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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

EMORY BOYD, JR., QUINTON	)	Case No. 2:11-CV-0231 JAM-EFB
HANCOCK, and NICHOLOS PAGE,	)	
	)	<u>ORDER DENYING DEFENDANTS'</u>
Plaintiffs,	)	<u>MOTION TO DISMISS</u>
	)	
v.	)	
	)	
	)	
FEATHER RIVER COMMUNITY COLLEGE	)	
DISTRICT, MERLE TRUEBLOOD, JOSH	)	
WHITE, and JAMES JOHNSON,	)	
	)	
Defendants.	)	

This matter is before the Court on Defendants' Feather River Community College District ("FRC"), James Johnson ("Johnson"), Merle Trueblood ("Trueblood") and Joshua White ("White") (collectively "Defendants") Motion to Dismiss (Doc. #12) Plaintiffs' Emory Boyd, J.R. ("Boyd"), Quinton Hancock ("Hancock") and Nicholos Page ("Page") (collectively "Plaintiffs") First Amended Complaint ("FAC") (Doc. #7).

Defendants seek to dismiss the FAC for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6).

1 Plaintiffs oppose the motion (Doc. #15). For the reasons set  
2 forth below, Defendants' motion is DENIED.<sup>1</sup>

3  
4 I. FACTUAL ALLEGATIONS

5 This action arises from allegations of racial  
6 discrimination against African American football players at FRC.  
7 Plaintiffs are African American, and allege that they were  
8 recruited to play football on the FRC football team, paid out-  
9 of-state tuition, and did all that was required of them to  
10 participate in FRC's athletic program as members of the football  
11 team. Am. Compl., ¶¶ 10-13.

12 The FAC alleges that Plaintiffs knew that many players  
13 previously on the team received athletic scholarships to four  
14 year colleges, and Plaintiffs understood that upon successful  
15 completions of the FRC program (both academically and on the  
16 football field) they would receive the best efforts of the  
17 football coaching staff to place them at four year colleges with  
18 scholarships. Am. Compl., ¶ 17. However, the FAC alleges that  
19 Plaintiffs suffered racially discriminatory treatment from White  
20 (the Assistant Coach), including being unfairly criticized,  
21 personally insulted, verbally abused, and taunted. Am. Compl.,  
22 ¶ 20. Plaintiffs allege that Johnson (the Head Coach) and White  
23 favored less committed and less skilled white players over their  
24 African American counterparts, gave white players more playing  
25 time and more opportunities on the field, and treated them in a  
26 more favorable and less hostile manner. Am. Compl., ¶ 19. The

27 \_\_\_\_\_  
28 <sup>1</sup> This matter was determined to be suitable for decision without  
oral argument. E.D. Cal. L.R. 23(g). Oral argument was originally  
scheduled for September 7, 2011.

1 FAC alleges that White's racist behavior went so far as to  
2 include physical attacks on African American students, Am.  
3 Compl., ¶ 22, calling African American students derogatory  
4 names, Am. Compl., ¶ 25, and attempting to provoke fights with  
5 them. Id. Additionally, Plaintiffs allege that Trueblood (the  
6 FRC Athletic Director) and Johnson were made aware of White's  
7 racially hostile conduct, but failed to take corrective action.  
8 Am. Compl., ¶ 21. Instead, between 2009-2010, Defendants  
9 changed FRC's football team from predominantly black to  
10 predominantly white, Am. Compl., ¶¶ 44-50, and in the course of  
11 doing so unfairly cut Plaintiffs from the football team in order  
12 to replace them with white players. Am. Compl., ¶ 48.  
13 Plaintiffs allege that they were eligible both academically and  
14 athletically to return to play football for FRC in the 2010-2011  
15 season. Am. Compl., ¶ 38. Plaintiffs bring claims for  
16 violation of Title VI, 42 U.S.C. § 1983 and 42 U.S.C. § 1981.  
17 Plaintiffs seek declaratory relief, compensatory, economic, and  
18 punitive damages, and attorneys' fees. Defendants move to  
19 dismiss all of Plaintiffs' claims in the FAC, for failure to  
20 plead sufficient facts to support the claims.

## 21 22 II. OPINION

### 23 A. Legal Standard

24 A party may move to dismiss an action for failure to state  
25 a claim upon which relief can be granted pursuant to Federal  
26 Rule of Civil Procedure 12(b)(6). In considering a motion to  
27 dismiss, the court must accept the allegations in the complaint  
28 as true and draw all reasonable inferences in favor of the

1 plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974),  
2 overruled on other grounds by Davis v. Scherer, 468 U.S. 183  
3 (1984); Cruz v. Beto, 405 U.S. 319, 322 (1972). Assertions that  
4 are mere "legal conclusions," however, are not entitled to the  
5 assumption of truth. Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950  
6 (2009), (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544,  
7 555 (2007)). To survive a motion to dismiss, a plaintiff needs  
8 to plead "enough facts to state a claim to relief that is  
9 plausible on its face." Twombly, 550 U.S. at 570. Dismissal is  
10 appropriate where the plaintiff fails to state a claim  
11 supportable by a cognizable legal theory. Balistreri v.  
12 Pacifica Police Department, 901 F.2d 696, 699 (9th Cir. 1990).

13       Upon granting a motion to dismiss for failure to state a  
14 claim, the court has discretion to allow leave to amend the  
15 complaint pursuant to Federal Rule of Civil Procedure 15(a).  
16 "Dismissal with prejudice and without leave to amend is not  
17 appropriate unless it is clear . . . that the complaint could  
18 not be saved by amendment." Eminence Capital, L.L.C. v. Aspeon,  
19 Inc., 316 F.3d 1048, 1052 (9th Cir. 2003).

20       B. Claims for Relief

21           1. Violation of Title VI- Racially Hostile  
22           Educational Environment

23       The first claim for relief, brought against FRC, asserts  
24 that Plaintiffs were subjected to a racially hostile educational  
25 environment, in violation of Title VI, and that FRC did not take  
26 steps to end the harassment. Defendants argue that the claim  
27 should be dismissed because Plaintiffs failed to plead facts  
28 showing that they were harassed because of their race. Further

1 Defendants contend that the allegations of the FAC do not show  
2 severe or pervasive harassment, rather, the decision to drop  
3 certain players from the team, or give certain players more time  
4 on the field, are personnel management decisions, not instances  
5 of discrimination. Lastly, Defendants argue that there are no  
6 allegations showing that FRC was deliberately indifferent to the  
7 allegations of racial harassment, or that the harassment  
8 interfered with Plaintiffs' educational pursuits.

9 Title VI mandates that "No person in the United States  
10 shall, on the ground of race, color, or national origin, be  
11 excluded from participation in, be denied the benefits of, or be  
12 subjected to discrimination under any program or activity  
13 receiving Federal financial assistance." Title VI, 42 U.S.C.  
14 § 2000d.

15 To state a claim for damages under Title VI, a plaintiff  
16 must allege that (1) the entity involved is engaging in racial  
17 discrimination; and (2) the entity involved is receiving federal  
18 financial assistance. Davison ex rel. Sims v. Santa Barbara  
19 High School Dist., 48 F.Supp.2d 1225, 1229 (C.D. Cal. 1998). A  
20 plaintiff need not plead that he was an intended beneficiary of  
21 the federally funded program. Id. While a plaintiff must prove  
22 intent at trial, it need not be plead in the complaint.  
23 Monteiro v. The Tempe Union High School Dist., 158 F.3d 1022,  
24 1026 (9th Cir. 1998). Courts look to the Department of  
25 Education's guidance on Title VI, which mandates that the  
26 following elements establish a violation of Title VI under the  
27 hostile environment theory: (1) A racially hostile environment  
28 existed; (2) the recipient had actual or constructive notice of

1 the racially hostile environment; and (3) the recipient failed  
2 to respond adequately to redress the racially hostile  
3 environment. See e.g. Davison, supra; Moneteiro, 158 F.3d at  
4 1033. Racial harassment creates a hostile environment if it is  
5 sufficiently severe that it would interfere with the educational  
6 program of a reasonable person of the same age and race as the  
7 victim. Monteiro, 158 F.3d at 1033. Racist attacks need not be  
8 directed at the complainant in order to create a hostile  
9 educational environment. Id.

10 Here, the FAC has alleged that FRC receives federal  
11 funding, Am. Compl., ¶ 11, and Plaintiffs have alleged that FRC  
12 was engaging in racial discrimination, Am. Compl., ¶¶ 19-56.  
13 The FAC alleges that FRC had notice of the discrimination, Am.  
14 Compl., ¶ 21; ¶ 35, but failed to take steps to correct the  
15 problem, Am. Compl., ¶¶ 34-36.

16 Defendants contentions that the alleged discrimination is  
17 not sufficiently severe and pervasive, and that Plaintiffs have  
18 not sufficiently shown a racist intent behind the hostility, are  
19 premature. A plaintiff does not need to prove intent until  
20 trial. Monteiro, 158 F.3d at 1026. Plaintiffs have alleged that  
21 the harassment and discrimination was racially motivated, Am.  
22 Compl., ¶ 100, and further, the Court can infer that Plaintiffs  
23 were being harassed based on their race from the wealth of  
24 allegations in the FAC. At this early stage in the pleadings,  
25 the allegations of inferior treatment of African American  
26 football players and a purging of African Americans from the  
27 football team, coupled with the swearing, name-calling and  
28 general hostility aimed at Plaintiffs, are sufficient to show

1 severe and pervasive racial discrimination for a hostile  
2 educational environment claim.

3 Defendants also argue that the harassment did not interfere  
4 with Plaintiffs' education and only affected Plaintiffs ability  
5 to play on the football team. However, the FAC contains  
6 sufficient allegations that the harassment and discrimination  
7 occurred at FRC and resulted in an environment permeated by  
8 racial hostility, see e.g., Am. Compl., ¶ 27, affected Boyd's  
9 ability to receive school credit for football courses, Am.  
10 Compl., ¶ 66, and eventually led to Boyd dropping out, Page  
11 taking online classes in South Carolina rather than stay at FRC,  
12 and Hancock completing the academic program but like Boyd and  
13 Page, losing the ability to pursue football scholarships at  
14 four-year colleges. These allegations are sufficient to show  
15 that the hostile environment at FRC interfered with Plaintiffs'  
16 education. Plaintiffs have alleged sufficient facts to state a  
17 claim for a racially hostile educational environment.

18 Accordingly, the motion to dismiss the first claim for relief is  
19 DENIED.

20 2. Violation of Title VI- Racial Discrimination in  
21 Education

22 The second claim for relief, brought against FRC, alleges  
23 that FRC discriminated against Plaintiffs based on their race.  
24 Plaintiffs assert that this discrimination was intentional, and  
25 is evidenced by the deliberate change of the football team from  
26 majority black to majority white, the verbal abuse and  
27 discrimination directed at African American football players,  
28 and FRC's deliberate indifference to the complaints of racism

1 and discrimination. Defendants and Plaintiffs offer the same  
2 arguments for and against this claim as were made for and  
3 against the first claim for relief. As discussed above, the  
4 Court finds that the FAC sufficiently alleged race  
5 discrimination in violation of Title VI. Accordingly, the  
6 motion to dismiss the second claim for relief is DENIED.

7 3. Violation of 42 U.S.C. § 1981- Intentional  
8 Discrimination in the Making of a Contract

9 The third claim for relief, brought against Trueblood and  
10 Johnson, asserts that Trueblood and Johnson interfered with  
11 Plaintiffs' ability to make and enforce contracts, in violation  
12 of 42 U.S.C. § 1981. Plaintiffs allege that they paid tuition  
13 to FRC for educational services and in return FRC entered into a  
14 contractual relationship to provide access to FRC programs,  
15 activities and instruction. Am. Compl., ¶ 117. Because of  
16 Trueblood and Johnson's malicious conduct in cutting them from  
17 the football team, this violated the contract formed between  
18 Plaintiffs and FRC. Plaintiffs argue that when they entered  
19 this contractual relationship with FRC, they expected equal  
20 opportunity to be able to participate fully in the college's  
21 athletic program on the same terms as the college's non-black  
22 students. In the past, the policy was to accept all returning  
23 players who were academically eligible. Am. Compl., ¶ 50.  
24 Trueblood and Johnson had the authority from FRC to recruit or  
25 reject student athletes for the football team, and used this  
26 authority to change the usual policy in a racially  
27 discriminatory manner, preventing Plaintiffs from returning to  
28 the football team and obtaining the benefits that they expected



1 from attendance at FRC.

2 Defendants contend that Plaintiffs have not alleged (and  
3 cannot allege) that they had a contract to play football, and  
4 therefore, being cut from the team did not violate any contract  
5 rights. Because the FAC alleges that Plaintiffs were told at  
6 the end of the academic year that they would be contacted if  
7 they were invited back to play on the team a second year,  
8 Defendants assert that this clearly shows the lack of either an  
9 express or implied contract involving participation on the  
10 football team. Plaintiffs' payments to FRC were in exchange for  
11 academic instruction, and Defendants note there are no  
12 allegations that they were denied academic instruction.

13 42 U.S.C. § 1981 provides:

14 That all persons shall have the same right . . . to make  
15 and enforce contracts . . . as is enjoyed by white  
16 citizens. The statute defines, makes and enforces  
17 contracts to include the making, performance, modification  
and termination of a contract, and the enjoyment of all  
benefits, privileges, terms and conditions of the  
contractual relationship.

18 Flores v. Von Kleist, 739 F.Supp.2d 1236, 1256 (E.D. Cal. 2010)  
19 (internal citations omitted). To state a claim under Section  
20 1981 a plaintiff must identify an "impaired contractual  
21 relation," by showing that intentional racial discrimination  
22 prevented the creation of a contractual relationship or impaired  
23 an existing contractual relationship. Schiff v. Barrett, 2010  
24 WL 2803037, \*4 (E.D. Cal. July 14, 2010) (internal citations  
25 omitted). A contract for educational services is a "contract"  
26 for purposes of Section 1981. Runyon v. McCrary, 427 U.S. 160,  
27 172 (1976); Gratz v. Bollinger, 539 U.S. 244, 275 n.23 (2003).  
28 Section 1981's protection extends to college athletics. Pryor

1 v. National Collegiate Athletic Ass'n., 288 F. 3d 548 (3rd. Cir.  
2 2002). In Pryor, the Third Circuit held that the plaintiffs had  
3 stated a claim under Section 1981 when they alleged that the  
4 National Collegiate Athletic Association's rules regarding  
5 academic eligibility to receive athletic scholarships was  
6 discriminatory towards African American student-athletes and  
7 interfered with their rights under contract. Because of the  
8 alleged discriminatory academic eligibility rule adopted by the  
9 NCAA, the plaintiffs in Pryor were unable to reap the benefits  
10 of their contracts, as they were prohibited from playing a sport  
11 during their freshman year and consequently denied their  
12 promised athletic scholarships. However, the plaintiffs in  
13 Pryor had actually signed contracts (National Letters of Intent)  
14 to play a sport at their respective colleges and receive an  
15 athletic scholarship, therefore Defendants argue that it is  
16 distinguishable from the present case. While Plaintiffs may  
17 have believed that they would be invited back to play football  
18 for a second year, the FAC does not allege that any contract to  
19 that effect existed. Nor have Plaintiffs alleged that they were  
20 receiving athletic scholarships to play football at FRC.  
21 Further, Plaintiffs do not allege that they were denied  
22 admission to FRC or denied academic instruction.

23 Plaintiffs do however allege that because of a change in  
24 policy (the decision not to invite back all academically  
25 eligible football players to be on the team) they were denied  
26 the benefits of the contract they formed with FRC, in which FRC,  
27 Johnson and Trueblood contracted to provide equal opportunities  
28 and benefits to Plaintiffs. Am. Compl., ¶ 54. Instead, the

1 team roster was limited and Plaintiffs were cut as part of an  
2 intentional, racially discriminatory, effort by Defendants to  
3 reduce the number of African American football players on the  
4 FRC team. Am. Compl., ¶ 51. These allegations are sufficient  
5 at this stage of the pleadings to show that Plaintiffs were  
6 denied the benefits that they contracted for. The Court has  
7 already found that Plaintiffs have sufficiently alleged that  
8 Defendants had intent to discriminate under Title VI, and the  
9 intentional discrimination analysis is the same under Title VI  
10 and Section 1981. Pryor, supra. Accordingly, Plaintiffs have  
11 sufficiently stated a claim for violation of Section 1981. The  
12 motion to dismiss the third claim for relief is DENIED.

13 4. Violation of 42 U.S.C. § 1983- Equal Protection  
14 Clause of the Fourteenth Amendment

15 The fourth claim for relief, brought against Trueblood and  
16 Johnson, alleges that Trueblood and Johnson violated Plaintiffs  
17 rights under the Equal Protection clause of the Fourteenth  
18 Amendment, by treating black student-athletes differently than  
19 white student-athletes. The FAC alleges that African American  
20 student athletes were treated worse than non-black athletes.  
21 Specifically, Trueblood is alleged to have announced his  
22 intention to "change the face" of the football team, desiring  
23 fewer African American and more whites on the team. Am. Compl.,  
24 ¶ 45. Trueblood, along with Johnson, are alleged to have  
25 implemented a policy of ridding the team of African American  
26 players (including Plaintiffs) and replacing them with white  
27 players. Am. Compl., ¶¶ 45-50. Plaintiffs assert that this was  
28 done with the intent to discriminate against African Americans.

1 As a result of the discrimination, Plaintiffs allege they  
2 suffered emotional distress and anxiety.

3 Defendants argue that the allegations against Trueblood and  
4 Johnson are insufficient to show purposeful acts of  
5 discrimination. Simply because more African American football  
6 players were cut from the team than football players of other  
7 ethnicities, Defendants argue this does not show intentional  
8 discrimination giving rise to an equal protection claim.

9 To prevail in a Section 1983 civil action against state  
10 actors for the deprivation of:

11 Rights, privileges, or immunities secured by the  
12 Constitution and laws, a plaintiff must show that  
13 (1) acts by the defendants (2) under color of state law (3)  
14 deprived him of federal rights, privileges or immunities  
15 and (4) caused him damage. Section 1983 is not itself a  
16 source of substantive rights, but merely provides a method  
for vindicating federal rights elsewhere conferred.  
Accordingly, the conduct complained of must have deprived  
the plaintiff of some right, privilege or immunity  
protected by the Constitution or laws of the United States.

17 Thornton v. City of St. Helens, 425 F.3d 1158, 1163-64 (9th Cir.  
18 2005) (internal citations omitted).

19 The "Equal Protection Clause of the Fourteenth Amendment  
20 commands that no State shall 'deny to any person within its  
21 jurisdiction the equal protection of the laws,' which is  
22 essentially a direction that all persons similarly situated  
23 should be treated alike." City of Cleburne v. Cleburne Living  
24 Ctr, Inc. 473 U.S. 432, 439 (1985) (internal citations omitted).  
25 To state a claim under 42 U.S.C. § 1983 for a violation of the  
26 Equal Protection Clause of the Fourteenth Amendment, a plaintiff  
27 "must show that the defendant acted with an intent or purpose to  
28 discriminate against the plaintiff based upon membership in a

1 protected class.” T.A. ex rel. Amador v. McSwain Union  
2 Elementary Sch. Dist., 2009 WL 1748793, at \*8 (E.D. Cal. Jan.  
3 18, 2009). A plaintiff may satisfy this showing by alleging  
4 four separate elements: (1) that the defendants treated  
5 plaintiff differently from others similarly situated; (2) this  
6 unequal treatment was based on an impermissible classification;  
7 (3) the defendants acted with discriminatory intent in applying  
8 this classification; and (4) plaintiff suffered injury as a  
9 result of the discriminatory classification. Id.

10 At this stage in the pleadings, when the Court must accept  
11 as true the allegations of the FAC and draw all reasonable  
12 inferences in Plaintiffs’ favor, the FAC sufficiently alleges a  
13 violation of Section 1983. Plaintiffs have alleged that they  
14 were discriminatorily cut from the team, along with numerous  
15 other African American players, and that white students were not  
16 rejected from the team in this manner. Am. Compl., ¶¶ 46-48.  
17 Plaintiffs have alleged that the discrimination was intentional,  
18 and the allegations of the FAC regarding the high number of  
19 black students cut from the team in comparison to the number of  
20 white students cut from the team supports the allegations of  
21 discrimination in violation of the equal protection clause.  
22 Accordingly, the motion to dismiss the fourth claim for relief  
23 is DENIED.

24 5. Violation of 42 U.S.C. § 1981- Intentional  
25 Discrimination in the Making of a Contract

26 The fifth claim for relief, brought against White, alleges  
27 that White’s discriminatory treatment of African American  
28 student-athletes violated the Plaintiffs’ contract rights under

1 Section 1981. Plaintiffs allege that when they paid tuition to  
2 FRC for educational services, FRC, and by extension White,  
3 entered into a contractual relationship with each plaintiff.  
4 Am. Compl., ¶ 128. In rendering these services in a  
5 discriminatory, harassing and hostile manner towards African  
6 American students, White violated Section 1981's mandate against  
7 discrimination in the making and enforcement of contracts. Am.  
8 Compl., ¶¶ 129-131. Defendants raise the same arguments against  
9 this claim for relief as were raised against the third claim for  
10 relief, that no contract to play football existed.

11 However, the claim against White is not that he denied  
12 Plaintiffs the ability to play football, but that when they  
13 participated in FRC's football program he intentionally treated  
14 them with racial hostility and discrimination. As discussed  
15 above, a contract for purposes of Section 1981 for services  
16 exists between schools and the students. Runyon, 427 U.S. at  
17 172; Gratz, 539 U.S. at 275 n.23. White's discrimination and  
18 harassment impaired an existing contractual relationship,  
19 preventing Plaintiffs from full and equal access to the benefits  
20 of their contracts with FRC. Plaintiffs have alleged sufficient  
21 facts to state a claim that White violated their rights under  
22 Section 1981, accordingly, the motion to dismiss the fifth claim  
23 for relief is DENIED.

24 6. Violation of 42 U.S.C. § 1983- Equal Protection  
25 Clause of the Fourteenth Amendment

26 The sixth claim for relief, brought against White, alleges  
27 that by intentionally treating black students differently and  
28 worse than non-black students, White violated the equal

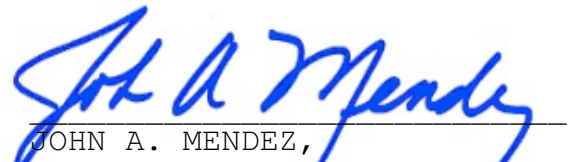
1 Protection Clause of the Fourteenth Amendment. Defendants raise  
2 the same arguments for dismissal of the sixth claim for relief  
3 that they raised for dismissal of the fourth claim, that  
4 Plaintiffs fail to show intentional discrimination. However, as  
5 already discussed above, the allegations against White are  
6 sufficient to show intentional discrimination. The allegations  
7 meet the necessary elements of an equal protection claim, as  
8 discussed in the Court's analysis of the fourth claim.  
9 Accordingly, the motion to dismiss the sixth claim for relief is  
10 DENIED.

11  
12 III. ORDER

13 For the reasons set forth above, the motion to dismiss is  
14 DENIED. Defendants shall file their Answer to the First Amended  
15 Complaint within twenty (20) days of this Order.

16 IT IS SO ORDERED.

17 Dated: October 20, 2011

18   
\_\_\_\_\_  
JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE