teachers absolutely refused, in writing, to provide FENDEL (and other parents too) with
11 access to the Materials FENDEL had asked to see.

12 60. It was not until after the biased and discriminatory Material was taught in the
13 classroom that Berkeley High School released that—but only that—Material. None of the other
14 requested material was ever produced to Mr. FENDEL. After each day's Material was taught, it would
15 then be released to Mr. FENDEL. This ensured that Plaintiff would not be able to challenge the use
16 of the Materials, or to show their clear bias to anyone, until after they had already been inflicted on
17 the Plaintiff's son and his son's classmates. And, oddly, when the day's lesson had been taught to the
18 students and those materials were sent to Mr. FENDEL, the school informed him that the material
19 was *not* being supplied to him as a result of his Public Records Act request. See attached February
20 29, 2024, cover email from Trish McDermott to FENDEL (Exhibit R).

21 **III. PLAINTIFF'S COMMITMENT TO THE LAND OF ISRAEL IS BOTH A**
22 **RELIGIOUS COMMITMENT AND AN ELEMENT OF PLAINTIFF'S SHARED**
23 **ANCESTRAL AND ETHNIC COMMITMENT TO THE JEWISH PEOPLE**

24 61. The Jewish people, as a people and not only as a religion, have been committed to
25 their nation's presence in, and sovereignty over, the land of Israel for well over two thousand years.
26 That commitment is manifest in the textual canon of the Jewish religion; in the Jewish calendar; in
27 Jewish customs; and in the ethnic and ancestral identity that Plaintiff and his son share with Jewish
28 people all over the world and throughout history.

62. That commitment originates in the Torah, which describes the coming into existence
of the Jewish people and God's grant to them of the land of Israel. It is expressed in a multitude of
Jewish customs, Jewish foods, and Jewish ritual observances.

1 63. Because this is so, for most Jews in the world, the commitment to Israel is manifest
2 in Jewish identity and is an element of Jews’ shared ancestry.

3 64. The United States Department of Education, Office of Civil Rights (“OCR”), has
4 repeatedly recognized that the Jewish commitment to Israel is an element of Jews’ shared ancestry
5 and ethnic identity which is protected by Title VI of the Civil Rights Act of 1964.

6 65. Attacks on students committed to Zionism is recognized by the OCR as antisemitic.

7 66. Thus, for example, even before the dramatic surge in on-campus attacks on Jews
8 committed to Israel that followed Hamas’s October 7, 2023 attack, OCR found the presence of
9 “antisemitic harassment” at the University of Vermont (“UVM”) when a single teaching assistant
10 stated publicly:

- 11 a. “its [sic] good and funny” “for me, a TA, to not give Zionists credit
12 for participation” and to give the students for whom she was a
13 teaching assistant “-5 points for going on birthright,” “-10 points for
posting a pic with a tank in the Golan heights,” and “-2 point just
14 cuz I hate ur vibe in general”
15 b. “why do so many Zionists work for the writing center[?]”
16 c. “I get the indelible [sic] surge [sic] to cyber bully” when receiving
17 “posts from UVM Zionist Instagram accounts”;
18 d. “serotonin rush of bullying Zionists on the public domain”
19 e. “... both sides discourse,” and the statement “my family lives in tel
20 aviv” should be “politically unthinkable, worthy of private and
21 public condemnation, [and] likened to historical and contemporary
22 segregationist movements”;

23 (Exhibit S at 5-6).

24 67. OCR found that these statements by one teaching assistant on a campus with over
25 11,500 students constituted UVM’s illegally treating “individuals differently on the basis of national
26 origin in the context of an educational program or activity.”

27 68. OCR found that proof of these facts would constitute a demonstration that UVM had
28 “allowed a hostile environment for some Jewish students to persist at the University.”

 69. On November 7, 2023, OCR issued a new Dear Colleague Letter, reminding schools
that receive federal financial assistance that they have a

1 responsibility to address discrimination against Jewish, Muslim, Sikh,
2 Hindu, Christian, and Buddhist students, or those of another religious group,
3 when the discrimination involves racial, ethnic, or ancestral slurs or
4 stereotypes; when the discrimination is based on a student's skin color,
5 physical features, or style of dress that reflects both ethnic and religious
6 traditions; and when the discrimination is based on where a student came
7 from or is perceived to have come from... [and reminding schools that]
8 Harassing conduct can be verbal or physical and need not be directed at a
9 particular individual.

10 U.S. Dep't of Educ., OCR Dear Colleague Letter: Shared Ancestry or Ethnic Characteristics
11 (Nov. 7, 2023), p.2, available online at [https://www2.ed.gov/about/offices/list/ocr/letters/colleague-
12 202311- discrimination-harassment-shared-ancestry.pdf](https://www2.ed.gov/about/offices/list/ocr/letters/colleague-202311-discrimination-harassment-shared-ancestry.pdf).

13 70. OCR further explains that "the following type of harassment creates a hostile
14 environment: unwelcome conduct based on shared ancestry or ethnic characteristics that, based on
15 the totality of circumstances, is subjectively and objectively offensive and is so severe or pervasive
16 that it limits or denies a person's ability to participate in or benefit from the recipient's education
17 program or activity." *Id.* And it repeats its longstanding admonition that "[s]chools must take
18 immediate and effective action to respond to harassment that creates a hostile environment." *Id.*

19 71. Defendants' discriminatory policy has created an environment within BUSD that is
20 hostile towards Jews and Israelis.

21 72. The hostility towards Jewish and Israeli members of the BUSD community is severe
22 enough that it interferes with these students' ability to participate in the programs and activities of the
23 school.

24 73. As described in the allegations above, these students cannot fully participate in the
25 intellectual life in BUSD schools.

26 **IV. THE USE OF THE MATERIALS HERE AT ISSUE, WHICH ADVOCATE FOR
27 THE DESTRUCTION OF ISRAEL AND JUSTIFY THE RAPE AND MURDER
28 OF ISRAEL'S JEWISH CITIZENS, MAKES THE CLASSROOMS IN WHICH
SUCH MATERIAL IS USED A HOSTILE LEARNING ENVIRONMENT FOR
PLAINTIFF'S SON AND OTHER JEWS**

74. An expert in educational psychology will testify that, when Jews are attacked
anywhere in the world because they are Jews, Jews around the world experience that attack as an
attack, or a threat to, them personally. When such an attack on Jews is claimed to be a moral act on

1 the ground that the victims are Jews living in the Jewish homeland—as if that were a justification for
2 the attack—that attack is experienced by Jews around the world as an attack on, and a threat to, them
3 and their identity.

4 75. Repeating this justification for attacks on Jews constitutes harassment of Jews as
5 Jews, and therefore harassment of Jews on the basis of their religion, and their ethnic ancestry. It also
6 constitutes harassment of Israelis on the basis of their nationality.

7 76. The use of teaching materials which make these assertions creates a hostile learning
8 environment for Jewish and for Israeli children, which makes it impossible for Jews or Israelis to
9 fully benefit from the educational experience provided by BUSD.

10 77. This is so because Identity-based stress or trauma stems from direct or indirect
11 behavior or messaging that communicates hatred, vitriol, delegitimization, disaffirmation, or
12 dehumanization towards individuals who share a social identity or have shared ancestry. Bias,
13 microaggression, or discrimination aimed at individuals within a group causes exponentialized
14 identity-based stress to that group Stevenson, H. C. (2014). *Promoting Racial Literacy in Schools:
15 Differences that Make a Difference*. Teachers College Press.

16 78. Vicarious identity-based trauma affects people within a marginalized or vilified social
17 identity group who see others in their group being singled out, mistreated, punished, or subjected to
18 stressful identity-based encounters. This can engender a sense of helplessness to intervene given
19 asymmetrical power relations. When symbolic violence occurs or is depicted, or advocated for in
20 classrooms or schools, it can traumatize students within the same group as those against whom such
21 symbolic violence occurs or is depicted, when the students in the classrooms are unable to respond
22 to their own or someone else's benefit during discriminatory acts or mistreatment *Id.*

23 79. Structural conditions in schools, classrooms, and school systems that exacerbate
24 identity-based trauma include ignoring identity-based trauma happening to students by not attending
25 to bias, microaggressions, or discrimination. Yip, T., Cham, H., Wang, Y., & Xie, M. (2022).
26 Applying stress and coping models to ethnic/racial identity, discrimination, and adjustment among
27 diverse adolescents. *Developmental psychology*, 58(1), 176–192.

28 <https://doi.org/10.1037/dev0001283> This constitutes vicarious identity-based trauma as Jewish

1 students see systems fail them and other Jewish students and see whistle blowers and victims of
2 antisemitism being pathologized, mistreated, misjudged, or blamed for trying to address their own or
3 other students' identity-based trauma. Victim blaming is a form of identity-based trauma and
4 antisemitism; it is deleterious to student experience and outcomes. Berman S. L, Montgomery M. J.,
5 Ratner K. (2020). Trauma and identity: A reciprocal relationship? *Journal of Adolesc.* Feb;79:275-
6 278. doi: 10.1016/j.adolescence.2020.01.018. Epub 2020 Feb 6. PMID: 32036171.

7 80. "A sense of belonging—the subjective feeling of deep connection with social groups,
8 physical places, and individual and collective experiences—is a fundamental human need that
9 predicts numerous mental, physical, social, economic, and behavioural outcomes....There is general
10 agreement that belonging is a fundamental human need that all people seek to satisfy. Studies have
11 identified numerous positive effects of having a healthy sense of belonging, including more positive
12 social relationships, academic achievement, occupational success, and better physical and mental
13 health Research shows that persistent stress and identity-based trauma lead to a lack of a sense of
14 belonging, which also has deleterious effects on students' academic performance, social engagement,
15 and sense of belonging as students and members of a community.

16 81. Identity-based trauma and stress negatively impact cognitive ability and development,
17 social emotional development, academic development, and overall experience of schooling, and their
18 affiliation with the adults in the building and other peers. Schools, classrooms, teachers, and leaders
19 can retraumatize students by ignoring or minimizing identity-based trauma happening with their
20 peers in person or on social media. When students try to have agency and advocate for themselves,
21 they are re-traumatized by places that question them, don't believe them, blame them, Anderson, R.
22 E., & Stevenson, H. C. (2019). *Recasting racial stress and trauma: Theorizing the healing potential*
23 *of racial socialization in families. American Psychologist, 74(1), 63–75.*
24 <https://doi.org/10.1037/amp0000392>; Yip, et al., 2022).

25 82. A traumatizing school environment is a hostile learning environment, always. A
26 hostile or traumatizing environment/school culture is one in which students feel disaffirmed or
27 blamed for mistreatment aimed at them based on their social identity group or where they are held to
28 a double standard of what constitutes a protection-worthy social identity. In these conditions, students

1 in a targeted identity group such as the BUSD Jewish students in academic year 2023-2024—and
2 likely continuing today—are treated with essentializing and deficitizing behaviors based on
3 unchecked (and in some cases unconscious) teacher/leader bias, which discriminates against Jewish
4 students based on assumptions about their Jewish shared ancestry, belief in Israel, Judaism, or
5 Zionism. Bacha, C., Einhorn, S., & Lieberman, S. (2021). ‘If you prick me, do I not bleed?’:
6 Antisemitism, racism and group analysis —some thoughts. *Group Analysis*, 54(3), 388-401.
7 <https://doi.org/10.1177/0533316421996111>; Berman S. L, Montgomery M. J., Ratner K. (2020),
8 Trauma and identity: A reciprocal relationship? *Journal of Adolesc.* Feb;79:275-278. doi:
9 10.1016/j.adolescence.2020.01.018. Epub 2020 Feb 6. PMID: 32036171.

10 83. For Jewish students post-October 7th, antisemitism has become the cudgel of identity-
11 based trauma at the hands of peers and justified by leaders given their own unconscious
12 antisemitism—a perception of Jewish people expressed as hatred, vitriol, delegitimization, or
13 dehumanization that uses tropes of conspiracy and control to justify demonizing, stereotyping,
14 degrading, or harming Jews individually or collectively (Bacha, et al., 2021).

15 84. A hostile classroom/school environment negates Jewish students’ sense of
16 psychological safety in who they are and in experiencing ‘unconditional positive regard’ in their
17 identity, which includes the centrality of their ancestral homeland, Israel. Maslow, A. H. (1943). *A*
18 *Theory of Human Motivation*. *PSYCHOLOGICAL REVIEW*, 50, 370-396,
19 <http://dx.doi.org/10.1037/h0054346>. This unchecked cultural and religious bias/violation constitutes
20 a traumatizing school environment/culture for Jewish students that impacts their ability to feel safe
21 enough to learn; it harms their sense of identity, both at school and in the world. These institutional
22 conditions create a hostile learning environment for Jewish students who are treated as “colonizers”
23 even as they are clearly being actively marginalized (Berman, et al., 2020).

24 85. The Materials here at issue convey exactly these claims about, and attacks on, Jews
25 living in the State of Israel. They therefore create a learning environment that is hostile to Jews and
26 Israelis in the BUSD classrooms in which they are used.

27
28

1 **V. IN MULTIPLE PROVISIONS, CALIFORNIA LAW COMMANDS THAT ITS**
2 **PUBLIC SCHOOLS USE ONLY TEACHING MATERIALS THAT DO NOT**
3 **DISCRIMINATE AGAINST PEOPLE ON THE BASIS OF RELIGION,**
4 **NATIONALITY, ETHNICITY, OR ANCESTRY**

5 86. Section 220 of the California Education Code bars the state’s public schools from
6 discriminating on the basis of a series of protected classifications, including race, religion, nationality
7 and ethnicity. It provides:

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

15 87. Similarly, California Education Code § 51500 prohibits teachers from delivering
16 instruction and school districts from sponsoring activities that reflect adversely upon individuals
17 based on race, sex, color, creed, disability, national origin, or ancestry.

18 88. California Education Code § 51501 similarly prohibits the adoption of textbooks or
19 instructional materials containing any matter reflecting adversely upon individuals based on these
20 characteristics.

21 89. Additionally, California Government Code § 11135 states:

22 No person in the State of California shall, on the basis of race, national origin, ethnic
23 group identification, religion, age, sex, sexual orientation, color, or disability, be
24 unlawfully denied full and equal access to the benefits of, or be unlawfully subjected
25 to discrimination under, any program or activity that is conducted, operated, or
26 administered by the state or by any state agency, is funded directly by the state, or
27 receives any financial assistance from the state.

28 90. In a December 1, 2023 email, Defendant Ford Morthel admitted that BUSD had no
approved “Israel-Palestine-Arab conflict” curriculum, and that obtaining approval was an arduous
process. Specifically, Ford Morthel stated:

 Currently, BUSD does not have a single BUSD-adopted curriculum that has been
approved to teach Israel-Palestine-Arab conflict. Please note that the District’s Board
of Education does not adopt or amend any curriculum without extensive process
which includes input from teachers, administrators, students and parents/guardians
from all grade levels, disciplines, schools, special programs and categories of
students. This is in accordance with our Policy 6141 on Curriculum Development and

1 Evaluation. At this point, the Curriculum and Instruction Department has not initiated
2 any curriculum additions related to the Israel and Palestine regions.

3 (Exhibit T).

4 91. Although FENDEL has regularly attended BUSD board meetings since December 1,
5 2023, he has never heard of any review process for any Israel-Palestine-Arab conflict curriculum,
6 has never been informed it was ongoing, has never had an opportunity to provide input as described.

7 92. To the best of FENDEL's knowledge, no Israel-Palestine-Arab conflict curriculum
8 has ever been approved for BUSD.

9 **VI. DEFENDANTS WILL, UNLESS RESTRAINED BY THIS COURT,
10 CONTINUE TO USE THE MATERIAL HERE AT ISSUE**

11 93. Nevertheless, the Materials here at issue have, according to BUSD employees, been
12 approved as acceptable content for inclusion in the regular curriculum at BUSD schools.

13 94. Defendants have taken extensive steps to include the same content that is set forth in
14 the Materials here at issue in other parts of the curriculum in many BUSD classes.

15 95. With the express approval of the individual Defendants, BUSD has contracted over a
16 period of multiple years with the Liberated Ethnic Studies Model Curriculum Consortium
17 ("LESMCC"), agreeing to pay that entity over \$100,000 so that LESMCC can participate in creating
18 instructional Materials bearing on, among other things, the Middle East conflict, Israel, and Zionism.

19 96. LESMCC has repeatedly, publicly, made clear its intention to include in all curricular
20 material it prepares or assists in preparing a categorical opposition—as if such opposition was
21 objectively based in truth—to the entire concept of Zionism and to the existence of the State of Israel
22 as a Jewish state, as that state was created by the United Nations in UN Resolution 181.

23 97. The decision to engage LESMCC to participate and provide input in the preparation
24 of teaching materials about Israel and the Middle East makes clear BUSD's intention and policy to
25 adopt LESMCC's views about those issues.

26 98. Defendants' months-long campaign to conceal Mr. Day's "Israel/Palestine" Materials
27 from Plaintiff and the public is another manifestation of the same policies.

28 99. As LESMCC has publicly acknowledged, the positions it espouses constitute
violations of California law. LESMCC's leaders have explicitly stated that they believe that

1 California law is wrong and that the materials they prepare contravene California law, and that they
2 intend to include such material in public school instructional materials notwithstanding this
3 inconsistency.

4 100. During an April 13, 2021, United Teachers of Los Angeles (“UTLA”) public Ethnic
5 Studies Panel, proponents of the Liberated Ethnic Studies Model Curriculum (“LESMC”)—whose
6 positions were rejected by the State of California—ridiculed the State Board of Education’s Ethnic
7 Studies Guideline example. The Guideline example explains that the purpose of ethnic studies is to
8 “Promote critical thinking and rigorous analysis of history, systems of oppression, and the status quo
9 in an effort to generate discussions on futurity and imagine new possibilities.” Advocates of so-called
10 “liberated” ethnic studies reject this idea, instead insisting that the only valid principles on which
11 ethnic studies classes must be based are those espoused by LESMC proponents: “Critique empire,
12 white supremacy, racism, patriarchy, cisheteropatriarchy, capitalism, ableism, anthropocentrism, and
13 other forms of power and oppression at the intersections of society.” As Theresa Montaña, a member
14 of the Liberated Ethnic Studies Model Curriculum Consortium leadership team, said at the April 13,
15 2021, UTLA Ethnic Studies Panel, “[t]he District wants to use multicultural curriculum, that is not
16 ethnic studies.” See, e.g. LESMCC Questions and Answers, in which LESMC supports a “liberatory
17 curriculum” and rejects “a multicultural curriculum” (Exhibit U).

18 101. An essential part of LESMCC’s curriculum work on Ethnic Studies focuses on Israel
19 and the conflict between Israel and her Arab neighbors. LESMCC prepares teaching materials on
20 this topic which are both false and discriminatory. They state that the creation of Israel and its
21 continued existence are exercises in western imperialism; that Israel is an apartheid country; and that
22 it commits genocide against local Arabs.

23 102. Like the Materials used in the classroom of Plaintiff’s son, the LESMCC instructional
24 material regarding the Middle East denies that Jews have an indigenous connection to the land of
25 Israel.

26 103. Defendant’s retention of LESMCC to participate and/or provide input in the
27 preparation of instructional materials regarding the Middle East is a clear expression of BUSD policy,
28

1 and proof that BUSD and Defendants will, if not stopped by this Court, continue to inject antisemitic
2 materials into its curriculum.

3 104. In addition, BUSD has created an Ethnic Studies Advisory Committee which also
4 participates in the preparation of teaching materials about the Middle East.

5 105. The membership of this committee is, on information belief, secret—strong evidence
6 that the committee’s work would be contrary to at least a significant portion of the Berkeley public.
7 BUSD’s decision to hide the identity of these people, like its extensive effort to hide the Materials
8 here at issue from Plaintiff, is further evidence of its intent to insert into its instructional materials
9 information that the public would object to if the public knew about it.

10 106. On information and belief, the mechanism by which people are chosen to sit on the
11 BUSD Ethnic Studies Advisory Committee is also secret. BUSD’s decision to hide this mechanism
12 is yet further evidence of Defendants’ intent to have the committee operate in a manner that would
13 raise objections by the public if the public knew about it.

14 107. Notwithstanding the above steps taken by BUSD to keep the work of its Ethnic
15 Studies Advisory Committee out of public scrutiny, one member of the committee has been revealed:
16 she is Lara Kiswani, executive director of the San Francisco-based Arab Resource and Organizing
17 Center (AROC).

18 108. Kiswani is clear in her intent to have school curricula not just denounce Zionism but
19 “end” it, and she sees her work on school curricula devoted to that—entirely noneducational—goal.
20 See Gabe Stutman, *Local activist with ties to public schools calls to ‘overcome Zionism’ at*
21 *conference*, J. THE JEWISH NEWS OF NORTHERN CALIFORNIA (June 7, 2024), available online at
22 [https://jweekly.com/2024/06/07/local-activist-with-ties-to-public-schools-calls-to-overcome-](https://jweekly.com/2024/06/07/local-activist-with-ties-to-public-schools-calls-to-overcome-zionism-at-conference/)
23 [zionism-at-conference/](https://jweekly.com/2024/06/07/local-activist-with-ties-to-public-schools-calls-to-overcome-zionism-at-conference/). Indeed, in her work for AROC, which advises other school districts around
24 the state about teaching materials relating to the Middle East, Kiswani is quite clear in stating her
25 goal: “We are isolating Zionism politically. We are isolating Zionism economically. We are isolating
26 Zionism militarily,” she said May 25 during the People’s Conference for Palestine in Detroit. “We
27 truly are witnessing the beginning of the end of Zionist hegemony in the United States.”
28

1 109. Another member of the Advisory Committee is Jody Sokolower, co-coordinator of
2 the Teach Palestine Project at the Middle East Children’s Alliance and a founding member of the
3 Coalition for Liberated Ethnic Studies. Sokolower publicly declared that she is a member of the
4 BUSD Ethnic Studies Advisory Committee at a school board meeting in November of 2023. The
5 “Teach Palestine Project” espouses the same categorical opposition to Zionism, and the same
6 insistence on teaching anti-Zionism as if it were fact, as is manifest in the work of Kiswani and the
7 Liberated Ethnic Studies Model Curriculum Consortium. Indeed, the Teach Palestine Project
8 materials are used by the Liberated Ethnic Studies Model Curriculum Consortium in their own work.

9 110. The substance of the work of BUSD’s Ethnic Studies Advisory Committee, the
10 secrecy of its work, its membership, the secrecy of its membership, and the few facts publicly
11 available about the content of the work, make it clear beyond doubt that BUSD intends to attempt to
12 “teach” its students exactly the same rank indoctrination that is manifest in the Materials here at
13 issue, with the same entirely non-educational goal of eliminating Zionism.

14 **COUNT I**
15 **Education Code §§ 220, 262.4, 49091.10(a), 51500, and 51501**

16 111. Plaintiff repeats and re-alleges each previous paragraph of this Complaint as if they
17 were fully set forth herein.

18 112. Section 262.4 of the California Education Code authorizes civil enforcement actions.

19 113. Section 220 of the California Education Code provides that

20 No person shall be subjected to discrimination on the basis of disability,
21 gender, gender identity, gender expression, nationality, race or ethnicity,
22 religion, sexual orientation, or any other characteristic that is contained in
23 the definition of hate crimes set forth in Section 422.55 of the Penal Code,
including immigration status, 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.

24 114. The Materials at issue in this case violate this provision, discriminating against
25 FENDEL and his son on the basis of their nationality, ethnic and ancestral identity, and religion.

26 115. Defendants’ actions and omissions, and those of their agents as alleged herein,
27 manifest a policy of discriminating against FENDEL and his son on the basis of their nationality,
28 ethnic and ancestral identity, and religion. That policy is intended to, and does in fact, create and

1 maintain a learning environment hostile to FENDEL's son, and to all other Israeli students and to all
2 other Jewish students who share the Jewish religious, ethnic and ancestral commitment to Israel.

3 116. Section 51500 of the California Education Code provides that no teacher may provide
4 any:

5 instruction[,] and [that] a school district shall not sponsor any activity that
6 promotes a discriminatory bias on the basis of race or ethnicity, gender,
7 religion, disability, nationality, or sexual orientation, or because of a
characteristic listed in Section 220.

8 117. The materials at issue in this case violate this provision, discriminating against
9 FENDEL and his son on the basis of their nationality, ethnic and ancestral identity, and religion.

10 118. Defendants' actions and omissions, and those of their agents as alleged herein,
11 manifest a policy of discriminating against FENDEL and his son on the basis of their nationality,
12 ethnic and ancestral identity, and religion. That policy is intended to, and does in fact, create and
13 maintain a learning environment hostile to FENDEL's son, and to all other Israeli students and to all
14 other Jewish students who share the Jewish religious, ethnic and ancestral commitment to Israel.

15 119. Section 51501 of the California Education Code bars any school board from
16 providing:

17 any textbooks or other instructional materials for use in the public schools
18 that contain any matter reflecting adversely upon persons on the basis of
19 race or ethnicity, gender, religion, disability, nationality, or sexual
orientation, or because of a characteristic listed in Section 220.

20 120. The Materials at issue in this case violate this provision, discriminating against
21 FENDEL and his son on the basis of their nationality, ethnic and ancestral identity, and religion.

22 121. Defendants' actions and omissions, and those of their agents as alleged herein,
23 manifest a policy of discriminating against FENDEL and his son on the basis of their nationality,
24 ethnic and ancestral identity, and religion. That policy is intended to, and does in fact, create and
25 maintain a learning environment hostile to FENDEL's son, and to all other Israeli students and to all
26 other Jewish students who share the Jewish religious, ethnic and ancestral commitment to Israel.

1 122. As stated above, Section 49091.10(a) of the California Education Code states that
2 such material “shall be compiled and stored by the classroom instructor and made available promptly
3 for inspection by a parent.”

4 123. The material repeatedly requested by FENDEL was not made available promptly for
5 FENDEL’s inspection, and may or may not have been compiled and stored by the classroom
6 instructor, as required by statute.

7 124. BUSD Board Policy 6141: Curriculum Development And Evaluation⁴ includes the
8 following requirements:

9 The Superintendent or designee shall establish procedures which ensure that
10 the curriculum development and evaluation process includes input from
11 teachers, administrators, students and parents/guardians from all grade
12 levels, disciplines, schools, special programs and categories of students. The
selection and evaluation of instructional materials shall be coordinated with
the curriculum development and evaluation process.

13 125. BUSD Board Policy 6144: Controversial Issues⁵ includes the following requirements:

14 The Board expects teachers to exercise caution and discretion when
15 deciding whether or not a particular issue is suitable for study or discussion
16 in any particular class. Teachers should not spend class time on any topic
17 which they feel is not suitable for the class or related to the established
course of study.

18 The Board also expects teachers to ensure that all sides of a controversial
19 issue are impartially presented, with adequate and appropriate factual
20 information. Without promoting any political, religious, social, historical,
21 or economic point of view, the teacher should help students separate fact
22 from opinion and warn them against drawing conclusions from insufficient
23 data.

24 The teacher may not use his/her position to forward his/her own historical,
25 religious, political, economic or social bias. The teacher may express a
personal opinion if he/she identifies it as such and does not express the
opinion for the purpose of persuading students to his/her point of view. The
teacher shall not suppress any student’s view on the issue as long as its
expression is not malicious or abusive toward others.

26 ⁴ The full policy is available online at
<https://simbli.eboardsolutions.com/Policy/ViewPolicy.aspx?S=36030527&revid=plusJjr4TTYPSxhS6tCkc0j9w==&ptid=amIgtZiB9plushNjl6WXhfiOQ==&secid=ruE8yj8gaZHBkLjNHWmKZw==&PG=6&IRP=0&isPndg=false>.

27 ⁵ The full policy is available online at
28 <https://simbli.eboardsolutions.com/Policy/ViewPolicy.aspx?S=36030527&revid=TzfgXblCCt8WnArk49rptA==&ptid=amIgtZiB9plushNjl6WXhfiOQ==&secid=ruE8yj8gaZHBkLjNHWmKZw==&PG=6&IRP=0&isPndg=false>.

1
2 126. BUSD Administrative Regulation 6144: Controversial Issues⁶ includes the following
3 requirements:

4 Controversial issues may be discussed in the classroom, provided that:

- 5 1. The issue is related to the course of study and provides opportunities
6 for critical thinking, for developing tolerance, and for understanding
7 conflicting points of view.
- 8 2. The issue has a meaningful relationship to matters of concern to the
9 students.
- 10 3. Available information about the issue is sufficient to allow
11 alternative points of view to be discussed and evaluated on a factual
12 basis.
- 13 4. All sides of the issue are given a proper hearing, using established
14 facts as primary evidence.
- 15 5. The issue has points of view which can be understood and defined
16 by the students.
- 17 6. The teacher does not use his/her position to forward his/her own
18 religious, political, economic or social bias. The teacher may
19 express a personal opinion if he/she identifies it as such and does
20 not express the opinion for the purpose of persuading students to
21 his/her point of view.
- 22 7. Discussion or study of the issue is instigated by the students or by
23 the established curriculum, but not by a source outside of the
24 schools.
- 25 8. The discussion does not reflect adversely upon persons because of
26 their race, sex, sexual orientation, color, creed, national origin,
27 ancestry, handicap or occupation.
- 28 9. The oral or written presentation does not violate state or federal law.
10. Any speaker brought onto the campus or into the classroom has
received prior approval from the responsible site administrator.

The Superintendent or designee shall have the authority to judge whether
the above conditions are being met.

⁶ The full regulation is available online at

<https://simbli.eboardsolutions.com/Policy/ViewPolicy.aspx?S=36030527&revid=prcw95fZz4zm8u4reeYA9w==&ptid=amIgtZiB9plushNjl6WXhfiOQ==&secid=ruE8yj8gaZHBkLjNHwMKZw==&PG=6&IRP=0&isPndg=false>.

1
2 127. Upon information and belief, the Israel-Palestine-Arab conflict curriculum was never
3 approved as required by state law and school board policies before it was taught.

4 128. Even if the Israel-Palestine-Arab conflict curriculum was approved, such approval
5 was in violation of state law and school board policies regarding the teaching of controversial
6 subjects.

7 129. Defendants are, at a minimum, deliberately indifferent to the existence of such a
8 hostile learning environment, and in the alternative, they actually subjectively intend to create and
9 maintain such an environment.

10 **COUNT II**
11 **Government Code § 11135**

12 130. Plaintiff repeats and re-alleges each previous paragraph of this Complaint as if they
13 were fully set forth herein.

14 131. Section 11135 of the California Government Code states:

15 (a) No person in the State of California shall, on the basis of race,
16 national origin, ethnic group identification, religion, age, sex, sexual
17 orientation, color, genetic information, or disability, be unlawfully
18 denied full and equal access to the benefits of, or be unlawfully
19 subjected to discrimination under, any program or activity that is
20 conducted, operated, or administered by the state or by any state
21 agency, is funded directly by the state, or receives any financial
22 assistance from the state...

23 (f) As used in this section, “race, national origin, ethnic group
24 identification, religion, age, sex, sexual orientation, color, or
25 disability” includes a perception that a person has any of those
26 characteristics or that the person is associated with a person who
27 has, or is perceived to have, any of those characteristics.

28 132. Defendants’ actions and omissions, and those of their agents as alleged herein,
manifest a policy of denying FENDEL’s son full and equal access to the benefits of public school
education, and/or unlawfully subjects FENDEL’s son to discrimination on the basis of his nationality,
ethnic and ancestral identity, and religion, in California public school conducted, operated, and/or
administered by the state or a state agency of California, and/or that is funded directly by the state.
Defendants’ actions and omissions are intended to, and do in fact, create and maintain a learning

1 environment hostile to FENDEL's son, and to all other Israeli students and to all other Jewish
2 students who share the Jewish religious, ethnic, and ancestral commitment to Israel.

3 **PRAYER FOR RELIEF**

4 WHEREFORE Plaintiff respectfully prays this Court for:

5 1. Judgment in his favor finding that the use of the teaching materials here at issue, and
6 the policies that direct the use of such material, and its concealment from Plaintiff and the public,
7 constitutes a violation of the California Education Code Sections 220, 262.4, 49091.10(a), 51500,
8 and 51501; and Government Code Section 11135, and that:

9 a. The use of these Materials creates a hostile learning environment for Jewish
10 and Israeli students;

11 b. The use of these materials discriminates against Jewish and Israeli students
12 because they contain numerous manifestly false statements about Judaism, the
13 Jewish people and their history, and the State of Israel, which was created by
14 the United Nations as, and is now officially, a Jewish state

15 2. An injunction barring the use of the Materials here at issue in any classroom in BUSD.

16 3. An injunction barring the use of any other instructional materials in BUSD which
17 contain the same flaws as those manifest in the teaching materials here at issue and attached as
18 Exhibit A.

19 4. An Order requiring BUSD to release to the public, before they are used in any BUSD
20 classroom, all materials used to teach about the Middle East, Israel, or the conflict between Israel
21 and her Arab neighbors.

22 5. An award of costs and attorney's fees.

23 6. Such other and further relief as this Court may deem proper.

24 DATED: October 11, 2024

Respectfully submitted

25 By: Mark Javitch

26 Mark Javitch (Local Counsel)
27 Javitch Law Office
28 3 East 3rd Ave. Ste. 200
San Mateo CA 94401
Phone: (650) 781-8000
mark@javitchlawoffice.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Lori Lowenthal Marcus
lorilowenthalmarcus@deborahproject.org
Jerome M. Marcus
jmarcus@deborahproject.org
Johanna Markind
johannamarkind@deborahproject.org

The Deborah Project
P.O. Box 212
Merion Station, PA. 19066
Voice: (610) 880-0100

Attorneys for Plaintiff
YOSSEL FENDEL on behalf of his son, A.

The Deborah Project

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, Yossi Fendel, declare as follows:

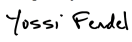
- 1. I am Yossi Fendel, Plaintiff in the above-named action.
- 2. I have read the foregoing Complaint, including all exhibits, and know the contents thereof.
- 3. I certify that the Complaint and all exhibits are true of my own knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Berkeley, California on the date stated below:

Dated: 10/8/2024

By: _____

Signed by:

 75726A228BD704EB

Yossi Fendel

JAVITCH LAW OFFICE
3 East 3rd Ave., Suite 200
San Mateo, CA 94401

The Deborah Project

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, Yossi Fendel, declare as follows:

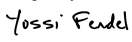
- 1. I am Yossi Fendel, Plaintiff in the above-named action.
- 2. I have read the foregoing Complaint, including all exhibits, and know the contents thereof.
- 3. I certify that the Complaint and all exhibits are true of my own knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Berkeley, California on the date stated below:

Dated: 10/8/2024

By: _____

Signed by:

 75726A228BD704EB

Yossi Fendel

JAVITCH LAW OFFICE
3 East 3rd Ave., Suite 200
San Mateo, CA 94401

The Deborah Project