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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

PLANS, Inc., Plaintiffs, v. SACRAMENTO CITY UNIFIED SCHOOL DISTRICT, TWIN RIDGES ELEMENTARY SCHOOL DISTRICT, DOES 1-100, Defendants.	Case No. CIV. S-98-0266 FCD PAN Date: January 14, 2005 Time: 3:30 p.m. Place: Courtroom 25 DEFENDANTS' FINAL PRETRIAL CONFERENCE STATEMENT

Defendants SACRAMENTO CITY UNIFIED SCHOOL DISTRICT (hereinafter "SCUSD" or "Defendant") and TWIN RIDGES ELEMENTARY SCHOOL DISTRICT (hereinafter "TRESD" or "Defendant") (hereinafter collectively "School Districts" or "Defendants"), hereby file their Final Pretrial Conference Statement.[1]

[1] Defendants attempted in good faith to file a joint statement with Plaintiff. Defendants were not able to secure Plaintiff's cooperation in a timely manner. See letters to Plaintiff's counsel, true and correct copies of which are attached hereto as Exhibits 1, 2, 3 and 4. Defendants file this separate statement as a last resort.

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1. JURISDICTION - VENUE:

Jurisdiction is predicated upon 28 United States Code section 1331 and 28 United States Code section 1343. Defendants contend Plaintiff does not have proper standing before this court.

2. JURY - NON-JURY:

Trial shall be to the court without a jury.

3. UNDISPUTED FACTS:

The following are the undisputed facts in this case as previously outlined in the court's last pretrial order:

a. A Waldorf method used by the schools is that the same teacher progresses through each grade with his or her class, through the eighth grade.

b. Austrian-born Rudolf Steiner founded Waldorf education in 1919 when he created a school in Germany for the children of the Waldorf-Astoria cigarette factory workers.

c. Oak Ridge began operating as a Waldorf methods magnet school in September 1995.

d. Rudolf Steiner College, a school for teacher training in Waldorf education, submitted a proposal for the training of the Oak Ridge teachers in the use of Waldorf methods in a public school setting. Betty Staley, the Dean of Faculty, created the teacher training program for the Oak Ridge teachers in 1995. The teachers began their teacher training through Rudolf Steiner College in spring of 1996.

e. Just prior to the 1997-1998 school year, the Waldorf Methods Magnet School moved from Oak Ridge School and became the John Morse Waldorf Methods Magnet School.

f. In August 1994, Twin Ridges agreed to sponsor a Waldorf methods charter school.

g. The Twin Ridges Alternative Charter School opened in September 1994.

h. The following year, the Twin Ridges Alternative Charter School moved and became the Yuba River Charter School.

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i. Both schools currently operate as public schools using Waldorf methods in the classroom.

4. DISPUTED FACTUAL ISSUES:

This case involves issues of law, and/or mixed questions of law and fact, in constitutional adjudication as outlined in the court's last pretrial order.

1. Whether anthroposophy is a religion.

   A. Whether anthroposophy is a system of belief and worship of a superhuman controlling power involving a code of ethics and philosophy requiring obedience thereto.

   B. Whether anthroposophy addresses fundamental and ultimate questions having to do with "deep and imponderable matters."

   C. Whether anthroposophy is "comprehensive in nature."

   D. Whether anthroposophy can be recognized by formal and external signs such as formal services, ceremonial functions, the existence of clergy, structure and organization, efforts at propagation, observance of holidays and other similar manifestations associated with the traditional religions.

2. Whether the Waldorf inspired methodology employed by the John Morse Waldorf Methods Magnet School (hereinafter "John Morse") advances and promotes anthroposophy.

   A. What are the current curricular and extra-curricular activities at John Morse.

   B. Whether John Morse curricular and extra-curricular activities fit within accepted teaching strategies and local, state, or federal instructional guidelines.

   C. What are the governance and accountability systems in effect for John Morse.

   D. What are the operational and personnel systems in effect for John Morse.

3. Whether the Waldorf inspired methodology employed by the Yuba River Charter School (hereinafter "Yuba River") advances and promotes anthroposophy.

   A. What are the current curricular and extra-curricular activities at Yuba River.

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B. Whether Yuba River curricular and extra-curricular activities fit within accepted teaching strategies and local, state, or federal instructional guidelines.

C. What is the governance and accountability system in effect for Yuba River.

D. What is the operational and personnel system in effect for Yuba River.

4. Whether any religious organization is benefitted by the use of Waldorf inspired methodology at John Morse.

5. Whether SCUSD, due to the operation of John Morse, pays from public funds any benefit or provides aid to any religious organization, and if so, what is the nature of such benefit or aid.

6. Whether due to the operation of John Morse there is a current relationship between SCUSD and any religious organization.

7. Whether SCUSD public officials supervise public employees on public property.

8. Whether any religious organization is benefitted by the use of Waldorf inspired methodology at Yuba River.

9. Whether TRESD, due to the operation of Yuba River, pays from public funds any benefit or provides aid to any religious organization, and if so, what is the nature of such benefit or aid.

10. Whether due to the operation of Yuba River there is a current relationship between TRESD and any religious organization.

11. Whether TRESD public officials supervise public employees on public property.

5. DISPUTED EVIDENTIARY ISSUES:

Defendants filed ten (10) in limine motions which were heard on April 11, 2001. The motions were either ruled on or decision reserved pending trial. Defendants intend to renew the in limine motions where judgment was reserved. The motions which were ruled upon are law of the case.

Defendants request the opportunity to file further in limine motions to limit or exclude witnesses or evidence which it believes to be inadmissable based on the most recent round of discovery.

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Defendants' *Daubert/Khumo* motions were also heard in April 2001 regarding expert witnesses. All of Plaintiff's expert witnesses were excluded or withdrawn, with the exception of Dr. James Morton. The court ruled that Plaintiff could introduce limited testimony by Dr. Morton.

6. SPECIAL FACTUAL INFORMATION IN CERTAIN ACTIONS:

Not applicable.

7. RELIEF SOUGHT:

Plaintiff has not requested damages. Plaintiff seeks a permanent injunction "enjoining defendants from operating taxpayer funded Waldorf schools, or other schools that similarly violate . . . [the federal and state constitution]." Additionally, Plaintiff seeks a declaration that Defendants' alleged operation of "Waldorf schools" violates both the state and federal constitutions. Finally, Plaintiff seeks attorneys fees and costs pursuant to 42 United States Code section 1988.

Defendants deny that they are operating "Waldorf schools." Defendants contend that Plaintiff's focus upon two schools (Twin Ridges Alternative Charter School and Oak Ridge Waldorf Methods Magnet School) no longer in operation improperly seeks retroactive injunctive and declaratory relief. *See Quern v. Jordan*, 440 U.S. 332 (1979) (no retrospective relief allowed). Defendants also contest Plaintiff's demand for overbroad injunctive relief to entirely shut down all Waldorf-inspired public schools in current operation. If any particular aspect of the Defendants' current programs or activities is found by declaratory judgment by this court to rise to the level of a constitutional violation, that aspect can be remedied. The Defendants can promptly bring any school into compliance with the court's declaration.

8. POINTS OF LAW:

The parties will brief the following as previously outlined in the court's last pretrial order:

General

1. Whether anthroposophy is a religion for Establishment Clause purposes under current United States Supreme Court and Ninth Circuit standards.
2. Whether John Morse advances anthroposophy through Waldorf inspired methodology in violation of Establishment Clause.

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3. Whether Yuba River advances anthroposophy through the Waldorf inspired methodology in violation of Establishment Clause.

4. Whether John Morse advances anthroposophy through the Waldorf inspired methodology in violation of Article XVI Section 5 of California Constitution.

5. Whether Yuba River advances anthroposophy through the Waldorf inspired methodology in violation of Article XVI Section 5 of California Constitution.

SCUSD and Endorsement:

6. Whether an objective observer in the position of an elementary school student would perceive a message of endorsement of anthroposophy in the use of Waldorf education methods at John Morse.

7. This observer is not an expert on esoteric religions.

8. Whether mere consistency with, or resemblance to, a religious practice has the primary effect of endorsing religion.

9. Whether the Waldorf method program at John Morse primarily advances the previously adjudicated secular purpose of educational innovation and desegregation through a magnet school.

TRESD and Endorsement:

10. Whether an objective observer in the position of an elementary school student would perceive a message of endorsement of anthroposophy in the use of Waldorf education methods at any charter school sponsored by TRESD, including Yuba River.

11. This observer is not an expert on esoteric religions.

12. Whether mere consistency with, or resemblance to, a religious practice has the primary effect of endorsing religion.

13. Whether the Waldorf inspired charter schools sponsored by TRESD primarily advance the previously adjudicated secular purpose of educational innovation pursuant to the Charter Schools Act, California Education Code section 47600 et seq.

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Entanglement Test Waiver:

SCUSD and "Excessive Entanglement" Test:

14. Whether there is payment of SCUSD public funds to a private religious institution. The court must determine the "character and purposes of the institutions that are benefitted, the nature of the aid that the State provides, and the resulting relationship between the government and religious authority."

15. Whether there is excessive entanglement between SCUSD and religion in general.

16. Whether supervision of public employees by public officials creates excessive entanglement between church and state.

TRESD and "Excessive Entanglement" Test:

17. Whether there is payment of TRESD public funds to a private religious institution. The court must determine the "character and purposes of the institutions that are benefitted, the nature of the aid that the State provides, and the resulting relationship between the government and religious authority."

18. Whether there is excessive entanglement between TRESD and religion in general.

19. Whether supervision of public employees by public officials creates excessive entanglement between church and state.

California Constitution:

20. Whether the court should abstain from ruling upon the alleged California Constitution violations since this case is one of first impression and the California legal standards are not entirely clear, and could raise conflicts between federal and state constitutional rights.

21. If the court does not abstain, then the court must determine whether Defendants violate Article I, section 4, Article XVI, section 5, or Article IX, section 8 of the California Constitution.

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22. The test for the California Constitution, Article I, section 4's "establishment clause" appears to be "endorsement." Article I, section 4's "no preference" clause appears to raise the issue whether government has granted a preferential benefit to a particular sect, religion, or religion in general, that is not granted to society at large.

23. Article XVI, section 5, has been held to prohibit official involvement, whatever its form, which has the direct, immediate, and substantial effect of promoting religious purposes. The test appears to be whether the government aid is direct, or indirect, and whether the nature of the aid is substantial or incidental. Article IX, section 8, precludes public funds appropriated for support of a sectarian or denominational school; any school not being under exclusive control of the officers of the public schools; and the instruction of any sectarian or denominational doctrine in a common school. An "incidental" benefit to a private, sectarian school is permissible if the "direct" benefit is to the student.

Relief:

24. Whether the relief requested by Plaintiff is necessary and proper in the circumstances as presented at trial.

9. ABANDONED ISSUES:

None.

10. WITNESSES:

See Defendants' witness list attached hereto as Attachment A.

11. EXHIBITS - SCHEDULES AND SUMMARIES:

See Defendants' exhibit list attached hereto as Attachment B.

12. DISCOVERY DOCUMENTS:

The Defendants intend to offer the following responses to discovery at trial for purposes of rebuttal and/or cross-examination:

a. PLANS' Response to Interrogatories propounded by SCUSD, dated September 9, 1998;

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b. PLANS' Response to Interrogatories propounded by TRESD, dated September 9, 1998;

c. PLANS' Response to Interrogatories of SCUSD, Set No. Two, dated March 4, 1999;

d. PLANS' Answer to Special Interrogatories propounded by Defendants, Set No. Three, dated January 15, 2004;

e. PLANS' Response to Request for Admissions propounded by Defendants, Set No. One, dated January 15, 2004;

f. PLANS' Supplemental Answer to Special Interrogatories propounded by Defendants, Set No. Three, dated February 22, 2004.

g. PLANS' Second Supplemental Answer to Special Interrogatories propounded by Defendants, Set No. Three, dated March 31, 2004;

h. PLANS' Response to Request for Production of Documents propounded by Defendants, Set No. Two, dated March 31, 2004;

i. PLANS' Supplemental Response to Request for Admissions propounded by Defendants, Set No. One, dated March 31, 2004.

13. FURTHER DISCOVERY OR MOTIONS:

None, except for further in limine motions.

14. STIPULATIONS:

None.

15. AMENDMENTS-DISMISSALS:

None.

16. SETTLEMENT NEGOTIATIONS:

Settlement negotiations have taken place between the parties to no avail. Defendants do not request a further settlement conference.

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17. AGREED STATEMENTS:

The parties do not believe an agreed statement of facts is feasible or advisable. Plaintiff and Defendants dispute almost all of the pertinent facts of this case. The case almost exclusively involves mixed questions of law and fact and issues.

However, the court previously granted summary adjudication on the issue of secular purpose for both school districts on September 24, 1999.

18. SEPARATE TRIAL OF ISSUES:

Defendants do not believe a separate trial on any issues is necessary.

19. IMPARTIAL EXPERTS - LIMITATION OF EXPERTS:

Plaintiff disclosed no expert witnesses before the April 16, 2004, deadline.

Defendants disclosed Dr. Douglas Sloan and Robert Anderson. No other non-percipient witnesses will be called at trial.

20. ATTORNEYS' FEES:

The matter of the award of attorneys' fees to prevailing parties pursuant to statute will be handled by motion in accordance with Local Rule 54-293.

21. CONCISE STATEMENT OF EVERY NON-DISCOVERY MOTION AND ITS RESOLUTION:

The disposition of the non-discovery motions filed in this matter are as follows:

a. **Motion for Summary Judgment or, in the Alternative, Summary Adjudication of Issues pursuant to the Federal Rules of Civil Procedure, rule 56**

Defendants' filed a Motion for Summary Judgment or, in the Alternative, Summary Adjudication of Issues on May 6, 1999.

The court denied Defendants' motion for summary judgment, but granted Defendants' motion for summary adjudication, finding Defendant SCUSD has a secular purpose for the operation of John Morse; Defendant TRESD has a secular purpose for the operation of Yuba River.

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b. ***Daubert* Motion**

Defendants' filed a *Daubert* motion on February 1, 2001, to exclude the Plaintiff's proposed expert witnesses: Dan Dugan, John Morehead, Dr. James M. Morton, Dr. Eugenie Scott, Debra Snell and Kathleen Stuphen.

The court ordered that Dan Dugan and John Morehead be excluded as expert witnesses. The court limited the testimony of Dr. James M. Morton to his expertise as to religion regarding his definition as encompassed by the Christian doctrines, Protestant doctrines and individual Southern Baptist doctrines.

Plaintiff conceded to the court that Debra Snell and Kathleen Stuphen will testify as percipient witnesses instead of as expert witnesses. Plaintiff conceded that Dr. Eugenie Scott will not be called to testify as an expert witness.

c. **In Limine Motions**

The disposition of Defendants' Motions in Limine filed on February 1, 2001, are as follows:

Motion in Limine 1:

The court granted Defendants' motion to exclude non-party witnesses from the courtroom during the testimony of other witnesses.

Motion In Limine 2:

The court granted Defendants' motion to exclude any testimony by "expert" witnesses not disclosed pursuant to the court's scheduling order of October 5, 1998.

Motion In Limine 3:

The court denied Defendants' motion to exclude exhibits not produced in exhibit exchange subject to the following provisions, as referenced below, being met by the Plaintiff within fifteen days from the date of the hearing held on April 11, 2001. The court ordered the following provisions:

The court ordered the Plaintiff to make the copyrighted videotapes (exhibits 30-31 on Plaintiff's exhibit list from the Amended Pretrial Conference Order filed April 24, 2001) physically available to the Defendants, by sending the originals to the Defendants and allowing them to make

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copies of the videotapes or making copies of the videotapes themselves and sending them to the Defendants.

The court ordered the Plaintiff to place dates on the student work (exhibits 43-44), and the student work must be physically made available to the Defendants.

The court ordered the Plaintiff to produce and exchange the books and pamphlets (exhibits 91-102) with the Defendants.

Motion In Limine 4:

The court reserved its ruling for trial on Defendants' motion to exclude evidence of anthroposophy not relevant to the determination of whether it is a religion or to the teachings or activities at either school.

Motion In Limine 5:

The court reserved its ruling for trial on Defendants' motion to exclude evidence regarding Rudolf Steiner not relevant to the methods at either school.

Motion In Limine 6:

The court reserved its ruling until the time of trial on Defendants' motion to exclude testimony by witnesses lacking personal knowledge. The court advised the Plaintiff that it is required to provide an offer of proof as to all witnesses with respect to their personal knowledge. The court additionally requested a proffer regarding Dan Dugan, John Morehead, Dr. James M. Morton, Debra Snell and Kathleen Stuphen before they testify.

Motion In Limine 7:

The court reserved its ruling for trial on Defendants' motion to exclude evidence of personal beliefs or practices of witnesses.

Motion In Limine 8:

The court granted Defendants' motion to exclude evidence of past acts or practices at either school with the understanding that this does not preclude the Plaintiff from presenting conduct that is relevant to establish present conduct.

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Motion In Limine 9:

The court granted Defendants' motion to exclude evidence of teachings and activities of private Waldorf schools, unless the Plaintiff can establish an offer of proof that the evidence or testimony about the private schools is relevant to the schools in question.

Motion In Limine 10:

The court granted Defendants' motion to exclude evidence of the teachings and activities of public Waldorf schools, unless the Plaintiff can establish an offer of proof to show that there is a connection between what is going on in other Waldorf methods public schools and the schools in question.

d. **Motion for Summary Judgment or, in the Alternative Summary Adjudication of Issues**

Plaintiff's Motion for Summary Judgment or, in the Alternative, Summary Adjudication filed on May 28, 2004, was denied. The Memorandum and Order issued by the court on November 15, 2004, stated that triable issues of material fact exist as to whether anthroposophy is a religion, as well as whether the method of education implemented at John Morse and Yuba River advances and promotes anthroposophy.

22. ESTIMATE OF TRIAL/TRIAL DATE:

Defendants agree to the sixteen-day trial estimate established by the court's last pretrial order. Defendants request the court schedule this trial at the court's earliest convenience.

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23. MISCELLANEOUS:

Because this case presents primarily mixed questions of law and/or mixed questions of law and fact, Defendants request the opportunity to file a pretrial brief setting forth the legal standards, and a post-trial brief to include proposed findings of fact and conclusions of law.

Respectfully submitted,

GIRARD & VINSON, LLP

Date: January 7, 2005.

By _____
MICHELLE L. CANNON
Attorneys for Defendant TWIN RIDGES ELEMENTARY SCHOOL DISTRICT

KRONICK MOSKOVITZ TIEDEMANN & GIRARD

Date: January 7, 2005.

By See attached signature page
SUSAN R. DENIOUS
Attorneys for Defendant SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

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25. MISCELLANEOUS:

Because this case presents primarily mixed questions of law and/or mixed questions of law and fact, Defendants request the opportunity to file a pretrial brief setting forth the legal standards, and a post-trial brief to include proposed findings of fact and conclusions of law.

Respectfully submitted,

GIRARD & VINSON, LLP

Date: January 7, 2005

By_____
MICHELLE L. CANNON
Attorneys for Defendant TWIN RIDGES ELEMENTARY SCHOOL DISTRICT

KRONICK MOSKOVITZ TIEDEMANN & GIRARD

Date: January 7, 2005

By Susan R. Denious
SUSAN R. DENIOUS
Attorneys for Defendant SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

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ATTACHMENT "A"

Defendants' Witness List

Sacramento City Unified School District Witnesses:

1. Lisa Broadkey: parent. Defendants anticipate Ms. Broadkey will testify regarding the program at John Morse.

2. Chris Chavez: teacher. Defendants anticipate Ms. Chavez will testify regarding the program at John Morse.

3. Cheryl Eining: principal. Defendants anticipate Ms. Eining will testify regarding the Waldorf methods program at John Morse.

4. David Kuchera: parent. Defendants anticipate Mr. Kuchera will testify regarding the program at John Morse.

5. Jane Marks: parent. Defendants anticipate Ms. Marks will testify regarding the program at John Morse.

6. Susan Miller: administrator. Defendants anticipate Ms. Miller will testify as to the oversight and operation of John Morse.

7. Lauren Rice: teacher. Defendants anticipate Ms. Rice will testify regarding the program at John Morse.

8. Barbara Warren: teacher. Defendants anticipate Ms. Warren will testify regarding the program at John Morse.

9. Chris Whetstone: parent and teacher. Defendants anticipate Mr. Whetstone will testify regarding the program at John Morse.

Twin Ridges Elementary School District Witnesses:

10. Caleb Buckley: administrator. Defendants anticipate Mr. Buckley will testify regarding the Waldorf methods program at Yuba River.

11. Marshall Goldberg: parent. Defendants anticipate Mr. Goldberg will testify regarding the program at Yuba River.

12. Frank Lawrence: parent. Defendants anticipate Mr. Lawrence will testify regarding the program at Yuba River.

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13. John Lee: parent. Defendants anticipate Mr. Lee will testify regarding the program at Yuba River.

14. Jill Messier: teacher. Defendants anticipate Ms. Messier will testify regarding the upper grades program at Yuba River.

15. Carol Nimick: teacher. Defendants anticipate Ms. Nimick will testify regarding the primary grades program at Yuba River.

16. David Taylor: superintendent. Defendants anticipate Mr. Taylor will testify regarding the oversight and operation of Waldorf methods schools in Twin Ridges.

Defendants' Expert Witnesses:

17. Robert Anderson: California Dept. of Education. Defendants anticipate Mr. Anderson will testify as a percipient and an expert witness regarding the California State Curriculum Frameworks and the curriculum of both schools at issue.

18. Dr. Douglas Sloan: Professor Emeritus, Teachers College, Columbia University. Defendants anticipate Dr. Sloan will testify as a percipient and expert witness regarding religion, philosophy, education, and anthroposophy.

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ATTACHMENT "B"

Defendants' Exhibit List

Defendants' Joint Exhibits:

A. Plaintiff's September 9, 1998 Response to Interrogatories propounded by SCUSD.

B. Plaintiff's September 9, 1998 Response to Interrogatories propounded by Twin Ridges.

C. Plaintiff's March 4, 1999 Response to Interrogatories propounded by SCUSD.

D. PLANS' Answer to Special Interrogatories propounded by Defendants, Net No. Three, dated January 15, 2004;

E. PLANS' Response to Request for Admissions propounded by Defendants, Set No. One, dated January 15, 2004;

F. PLANS' Supplemental Answer to Special Interrogatories propounded by Defendants, Set No. Three, dated February 22, 2004;

G. PLANS' Second Supplemental Answer to Special Interrogatories propounded by Defendants, Set No. Three, dated March 31, 2004;

H. PLANS' Response to Request for Production of Documents propounded by Defendants, Set No. Two, dated March 31, 2004;

I. PLANS' Supplemental Response to Request for Admissions propounded by Defendants, Set No. One, dated March 31, 2004.

J. State Curriculum Frameworks for Mathematics.

K. State Curriculum Frameworks for Science.

L. State Curriculum Frameworks for History/Social Science.

M. State Curriculum Frameworks for English-Language Arts.

N. California Department of Education handbook entitled "Moral, Civic, and Ethical Education."

O. California Department of Education handbook entitled "Social Studies Review, Character Education."

P. California Department of Education handbook entitled "Elementary Makes the Grade."

Q. California Department of Education Character Education annotated bibliography.

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R. California Department of Education Character Education documents.

S. The President's Guidelines to Religion in Schools.

T. PLANS/Dugan e-mails and web-site postings.

Sacramento City Unified School District Exhibits:

U. Curriculum for John Morse Waldorf Methods Magnet School.

V. John Morse Teacher Lesson Plans.

W. John Morse Block Rotation Schedules.

X. Collective Bargaining Agreement between Sacramento City Unified School District and Sacramento City Teachers Association.

Y. Photographs of John Morse.

Z. July 1997 letter from Dan Dugan to Tom Griffin.

AA. July 1997 letter from Dan Dugan to Matt McDonald.

Twin Ridges Elementary School District Exhibits:

BB. Curriculum for the Yuba River Charter School.

CC. Current Charter for Yuba River Charter School.

DD. Yuba River Charter School Teacher Lesson Plans.

EE. Yuba River Charter School Block Rotation Schedules.

FF. Yuba River Charter School Weekly Schedule.

GG. Yuba River Charter School Accountability Reports.

HH. Twin Ridges Elementary School District Accountability Reports.

II. Twin Ridges Elementary School District Accountability Rubrics.

JJ. Yuba River Charter School teacher evaluation forms.

KK. Yuba River Charter School Newsletters.

LL. Yuba River Charter School parents handout, Educational Overview.

MM. Nevada County and Yuba River Charter School STAR profile.

NN. Twin Ridges Elementary School District Newsletters.

OO. Photographs of Yuba River Charter School.

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Exhibit 1

GIRARD & VINSON LLP
ATTORNEYS AT LAW

Confirmation of fax sent December 21, 2004

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Respond to Sacramento

DAVID W. GIRARD
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KEITH J. BRAY
DIANE MARSHALL-FREEMAN
LOIS SCHWARTZ
ANNE M. SHERLOCK
WILLIAM F. SCHUETZ, JR.
ELIZABETH P. LIND
MARCELLA L. GUTIERREZ
SCOTT K. HOLBROOK
CYNTHIA M. SMITH
DAVID E. ROBINETT
TRAVIS J. LINDSEY

December 21, 2004

Mr. Scott M. Kendall
Attorney at Law
Law Offices of Scott Kendall
8788 Elk Grove Bl., Bldg. 1, Ste. I
Elk Grove, CA 95624

Re: *PLANS, Inc. v. Sacramento City Unified School District*
USDC Case No. CIV. S-98-0266 FCD PAN

Dear Mr. Kendall:

Please note that there is a Joint Pretrial Statement due to be filed with the court on January 7, 2005, in the above-referenced matter. I will e-mail a draft to you on or before December 30, 2004. My draft will mirror the court's last pretrial statement in content. Please return your suggested revisions to me by January 4, 2005, so that I may incorporate them and file the final version with the court. Additionally, please e-mail your witness and exhibit lists to me as well. As you know, my e-mail address is cannon@gandv.com.

If you have any questions or concerns, please contact me as soon as possible. Thank you in advance for your professional courtesy.

Very truly yours,

GIRARD & VINSON, LLP

Michelle Cannon

MICHELLE L. CANNON

MLC:AKK
By facsimile
cc: Susan Denious

Exhibit 2

GIRARD & VINSON LLP
ATTORNEYS AT LAW

Confirmation of fax sent January 5, 2005

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Fax: 916.446.5711

360 Nevada Street
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Respond to Sacramento

DAVID W. GIRARD
ALLEN R. VINSON
CHRISTIAN M. KEINER
PHILLIP A. TRUJILLO
DEANNA J. MOUSER
MICHELLE L. CANNON
KEITH J. BRAY
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ELIZABETH P. LIND
MARSHA VOLK BUGALLA
SCOTT K. HOLBROOK
CYNTHIA M. SMITH
DAVID E. ROBINETT
TRAVIS J. LINDSEY
EMILY E. SOARES

January 5, 2005

Mr. Scott M. Kendall
Attorney at Law
Law Offices of Scott Kendall
8788 Elk Grove Bl., Bldg. 1, Ste. I
Elk Grove, CA 95624

Re: *PLANS, Inc. v. Sacramento City Unified School District*
USDC Case No. CIV. S-98-0266 FCD PAN

Dear Mr. Kendall:

I am in receipt of your proposed corrections and additions to the joint pretrial conference statement sent to me by fax. The content of our draft, specifically the disputed and undisputed facts, and the legal issues, is taken directly form the court's last pretrial order. As you know, Judge Damrell has stated that his last pretrial order still stands. Therefore, we do not feel it appropriate or necessary to vary substantially from that final pretrial order. As such, to incorporate your changes, I will change the joint statement so that it reads "Defendants contend" and "Plaintiff contends" to delineate the different issues put forth by each side.

Since your language is extensive, please e-mail this document to me immediately so that I may incorporate your additions into our draft.

Very truly yours,

GIRARD & VINSON, LLP

Michelle L. Cannon

MICHELLE L. CANNON

MLC:AKK
By facsimile
cc: Susan Denious

Exhibit 3

GIRARD & VINSON LLP
ATTORNEYS AT LAW

Confirmation of fax sent January 5, 2005

Growers Square
1676 N. California Blvd., Ste. 450
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January 5, 2005

Mr. Scott M. Kendall
Attorney at Law
Law Offices of Scott Kendall
8788 Elk Grove Bl., Bldg. 1, Ste. I
Elk Grove, CA 95624

Re: *PLANS, Inc. v. Sacramento City Unified School District*
USDC Case No. CIV. S-98-0266 FCD PAN

Dear Mr. Kendall:

This letter will confirm my secretary's telephone conversation on January 4, 2005, with Christopher of your office, whereby he said we would receive your suggested revisions and changes to the Joint Pretrial Conference Statement by Tuesday, January 4, 2005. As you know, we are willing to finalize and file the statement and attached exhibits with the court on Friday, January 7, 2005. In order to do this, we must have your suggested revisions, with witness and exhibit lists, by today at 1:00 p.m. We will then fax the final version to you for your signature, file it with the court, and send you a copy.

Please contact me if you are not amenable to completing the Joint Pretrial Conference Statement as outlined above. If we do not receive your input for the joint statement today, we will have no choice but to file a separate statement and explain the reasons thereof to Judge Damrell.

Thank you for your anticipated cooperation.

Very truly yours,

GIRARD & VINSON, LLP

MICHELLE L. CANNON

MLC:AKK
By facsimile
cc: Susan Denious

Exhibit 4

GIRARD & VINSON LLP
ATTORNEYS AT LAW

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January 6, 2005

Mr. Scott M. Kendall
Attorney at Law
Law Offices of Scott Kendall
8788 Elk Grove Bl., Bldg. 1, Ste. I
Elk Grove, CA 95624

Re: *PLANS, Inc. v. Sacramento City Unified School District*
USDC Case No. CIV. S-98-0266 FCD PAN

Dear Mr. Kendall:

It is after 5:00 p.m. and we do not have any further changes or revisions from you, much less your signature or witness and exhibit lists. We have worked exhaustively to accommodate your schedule to no avail. Because you refuse to participate in the drafting, finalizing, and signing of this joint statement in a timely manner, we have no choice but to finalize and file our statement as a separate pretrial conference statement. I have spoken with the attorney for Sacramento City Unified School District and she is in agreement with this. Therefore, the defendants will file their statement tomorrow morning. We will serve a copy on you as required.

Very truly yours,

GIRARD & VINSON, LLP

Michelle Cannon
MICHELLE L. CANNON

MLC:AKK
By facsimile
cc: Susan Denious

PROOF OF SERVICE

I am employed in the county of Sacramento, state of California. I am over the age of 18 and not a party to the within action; my business address is 1006 Fourth Street, Eighth Floor, Sacramento, California 95814-3326.

On January 7, 2005, I served the foregoing documents described as DEFENDANTS' FINAL PRETRIAL CONFERENCE STATEMENT on the following interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

SCOTT M KENDALL
ATTORNEY AT LAW
LAW OFFICES OF SCOTT KENDALL
8788 ELK GROVE BL BLDG 1 STE I
ELK GROVE CA 95624

SCOTT M KENDALL
ATTORNEY AT LAW
LAW OFFICES OF SCOTT KENDALL
9401 EAST STOCKTON BLVD SUITE 210
ELK GROVE CA 95624

I caused such envelope to be delivered by hand to the offices of the addressee.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury under the laws of the state of California that the above is true and correct.

Executed on January 7, 2005, at Sacramento, California.

Angela Knight

Angela Knight

GIRARD & VINSON
1006 Fourth Street, Eighth Floor
Sacramento, CA 95814-3326
(916) 446-9292