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APPEARANCES (continued)

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Court-Approved Reporter

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THE COURT: Good morning.

MR. PECK: Good morning, Your Honor.

THE COURT: Mr. Peck, you made it.

MR. PECK: I did, Your Honor. Thank you.

THE COURT: Are you ready?

MR. PECK: I am indeed.

THE COURT: May I have appearances, please.

MR. BROYLES: Your Honor, Dean Broyles on behalf of plaintiffs and petitioners, the Sedlocks, and their children. With me is an associate attorney of the National Center for Law and Policy.

MR. REYNOLDS: Also, Rob Reynolds on behalf of the same parties, same organization.

MR. SLEETH: Jack Sleeth appearing on behalf of the school district defendants along with Paul Carelli. With us at the table is the superintendent of schools, Timothy Baird.

MR. PECK: Good morning, Your Honor.

My name is David Peck. I represent the intervenor, YES! Yoga for Encinitas Students.

THE COURT: Well, I've had some interesting reading over the weekend. Let me just say that I thought the briefs were well done, and the material I reviewed was well presented. It's an interesting case, to say the least. And I think Friday we discussed kind of ground rules, and I think we're going to have opening statements

1 to start off.

2 Is there anything preliminarily before we begin?
3 I know the district had made an in limine motion with
4 regard to the expert testimony. I'm going to deny that
5 motion to exclude your expert. I think it would be
6 helpful within the parameters of what an expert does and
7 doesn't do. I think that she will assist the trier of
8 fact in a somewhat limited way, but I think she should be
9 allowed to provide testimony to the Court.

10 MR. BROYLES: Thank you, Your Honor.

11 THE COURT: Mr. Sleeth, anything further?

12 MR. SLEETH: No, Your Honor.

13 MR. BROYLES: Your Honor, just one last thing.
14 I -- there's an attorney who's here with us who I'd -- if
15 your court allows, we'd like to have sit at the table with
16 us today.

17 THE COURT: All right.

18 MR. BROYLES: Just to assist. He's not going to
19 be speaking, Your Honor.

20 THE COURT: Sure.

21 MR. ABRAMSON: Good morning, Your Honor.

22 THE COURT: You want to state your name for the
23 record.

24 MR. ABRAMSON: Yes. Bradley S. Abramson from
25 Alliance Defending Freedom.

26 THE COURT: Anything else preliminarily?

27 MR. SLEETH: No, Your Honor.

28 THE COURT: All right. Let me just indicate a

1 couple things that you might want to address in your
2 opening statement, just of couple of thoughts that I had
3 from reading the material.

4 The first question, which might sound kind of
5 basic, but I do have the question, and that is what is
6 religion? And I don't want to lose sight of what we're
7 here for.

8 I suppose when you refer to worship, one is free
9 to worship whatever, whomever one wishes, and that can be
10 virtually anything. I suppose some people are accused of
11 worshipping a sports team. There are traditional
12 religions and very untraditional religions, and I'm not
13 sure what religion actually is.

14 And the other thought is that the benefits and
15 objectives of religion may be the same for certain
16 physical activity; a sense of well being, a sense of
17 accomplishment, stress release, an appreciation of life.
18 You know, a physical workout can achieve those objectives
19 as can religion.

20 The other thought is a little more to the point,
21 and I think that's the difference between western religion
22 the -- I guess you'd call it the Judeo-Christian beliefs
23 versus Eastern religion, which could be Hinduism and
24 Buddhism. And I suppose the expert's going to elucidate
25 the Court more on that.

26 The other thought that I had that I don't want to
27 lose sight of is that other than 200 hours of physical
28 education, which is mandated by the Education Code, the

1 Court can't direct the district as to the particular
2 curriculum.

3 And I suppose you can discuss a philosophical way
4 the differences between traditional P.E., whatever that
5 is -- and I suppose that's running around a playground or
6 playing a game -- as opposed to what some people might
7 consider touchy-feely wellness. And I know that there is
8 some dialog about youth sports and the traditional
9 competition as supposed to everybody's a winner and
10 everybody wins, which some people say is not teaching kids
11 what real life is about.

12 And the Court isn't and can't get involved in
13 establishing curriculum for the district other than what's
14 mandated by the Education Code and, of course, by the
15 State and Federal Constitution.

16 There's also been some talk about practicing
17 yoga, whatever that is, and doing yoga. And I suppose you
18 can practice religion. I don't know that you practice
19 yoga. Maybe some people do. But it's perhaps nothing
20 more than doing something like running or playing a game
21 or doing yoga. I don't know that you necessarily have to
22 practice something.

23 But the other question that I had that I assume
24 will be answered, that is whether the Jois Foundation is
25 religious. There's an issue about whether the yoga that
26 is being done or practiced in the schools of this district
27 is in any way religious.

28 But what apparently is the case is there is a

1 foundation that has given the school district a grant, and
2 there's some insinuation that that foundation is
3 religious. I don't know.

4 So those are just some thoughts the Court had
5 after reading the material that was prepared and
6 presented. And again, I want to commend counsel. I
7 thought it was well written, well researched, and it's
8 very helpful to have good material to review.

9 So Mr. Broyles, are you ready to proceed with an
10 opening statement? And I hope I've been somewhat helpful.

11 MR. BROYLES: Yes, Your Honor. I've written down
12 your questions.

13 THE COURT: Those are just some.

14 MR. BROYLES: So I will address many of those in
15 the opening statement. When I'm done with my formal
16 remarks, if I have failed to address anything that the
17 Court would like to have addressed preliminarily before we
18 put on the evidence, I can answer any questions.

19 THE COURT: Well, I don't intend to just sit up
20 here like a potted plant. So, I mean, my objective is to
21 get educated and make the best decision. So if I have a
22 question, I will perhaps interrupt and get an answer.

23 MR. BROYLES: I appreciate that, Your Honor.

24 THE COURT: I know.

25 MR. BROYLES: Your Honor, Counsel, parties, this
26 case is fundamentally about religious freedom, a liberty
27 that is protected against the tyranny of corrosive
28 government power. As George Washington said, "I beg you

1 will be persuaded that no one would be more zealous than
2 myself to establish effectual barriers against the horrors
3 of spiritual tyranny. And every species of religious
4 persecution, for you doubtless remember that I've often
5 expressed my sentiment that every man conducting himself
6 as a good citizen and being accountable to God alone for
7 his religious opinions ought to be protected in
8 worshipping the deity according to the dictates of his own
9 conscience."

10 The consciences the petitioners are working so
11 hard to protect in this case from the spiritual tyranny of
12 the state, Your Honor, are the tender consciences of our
13 youngest citizens, some of who are as young as five years
14 old.

15 What will the evidence in this case show? Simply
16 put, the evidence will clearly demonstrate that the
17 Encinitas Union School District is teaching religion to
18 young impressionable children in its care in the form of
19 specifically Ashtanga yoga. And that as a result, the
20 district has not been providing the mandatory minimum P.E.
21 minutes required by California law to its students who,
22 for very good reasons, for religious reasons, Your Honor,
23 decide to opt out of the district's unconstitutional
24 program.

25 Let me start today by telling you a brief story,
26 a sad but true story.

27 There was once a religious organization with
28 worldwide religious goals, which as part of its marketing

1 plan and strategy one day purchased access to more than
2 5,000 young and impressionable elementary school children.
3 What was their goal? What was the goal of the religious
4 organization? Their goal was to use the unsuspecting
5 children as religious test subjects, as spiritual guinea
6 pigs. Why? They wanted to develop a religious curriculum
7 so that they could more easily spread their religious
8 beliefs and practices to public school children across
9 America and across the world.

10 And being quite smart, being quite clever, the
11 organization camouflaged its religious designs by wrapping
12 the whole religious program in the cloak of
13 respectability, the cloak of science, by claiming the
14 program had measurable physical and mental benefits and by
15 acquiring the aura of academia by asserting that the study
16 being done of these children was being done by respected
17 universities.

18 How much did this religious organization's
19 virtual restricted access to the young public school
20 children cost? About a half a million dollars. But
21 that's not all.

22 One of the universities studying the local
23 religious elementary school program was coincidentally
24 just last -- just the year before given a \$12 million
25 grant. What for? Why? To form a religious center to
26 promote the very same religious beliefs and practices
27 being promoted in the local elementary school district.

28 But that's not all. Who gave the university the

1 money, who was it, to form the religious center? The very
2 same billionaire couple that provided the money and
3 impetus to form the very religious organization that gave
4 the elementary school district the half-million dollars.
5 Follow the money. And so we have come full circle to
6 where we began and why we're here today.

7 Now, permit me to reveal the characters in our
8 story, which is unfortunately, as I said earlier, all too
9 true.

10 What is the name of the religious organization?
11 The K.P. Jois Foundation. What is the name of the
12 religious center studying the children? The Contemplative
13 Sciences Center at the University of Virginia. What is
14 the name -- or I'm sorry. What is the name of the wealthy
15 billionaire couple who gave the money to both the
16 university and the Jois Foundation? Paul and Sonia Tudor
17 Jones.

18 What was the religious activity being promoted by
19 the foundation at the schools in the district? Ashtanga
20 yoga, which is based primarily in Hinduism and Hindu
21 beliefs and practices. And the evidence will show that
22 Ashtanga yoga is inherently and pervasively religious.

23 And finally, Your Honor, what is the name of the
24 school district that offered their children up as
25 religious beta test subjects? The Encinitas Union School
26 District. If you're skeptical about our story, I
27 understand because I have not yet told you how the program
28 is religious.

1 The evidence during this trial, Your Honor, will
2 show that during the 2011 and 2012 school year, the Jois
3 Foundation taught Ashtanga yoga in one EUSD school. It
4 was maybe referred to later on as some type of pilot
5 program.

6 THE COURT: When was that?

7 MR. BROYLES: 2011 to 2012, last full school
8 year, Your Honor.

9 Not having received too much opposition from
10 parents at that point, they decided to expand the program
11 the following year districtwide. To that end, over the
12 summer of 2012, the Encinitas Union School District was
13 awarded a \$533,720 grant by the Jois Foundation not to
14 teach P.E., not to teach yoga, not to teach any type of
15 yoga, but specifically in the grant and MOU is required
16 that the school teach Ashtanga yoga to all of its
17 students.

18 The grant and memorandum of understanding created
19 quite a cozy partnership -- and when I say "partnership,"
20 I'm not using my words, Your Honor, I'm using the words of
21 the grant -- between the secular public school system and
22 an unapologetically religious organization with clear
23 religious goals.

24 And the grant obviously was not without strings
25 attached. According to the terms of the agreement, EUSD
26 schools couldn't just teach any physical fitness or
27 stretching program or, for that matter, any type of yoga.
28 It was mandated that they specifically teach, as I said

1 earlier, Ashtanga yoga by the terms of the agreement
2 between the partners.

3 And the physical fitness program could not be
4 taught by California credentialed P.E. teachers. Rather,
5 it was mandated that the elementary yoga teachers in the
6 district must be, quote, "certified yoga instructors,"
7 quote, "trained by Jois Foundation teachers."

8 The grant required the development of a
9 comprehensive wellness and life skills curriculum which
10 would include yoga life concepts. And when I say "quote,"
11 I mean these are their quotes, Your Honor, from the grant
12 and MOU. They'd be teaching yoga life concepts. And it
13 was built around, quote, "key themes of yoga instruction"
14 that would be later taught not just in the P.E. courses on
15 the mat, but by other teachers in the school district as
16 they expanded the program in future years.

17 The goal of the new curriculum was to make it
18 scalable specifically so that other school districts
19 beyond EUSD could adopt the program for future expansion
20 plans to elementary schools across the country.

21 So you're probably wondering what is Ashtanga
22 yoga and how is it religious?

23 Your Honor, I submit that I'm not the expert. So
24 many of the religious aspects of the program will be
25 described later by Candy Brown. But I just want to
26 briefly read the Court something out of a Jois brochure
27 about Ashtanga yoga.

28 THE COURT: Mr. Sleeth, you've seen that?

1 MR. SLEETH: I have not seen it, and I'm not sure
2 that it's even relevant.

3 THE COURT: Okay.

4 MR. BROYLES: All right.

5 THE COURT: What is that, though?

6 MR. BROYLES: It's a brochure by the Jois -- by
7 Jois Yoga, Your Honor. If you want to see it before I
8 talk about it.

9 THE COURT: No, that's all right.

10 MR. BROYLES: About Ashtanga yoga, "'Ashtanga
11 Yoga' means 'eight limbed.' It is an ancient system that
12 can lead to liberation and greater awareness of our
13 spiritual potential. The eight limbs of Ashtanga Yoga can
14 be described as eight disciplines. Of these, the third
15 limb" -- Your Honor, I'm going to have to change to my
16 reading glasses. The print's very small. I apologize.

17 Okay. "Ashtanga Yoga can be described as eight
18 disciplines. They are yama, niyama, asana, pranayama,
19 pratyahara, dharana, dhyana, and samadhi." And I
20 apologize if I'm mispronouncing any of those names.

21 "Of these, the third limb, asana (yoga
22 postures)," and by "postures," they mean the positions and
23 physical things that they do in yoga, with Ashtanga Yoga.
24 So, "Of these, the third limb, asana (yoga postures), is
25 the most important for us to practice, and through it we
26 can understand the other limbs. Though in appearance an
27 external and physical discipline, through consistent
28 effort we find many layers, more and more subtle, which

1 need to be experienced directly and can lead to the"

2 I can wait, Your Honor.

3 THE COURT: No.

4 MR. BROYLES: Okay. This print's so small, it's
5 hard for me to keep my place.

6 THE COURT: Are the postures you're referring to
7 the animal poses? Am I --

8 MR. BROYLES: Your Honor, there's many postures.
9 Some have been renamed with other names as animal poses.

10 THE COURT: I just want to make sure that we're
11 on the same page here. I think I understand that. But
12 the postures in -- that we're talking about are what has
13 been referred to as the animal poses. Am I --

14 MR. BROYLES: Yeah. The school district has
15 renamed some of them animal pose names. Some of them in
16 the original language were animal pose names already.
17 So...

18 I will continue, Your Honor.

19 "Though in appearance an external and physical
20 discipline, through consistent effort we find many layers,
21 more and more subtle, which need to be experienced
22 directly and can lead to the experience of the last four
23 limbs."

24 And that's important Your Honor, "the last four
25 limbs." I'll explain those in a moment.

26 "Yama (restraints) and niyama (observances)
27 should be observed at all times, otherwise yoga asana
28 practice is reduced to a purely physical pursuit.

1 Pranayama (breath control) should only be taught after
2 mastering asanas, when the nervous system is strengthened
3 and prepared for more rigorous practice. The last four
4 limbs are pratyahara (withdrawal of the senses), dharana
5 (concentration), dhyana (meditation), and samadhi (union).
6 These final four are considered 'internal limbs,' meaning
7 that they arise spontaneously as a result of practice of
8 the first four and lead to experiential spiritual
9 knowledge.

10 "Through asana we can access higher levels of
11 yoga and, over time, bring both the body and mind to a
12 state of stability, a state of peace. With consistent
13 practice of asanas, changes become apparent on many
14 levels, physical and mental. A deep sense of contentment
15 and inner peace arises, and it is then that we can begin
16 to more clearly understand the other seven limbs of
17 Ashtanga Yoga."

18 As I mentioned, Your Honor, you'll be hearing
19 much more from our expert witness Candy Gunther Brown
20 about what Ashtanga yoga is and why it is religious. But
21 let me just mention and highlight a few things here, some
22 of which were already touched on in what I read.

23 The evidence will show that Ashtanga yoga
24 promotes and advances religion, including Hinduism,
25 Buddhism, and Western Metaphysics. Of those, it primarily
26 advances Hinduism. Yoga is primarily based in Hinduism,
27 and the word "yoga" literally means yoked, which refers to
28 the Hindu religious goal of achieving union with the

1 divine, also known as absorption into the universal.

2 I mentioned earlier I'd get back to the final
3 four stages. The final stage and the ultimate goal of
4 Ashtanga yoga is samadhi. By "samadhi," they mean
5 absorption into the universal or union with the divine,
6 Your Honor. If that is not an explicitly religious goal,
7 I don't know what is.

8 THE COURT: What's the divine?

9 MR. BROYLES: Your Honor, I will have my expert
10 talk about that. Certainly Hinduism is based more in
11 polytheism, so there are many different Hindu gods.
12 She'll testify as to which Hindu god they're referring
13 when they refer to union with the divine.

14 It was brought -- I'm sorry. Ashtanga yoga, a
15 modern day form of 2500-year-old classical Indian yoga was
16 brought to the United States and popularized by Shri K.
17 Pattabhi Jois, also known to his devotees as Guruji. And
18 this brochure refers to him, Your Honor, as Guruji.

19 The PK Jois Foundation was named after Pattabhi
20 Jois and was formed after he died in 2009. "Ashtanga"
21 literally means eight limbed. The eight limbs of Ashtanga
22 yoga are the moral codes or yama; self-purification and
23 study, niyama; posture, asana; breath control, which is
24 called pranayama; withdrawing the mind from the senses,
25 pratyahara; concentration, dharana; and deep meditation,
26 dhyana; and absorption into the universal or union with
27 the divine.

28 Now, as I said earlier and I just want to

1 emphasize one more time, by absorption into the universal,
2 which is the ultimate goal of Ashtanga yoga, Ashtangis
3 believe it was their true inner self -- I'm sorry -- that
4 their true inner self is not really just human, but it's
5 divine or is god.

6 And they also believe that there's this god out
7 there in the universe, which I'll call the big S self.
8 There's the little S self inside, and there's a big S self
9 floating out there somewhere, Your Honor.

10 So the goal of Ashtanga yoga practice is to
11 transcend your physicality and merge your small S divine
12 inner self with a big S divine self in the universe. This
13 is what samadhi or absorption into universal or union with
14 the divine means.

15 And just because it's not common for us to
16 understand these types of ideas with our Judeo-Christian
17 background here in America and our world view here doesn't
18 make them any less religious.

19 Now, as you can see, the Ashtangis have a very
20 unique view of who God is and who man is, which are, for
21 example, very different, as I said, from our
22 Judeo-Christian world view here in the United States.
23 Where it was taught in practice in our country from our
24 Judeo-Christian heritage that God and man are not merged,
25 but they are, in fact, distinct beings. There's a
26 creator/creation distinction. Man and God are not the
27 same.

28 "So what?" you say. What has actually been

1 taught in the classroom that is religious? That's what I
2 really want to know. That's what we all really want to
3 know. So let me tell you a little bit about what's been
4 taught in the classroom.

5 THE COURT: So the objective of Ashtanga yoga is
6 to achieve a unity of self with some divine god?

7 MR. BROYLES: Yes, Your Honor, that's basically
8 it. And again, I'm going to allow my expert to elucidate
9 more on that concept.

10 THE COURT: And that's what's being taught?

11 MR. BROYLES: Yes, Your Honor.

12 Until concerned parents complained, the Ashtanga
13 tree with all eight branches that I've gone over at least
14 three times already was on the wall of many of the
15 classrooms early in the school year. Until parents
16 complained -- and the Sanskrit names were on the tree.
17 Until parents complained, the Jois trained Ashtanga yoga
18 teachers were teaching the students to say "namaste" to
19 each other, which is a religiously laden Hindu greeting
20 that, in essence, means the divine in me bows to the
21 divine in you. Often, namaste is accompanied by praying
22 hands and a bow.

23 If you bow to someone even without saying
24 "namaste," it's my understanding that it means the divine
25 in me bows to the divine in you even if you don't say the
26 word "namaste."

27 THE COURT: Namaste?

28 MR. BROYLES: Namaste. I'm probably saying it

1 wrong, Your Honor.

2 THE COURT: And the kids were doing this?

3 MR. BROYLES: Yes. They were taught to say
4 "namaste" to each other until parents started complaining.

5 THE COURT: And put their hands together like
6 they're in pray?

7 MR. BROYLES: My understanding is that that was
8 also done. And you'll see the -- what I'm calling -- for
9 lack of a better term, they call it putting your palms
10 together in their declarations to downplay the religious
11 significance, but it's actually a sign of prayer or, you
12 know, divine acknowledgment, Your Honor.

13 Now, even after -- I'm sorry. Until parents
14 complained, Jois-trained teachers had students coloring
15 mandalas, which are circular pieces of artwork sacred to
16 Hindus and Buddhists and used in meditation. Even after
17 the parents complained, the curriculum being developed
18 taught children that they needed to get in touch with
19 their, quote, "inner selves," the small S self, Your
20 Honor, and that the practices in the curriculum would
21 help, quote, "bring the inner spirit of the child to the
22 surface."

23 In spite of parents' complaints, the Jois-trained
24 teachers continued teaching the Ashtanga yoga primary
25 series of poses called the surya namaskara salutation,
26 also known as Opening Sequence A, and there's also an
27 Opening Sequence B.

28 But the whole purpose of this surya namaskara as

1 taught by Patthabi Jois and as passed on to his son and
2 grandson now, Sharif Jois, is to worship the solar deity
3 Surya, who is a Hindu solar deity. And the Jois -- the
4 brochure that I've been reading out of, Your Honor, shows
5 the Opening Sequence A, the sun salutation, on the top of
6 their brochure that I'll talk more about later in other
7 exhibits.

8 In spite of the parents' complaints, the
9 Jois-trained Ashtanga yoga teachers continue to teach the
10 lotus position, not criss-cross applesauce, and offered
11 extra credit if the children put their pointer fingers and
12 thumbs together in round mudras believed to channel energy
13 while meditating.

14 Now, Your Honor, if the children were really just
15 doing P.E., I have a big question about why putting their
16 finger and pinkies -- sorry -- their finger and thumbs
17 together was important. In some classes, it was -- the
18 kids received extra credit if they did that. And this is
19 called a yana mudra, Your Honor. And Ms. Candy Brown will
20 be talking about it later. A yana mudra is believed to
21 channel spiritual energy. That's the purpose of the yana
22 mudra.

23 And many, many more things will be laid out by
24 our expert witness. The district has -- and many more
25 were laid out in our brief, also, Your Honor. The
26 district has publicly stated many different things about
27 the program, like the program is not religious, period.
28 In other words, as instituted and intended, there's no

1 religious content at all and no religious teaching at all.
2 That claim has no merit, Your Honor.

3 They've also said that the program has been
4 stripped of religion or what they call cultural elements
5 or cultural dimensions. And when Westerners describe
6 Eastern religious practice as cultural, they're trying to
7 say that those practices are merely spiritual and they're
8 not really religious.

9 And in the sense of the Judeo-Christian, Your
10 Honor, they may not be religious from our understanding,
11 but they definitely are spiritual. And spirituality
12 includes religion.

13 The district is in control -- they've also said
14 that the district is in control of the curriculum and the
15 teachers, falsely implying that the Jois Foundation has
16 little to nothing to do with the program.

17 Parents whose children opt -- they've also said,
18 and now they're changing their tune on this, the parents
19 whose children opt out of yoga won't get their full P.E.
20 minutes fulfilled at school. That's what they told
21 parents for months when they were complaining in the fall,
22 right? Because, as they explained, yoga is approximately
23 half of the P.E. minutes, and the district does not have
24 the resources to provide more P.E. to the kids who opted
25 out, okay? That was what the district was telling parents
26 for months. And parents were not having their kids
27 receive 200 minutes of P.E. no matter what the district
28 says, Your Honor. It's just simply not true.

1 THE COURT: How did they get 200 minutes of P.E.
2 before 2011?

3 MR. BROYLES: Your Honor, you'll have to ask the
4 district about that. But my understanding, it was a
5 combination of karate programs and traditional P.E.
6 Oftentimes the classroom teacher would take the kids out
7 to the playground and do active participatory sports. But
8 through various programs, they met the requirements.

9 Does that answer your question, Your Honor?

10 THE COURT: Yeah. I mean, isn't -- doesn't
11 karate have its roots in religion, some -- shinto or
12 something?

13 MR. BROYLES: I'm not here today to talk about
14 karate, Your Honor.

15 THE COURT: I know. I know.

16 MR. BROYLES: But some people allege that it
17 does, but that's not the issue before the Court.

18 THE COURT: I know. I know.

19 MR. BROYLES: Now, the very latest thing the
20 district has done just in the last few weeks before trial
21 has been to suddenly assert that all district students are
22 now receiving yoga over and above the required 200 P.E.
23 minutes every ten days, but this is nothing but
24 last-minute desperate sophistry because they knew they
25 were caught, Your Honor.

26 The evidence will show that in making these and
27 other inaccurate and self-serving claims, the district
28 desperately does not want the public or this Court to peek

1 behind the curtain and see what's really going on. But we
2 must look behind the curtain and understand exactly what
3 is going on.

4 It's our duty, Your Honor, to follow the
5 Constitution. The changes that the district has made to
6 its yoga program since parents started complaining in the
7 fall of 2012 are cosmetic changes only and do not
8 fundamentally alter the basic religious nature of the
9 program, which remains anchored in Ashtanga yoga.

10 Ashtanga yoga is still being taught to children
11 at district schools as young as five years old the way
12 that Pattabhi Jois taught it, the way that he taught the
13 teachers who will be testifying later to teach taught it.
14 And should we be surprised, should we be amazed that
15 religion is being taught in this circumstance? Not
16 really.

17 A half-million dollars was given by the Jois
18 Foundation precisely so that Ashtanga yoga can be
19 beta-tested on the kids and proven with purportedly
20 scientific studies so that the Jois Foundation could use
21 the curriculum and studies in turn to spread the gospel of
22 Ashtanga yoga worldwide.

23 The now deceased Pattabhi Jois, who brought
24 Ashtanga to Encinitas decades ago, would be indeed very
25 proud. If the foundation formed in his honor to carry on
26 his religious beliefs and practices succeeds here, Your
27 Honor, his missionary goals would have been fulfilled. He
28 can rest in peace.

1 Yet this case is not about whether we like or
2 dislike yoga, whether yoga has health benefits, nor
3 whether other forms of yoga that are taught and practiced
4 in the United States are religious or not religious, as
5 delineated in the intervenor's brief.

6 This case is only about whether Ashtanga yoga,
7 which involves religious beliefs and practices, may be
8 taught to young and impressionable children in the public
9 schools.

10 Once you've heard all the evidence, Your Honor,
11 the petitioners will be asking this Honorable Court to
12 order the district to suspend its religious Ashtanga yoga
13 program and order EUSD to comply with the law regarding
14 mandatory P.E. minutes.

15 Now, that concludes my formal remarks, Your
16 Honor. I just want to touch briefly on some of your
17 questions.

18 I'm a little loathe to even begin to answer the
19 question "What is religion?" even though I have some
20 background in it, Your Honor.

21 THE COURT: That was kind of a rhetorical
22 question.

23 MR. BROYLES: Yeah. But let me just say from my
24 perspective, from kind of a common sense layman attorney
25 perspective, religion is about ultimate beliefs about who
26 God is and who man is and about our position in the
27 universe. It often deals with comprehensive world views.

28 Often Hinduism is misunderstood and has been

1 called in some places in America a philosophy or a world
2 view. But Hinduism, as you'll hear from Ms. Brown, is
3 actually a world religion with specific religious beliefs
4 and practices that specifically inform Ashtanga yoga.

5 Now, as you were asking also questions about the
6 concept of, you know, how we define religion, oftentimes
7 people who are following Eastern religious beliefs and
8 practices like Hinduism, like Buddhism, like Jainism,
9 especially Westerners here in the United States, they
10 don't like to call their beliefs or practices that they're
11 engaging in religious. And why? Because they would
12 rather call their beliefs and practices spiritual or
13 philosophical.

14 And the reason that is, Your Honor -- and you'll
15 hear from our expert witness -- is because many Westerners
16 now object to the Judeo-Christian biblical world view that
17 says that we have a God who shows us how to live and has
18 prescriptions for how we live.

19 So many people who rejected Judeo-Christian world
20 view would rather not be seen as religious because our
21 culture brings in all the baggage of what people see
22 negative about those Judeo-Christian world views.

23 And so it's convenient to call it spiritual, but
24 don't let the euphemism "spiritual" fool the Court. When
25 we say -- use the word "spiritual" in the context of
26 Ashtanga yoga and Hinduism and Buddhism and Eastern
27 religions, what we're really saying is religious, and the
28 evidence will show that.

1 Now, you asked a question about whether the
2 physical can achieve the same objectives. A physical
3 practice can achieve some of the same objectives as
4 religion. You're absolutely right, Your Honor. There are
5 many physical benefits to all sorts of physical activity,
6 whether it's running, lifting weights, yoga, and there's
7 whole -- Pilates, I mean, step aerobics. We can name
8 dozens and dozens of physical practices that when you're
9 done doing them, you may feel less stressed and more calm
10 and more peaceful.

11 THE COURT: I think a sense of discipline and --
12 there's a lot to be gained from -- from both, and the
13 objective is the same.

14 MR. BROYLES: Yeah, there are -- there are some
15 similar benefits that are achieved. And so I wouldn't
16 argue that with the Court. And I just want to make clear
17 that neither I nor the petitioners are against physical
18 exercise or against the relief of endorphins in the body
19 that leads to those good feelings of calmness, peace, less
20 stress, and euphoria. Those are good things and those are
21 things we need in this fast-paced world that we live in.
22 So we're not objecting to the physical practice.

23 And so you imply perhaps that can yoga be just
24 physical versus religious? And that's a very good
25 question. And I'm going to let my expert answer that
26 question, okay?

27 But really the question isn't whether certain
28 other watered-down types of yoga are religious or not

1 religious, Your Honor. The question before the Court is
2 what is Ashtanga yoga, is Ashtanga yoga being taught in
3 the school district, and is Ashtanga yoga religious, okay?
4 So I want to focus the Court on the issue before the
5 Court.

6 The issue -- you asked the question is the Jois
7 Foundation religious? I work with and form 501(c)(3)s.
8 To my understanding, the Jois Foundation is not formed as
9 a religious organization in the State of California. So
10 on paper, they're not a religious nonprofit.

11 But I would ask the Court to keep an open mind on
12 that issue and look at the substance, not the form. And
13 by the end of the trial, you'll hear much testimony about
14 the nature of the Jois Foundation, and I believe you'll
15 reasonably conclude that they are indeed, in substance, a
16 religious organization that operates with religious goals.

17 Now, on the issue of whether the Court can direct
18 the district to do a particular P.E., I agree with Your
19 Honor. You cannot order them to do any type of P.E. But
20 you can order them to not do a type of P.E. that may
21 violate the 1st Amendment.

22 Thank you, Your Honor

23 THE COURT: Thank you, Mr. Broyles.

24 Mr. Sleeth.

25 MR. SLEETH: Lawyers are warned that we're not
26 supposed to argue in opening statement, and I heard some
27 interesting arguments here. This is an issue that raises
28 some concepts that bleed together the facts and the issues

1 of law so that argument is almost imperative.

2 I would start by saying that the evidence is
3 going to show that the Jois Foundation did not buy access
4 to the students at the Encinitas School District. Jois
5 provided some money by way of a grant to put together a
6 curriculum to produce a wellness program, a health and
7 wellness program, that was focused on physical activity,
8 and it's done in conjunction with a study to make a
9 determination whether the particular kind of low-impact,
10 noncompetitive physical conduct of yoga has health and
11 mental benefits for students. That's the essence of the
12 study. That's the essence of what we're going to find
13 out.

14 I don't think that it matters whether Jois is
15 religious or not, and I don't think we'll get much
16 evidence on whether it is or not as long as we've got a
17 barrier up. The issue is not really whether we're
18 teaching Ashtanga yoga. The issue is whether the
19 curriculum that we are teaching, whatever we call it,
20 violates the Constitution or fails to provide the number
21 of minutes.

22 The evidence is going to show that the curriculum
23 that the school district is providing does not have any
24 Sanskrit language in it, that the names of each of the
25 poses are in English. There is no belief system that has
26 been added to the physical conduct that the students
27 believe in. They focus their mind on breathing, on
28 positions, on the alignment of their body, and on the --

1 this low-impact, noncompetitive physical conduct that
2 builds strength, balance, and coordinates breathing. And
3 they believe that the science of this will show that it
4 has benefits psychologically.

5 The Court asked the question and I have asked
6 myself many times what is religion? I know that the
7 courts across the country have struggled with a definition
8 for religion. I put the dictionary definition in my
9 brief, and now I intrude into argument.

10 I think that the definition of religion has to
11 include some component of belief. I don't believe that
12 the Court can look at a physical motion, whatever it is,
13 and determine that that motion is religious without some
14 additional information informing you that that movement is
15 of a religious nature. The movements --

16 THE COURT: But isn't the test an objective test
17 as a five- or six-year-old child? It's not looking at it
18 from the perspective of someone who's been educated and --

19 MR. SLEETH: That's exactly the test that has
20 come down to us from the Supreme Court and the Ninth
21 Circuit on testing constitutional validity in education,
22 is an objective test of a reasonable student reasonably
23 informed at that circumstance looking at that curriculum.

24 THE COURT: Yeah. Not you and me or somebody
25 who's a little more versed in religion. It's whether a
26 child in the class would be educated toward religion in
27 some fashion.

28 MR. SLEETH: Or away from --

1 THE COURT: Whatever religion is.

2 MR. SLEETH: Or away from religion.

3 THE COURT: Exactly.

4 MR. SLEETH: We can neither advance religion nor
5 inhibit it. We mustn't become entangled -- as a
6 governmental entity, we mustn't become entangled in that
7 religious question. So if we advance religion, we've
8 violated the Constitution. If we inhibit religion, we've
9 violated the Constitution.

10 THE COURT: Hypothetically, if a child has a
11 particular -- say a Judeo-Christian belief, this
12 particular program can't act negatively toward that
13 belief.

14 You follow what I'm --

15 MR. SLEETH: Exactly. We can't say anything or
16 do anything that would harm --

17 THE COURT: One way or the other.

18 MR. SLEETH: One way or the other.

19 THE COURT: It's got to be completely neutral.
20 It's got to be nonreligious completely.

21 MR. SLEETH: But the example that I would use is
22 if we have a Muslim child in class who knows a little bit
23 about Christianity and the struggle between Islam and
24 Christianity, if we ask that student to make the sign of
25 the cross, that physical motion is not religious without
26 some belief behind it. The child at least needs to know
27 that the sign of the cross is associated with
28 Christianity, that there has to be some information to

1 come with the physical movement.

2 And that's what the Court is going to find that
3 Encinitas School District has completely removed. There
4 is no belief taught about any of the movements that the
5 children engage in so that a reasonable child looking at
6 this, not a child that's overly sensitive or a child
7 that's not sensitive to the issues at all, but a
8 reasonable child with information looking at this will not
9 be persuaded toward or away from a religion, but will feel
10 a better connection to their physical -- to their self, to
11 their body and to their breathing and to their balance and
12 to their strength.

13 THE COURT: But if, as Mr. Broyles said, there is
14 a course of instruction that teaches a child that you can
15 become divine, that could be arguably the antithetical to
16 the Judeo-Christian belief in a different kind of a divine
17 entity.

18 MR. SLEETH: We're getting pretty esoteric there.

19 THE COURT: We are.

20 MR. SLEETH: Jesus walks with me and talks with
21 me and tells me I am His own so I may be one with Christ.

22 THE COURT: Well, now you're --

23 MR. SLEETH: So it isn't necessary that being one
24 with the divine is necessarily antithetical to Christian
25 religion.

26 THE COURT: I don't know. Once you start talking
27 about the divine, you get into a difficult area.

28 MR. SLEETH: Well, the -- absolutely. Once you

1 start talking about the divine, you do get into
2 complications that still may not be entangling, advancing,
3 inhibiting religion for the purpose of a Lemon test. But
4 what I'm telling the Court at this point is that we have
5 extracted whatever was in Ashtanga yoga out of that.

6 THE COURT: Okay.

7 MR. SLEETH: That is not there. You're going to
8 find a health and wellness program focused upon the mental
9 and physical benefits of these low-impact movements partly
10 because it improves the students' attention, partly
11 because it reduces -- it's thought to reduce bullying. It
12 has a number of different purposes.

13 THE COURT: So we're not going to just peek
14 behind the curtain, you're going to throw the curtain
15 open?

16 MR. SLEETH: You can have the curtain.

17 THE COURT: All right.

18 MR. SLEETH: Come on down. We'd be happy to have
19 the Court come on down and see everything we're doing.

20 THE COURT: That's absolutely going to happen.

21 MR. SLEETH: The 200-minutes issue, I'm not in a
22 position to say about what somebody else said at some
23 other time. We have produced evidence, declarations under
24 penalty of perjury, from many people. We will explain
25 more fully if the Court needs it. There is 200 minutes
26 being delivered to every student.

27 THE COURT: 200 minutes in what --

28 MR. SLEETH: In a ten-day period. That is 100

1 minutes every week, five-day week, five-day week, ten
2 days, 200 minutes, is what the Ed Code says. And we are
3 providing that. The yoga program was additional minutes
4 on top of that so that the students who opted out of yoga
5 may have gone into a nonphysical class, but they didn't
6 lose their 200 minutes.

7 Now, the Court asked what the 200 minutes
8 consists of, and we'll have to put somebody on. I don't
9 know exactly. But I have an understanding that the
10 homeroom teachers take the students out, they walk them
11 around, they play ball games, they may play catch, they
12 may just go on walks. But they get the physical activity,
13 and it's calculated out so that every student gets their
14 200 minutes in a ten-day span.

15 Thank you, Your Honor.

16 THE COURT: That's it?

17 MR. SLEETH: Unless the Court has questions.

18 THE COURT: No, no. That's fine. Thank you,
19 Mr. Sleeth.

20 Mr. Broyles, you ready to call your first
21 witness?

22 MR. PECK: Your Honor, with all due respect --

23 THE COURT: I'm sorry.

24 MR. PECK: -- I'm not a potted plant either.

25 THE COURT: Sorry, Mr. Peck.

26 MR. PECK: No problem. I promised the Court I'd
27 be brief in my opening remarks, and I will endeavor to
28 keep that promise.

1 Hinduism is a religion. Buddhism is a religion.
2 Christianity is a religion. Yoga is not a religion. It's
3 unquestionable that some folks practice yoga as part of
4 their religious beliefs or as part of their religious
5 practice.

6 In Southern California, in San Diego, and in
7 Encinitas, yoga is primarily practiced for health reasons;
8 for physical health, for mental health. I stand here
9 before the Court on behalf of more than 150 students
10 enrolled in the Encinitas Union School District. I
11 represent those kids and their families.

12 And we submit that the evidence during this trial
13 will show that the yoga taught in the school district is
14 not religious. It is not religion. The United States
15 Constitution and the California Constitution are not
16 violated in any regard by the maintenance of that program.

17 THE COURT: Is it called Ashtanga yoga?

18 MR. PECK: It's not, Your Honor.

19 THE COURT: It's not.

20 MR. PECK: It's not called Ashtanga yoga. It's
21 interesting Mr. Broyles brings up the fact that in the
22 MOU, an initial document, before there was any yoga
23 practiced in the school district whatsoever, there was a
24 memorandum of understanding between the school district
25 and Jois Foundation, which referenced once to Ashtanga
26 yoga.

27 The evidence will show that the curriculum,
28 what's actually been implemented and what's actually

1 performed in the classrooms does not even use the word
2 "Ashtanga." There's no reference to the divine. There's
3 no reference to belief. There's no reference to spirit.
4 There's no reference to creator.

5 The students, including my son who are in the
6 yoga program in the district, can think about anything
7 they want during the program. They can maintain any
8 beliefs. They can dream about whatever they want. They
9 can think about pizza while they're doing a pose, while
10 they're doing a doggy pose.

11 The mere fact or the suggestion that the posing
12 of one's body necessarily engages in religion, necessarily
13 means religious practice means that we need to ban kids
14 from folding their hands, from bowing their heads, from
15 closing their eyes lest they be accused of somehow
16 fostering or promoting religion in the schools.

17 The families that I represent stand steadfastly
18 against the promotion for the inhibition of any religion
19 whatsoever in the schools. What they see, though, is a
20 program that's designed to eliminate bullying, to
21 eliminate stress, to help with the hyper competitiveness,
22 to help with obesity. And, in fact, Your Honor the yoga
23 program is working. Parents, students, teachers alike
24 have raved about it.

25 The plaintiffs wear their religion on their
26 sleeve in the case. All the declarations submitted by the
27 plaintiffs and their witnesses make it very clear they
28 throw the curtain open, so to speak, on their own

1 religious beliefs, and they are devout Christians. And
2 that's fine. My clients include devout Christians and
3 atheists, folks who have no religious beliefs whatsoever.

4 The only thing that my clients truly believe is
5 that this is a good program and that it's constitutional.
6 It passes the Lemon test. Mr. Sleeth brought up the Lemon
7 test, the objective standard. I didn't hear Mr. Broyles
8 make much reference to that. But the Lemon test is
9 clearly what applies here. From an objective perspective,
10 is what's going on in the yoga classroom in the Encinitas
11 School District, is it advancing religion? Is it
12 inhibiting religion?

13 We don't want to hear and it makes no difference,
14 it makes no sense, it's irrelevant, in other words, Your
15 Honor, what took place when the yoga program was
16 instituted in September or August of 2012. As with any
17 new curriculum, there were fits and starts. There were
18 perhaps missteps taken. What matters is what's taking
19 place in the yoga classroom today.

20 There's no way plaintiffs can meet their
21 burden of proof in showing objectively, not through a
22 subjective skewed fanatical religious prism, but
23 objectively, that the program that's being performed in
24 the school district today --

25 THE COURT: From the objective perspective of a
26 student.

27 MR. PECK: Correct, Your Honor, from the
28 objective perspective of a student.

1 THE COURT: I think everybody agrees that's the
2 test.

3 MR. PECK: Absolutely, Your Honor. And absent
4 influence from the parents -- I read some of the
5 declaration that were submitted by plaintiffs, and there
6 were declarations suggesting that kids were being picked
7 on because they were pulled out of class.

8 Well, were they being picked on because they
9 chose not to do yoga or were they being picked on because
10 they were being taken out of class by the parents? This
11 is not a program which does anything other than promote
12 health and wellness both psychologically and physically.
13 And any student from grade kindergarten up through 6th
14 grade -- it's an elementary school district -- would think
15 nothing other -- think nothing otherwise unless their
16 parents told them that they are somehow engaging in
17 religious practice by bending over and stretching and
18 breathing.

19 This is a great program, Your Honor. My clients
20 urge the Court not to strip it from them, plaintiffs
21 cannot meet the burden of proof here, and this program
22 should survive.

23 Thank you.

24 THE COURT: All right. Thank you, Mr. Peck.

25 All right. That concludes the opening
26 statements.

27 Mr. Broyles, you ready to proceed?

28 MR. BROYLES: Yes, Your Honor. I've got binders

1 with exhibits in it that I'll be going through with the
2 witnesses. I have one for the Court I'd like to give the
3 Court and put on the witness stand, if that's okay.

4 THE COURT: Sure.

5 You want to take a five-minute break or you want
6 to --

7 MR. BROYLES: Yeah, that would be fine, Your
8 Honor.

9 THE COURT: I mean, it's up to you. This might
10 be a good time if you want to get --

11 Who's your first witness?

12 MR. BROYLES: Timothy Baird.

13 THE COURT: Under 776?

14 MR. BROYLES: Yes, Your Honor.

15 THE COURT: All right. Let's take a short
16 recess, then. Then you can get set up.

17 Mr. Broyles, where are you going to put the
18 binders?

19 MR. BROYLES: I can give Your Honor one and put
20 one on the witness stand.

21 THE COURT: Okay, sure.

22 (Recess.)

23 THE COURT: All right. We're back on the record.

24 Mr. Broyles, you ready to proceed?

25 MR. BROYLES: Yes, Your Honor. The first witness
26 we call is Timothy Baird.

27 THE CLERK: Thank you, sir. Would you please
28 have a seat in the witness stand.

1 Sir, would you please state your name for the
2 record and spell both your first and your last name.

3 THE WITNESS: My name is Dr. Timothy Baird.
4 And spell my last name?

5 THE CLERK: First and last.

6 THE WITNESS: First name, T-i-m-o-t-h-y; last
7 name is B-a-i-r-d.

8 THE CLERK: Thank you.

9

10 TIMOTHY BAIRD,
11 having been called by the plaintiffs,
12 was first duly sworn and testified as follows:

13

14 MR. BROYLES: Your Honor, just for the record,
15 before I start with my examination of Mr. Baird, I would
16 just like for the record to state that the majority, if
17 not all of our exhibits, we've stipulated to the
18 foundation and admissibility.

19 THE COURT: All right.

20 MR. BROYLES: So rather than waste a lot of time
21 going through the litany of questions, I'll ask the
22 witness if they've seen the document before. But beyond
23 that, I won't go into --

24 THE COURT: Just so that the clerk knows what's
25 in it and what's not, just make sure you reference the
26 exhibit, give it a number. And I'll say, "Any objection?"

27 And Mr. Sleeth, you're going to say, "No
28 objection," and then it will come in; right?

1 MR. SLEETH: Yes.

2 THE COURT: Just so that the clerk has a record
3 and then knows what it is and what the number is.

4 MR. BROYLES: Your Honor, can we just clarify the
5 stipulation now for the record so I can move quickly
6 through this stuff.

7 THE COURT: I don't care. Sure.

8 MR. SLEETH: I'm going to object to the
9 admissibility of the newspaper article. Everything else
10 comes in.

11 THE COURT: All right.

12 MR. BROYLES: I'm fine with that at this point,
13 Your Honor. I'll lay a foundation later.

14 THE COURT: Well, I'm not sure that's going to
15 work.

16 MR. BROYLES: Only on the newspaper article.
17 That's only the thing we disagree on, Your Honor.

18 THE COURT: Okay.

19 MR. BROYLES: So stipulated.

20 MR. REYNOLDS: I'm sorry. He spoke softly, so
21 maybe you didn't hear it.

22 THE COURT: He did speak softly.

23 MR. SLEETH: I spoke softly?

24 THE COURT: Yes.

25 MR. SLEETH: I agree to the foundation of and
26 will make no objection to all the documents that are
27 district documents or district e-mails. There is a
28 newspaper article in there, I think, from the *New York*

1 *Times*. I don't believe it's admissible on the basis of
2 relevance.

3 THE COURT: Okay.

4 MR. BROYLES: The article is from Seaville, Your
5 Honor, and we can deal with that issue later.

6 THE COURT: I'll deal with that issue separately.
7 But just so that the clerk has a record and knows, just
8 indicate the document, the exhibit number, and the minutes
9 will reflect that it's in evidence.

10 MR. BROYLES: All right. So stipulated.

11 THE COURT: All right. And that's in -- I've got
12 a couple of binders here.

13 Yours are the white binder?

14 MR. BROYLES: Yes, Your Honor. We will primarily
15 be using the one that's marked with our name and USD on
16 it. There's a separate Yes! binder. I think you have the
17 correct one.

18 THE COURT: Okay. Good.

19

20 DIRECT EXAMINATION

21 BY MR. BROYLES:

22 Q Good morning, Mr. Baird.

23 A Good morning.

24 Q Mr. Baird, you serve as the superintendent of the
25 Encinitas Union School District; correct?

26 A Yes, I do.

27 Q And as the superintendent, you're in charge of
28 all operations of the school district; is that right?

1 A That's correct.

2 Q And you answer directly to the board of
3 directors; is that correct?

4 A Yes.

5 Q So as far as executive authority and
6 accountability in the district, the buck stops with you.
7 Is that a fair statement?

8 A That would be correct.

9 Q Okay. I'm going to ask you a few questions about
10 the Jois Foundation grant.

11 The Jois Foundation gave USD \$533,720 for a
12 health and wellness program that included yoga
13 instruction; correct?

14 A Yes.

15 Q And we'll get into more specifics of the grant
16 later, but I want to ask you a few questions about the
17 level of control the district had over that specific
18 program. All right?

19 A Okay.

20 Q Okay. Now, you have said publicly that the
21 district is in charge of all aspects of the yoga program;
22 is that correct?

23 A That's correct.

24 Q And by that you mean that the district maintained
25 complete control of the curriculum that would be taught in
26 the yoga classes; is that right?

27 A Yes.

28 Q By "district control," you also meant that the

1 district maintained control over the teachers that would
2 be teaching yoga to the students; is that right?

3 A Yes.

4 Q Now, by stating that the district was in charge,
5 did you mean that the district was in charge of any other
6 aspects of the yoga program?

7 A I'm -- we're in charge of all aspects of the
8 program.

9 Q Just to be specific, beyond teachers, the
10 teachers that I mentioned, and beyond the curriculum, were
11 there any other aspects of the yoga program that you would
12 contend that the district maintained control over?

13 A I'm not sure what you're alluding to beyond the
14 teachers and the program.

15 THE COURT: Mr. Broyles, the question is a little
16 vague in the sense that is your question did he say this
17 or is what he said a fact?

18 MR. BROYLES: My question is I have his public
19 statements. And I'm asking if beyond his public
20 statements, was there any other aspects of control that
21 the district had over the program.

22 THE WITNESS: We control the program. I'm not
23 sure what you're asking.

24 BY MR. BROYLES:

25 Q So it would be your contention that you -- the
26 district has ultimate control over all aspects of the yoga
27 program?

28 A Yes.

1 Q Okay. And that would include the teachers?

2 A Yes.

3 Q The curriculum?

4 A Yes.

5 Q The budget?

6 A Yes.

7 Q And any other aspect that we could imagine; is
8 that correct?

9 A That's correct.

10 Q Now, you told a parent in an e-mail when the
11 controversy arose over the yoga program that the district
12 had weekly teacher training meetings with the yoga
13 instructors; is that correct?

14 A That's correct.

15 Q Okay. Is that true?

16 A That statement is true.

17 Q Okay. So someone in the district would meet --
18 as the program was being implemented in the fall of 2012,
19 someone in the district was regularly meeting with the
20 yoga teachers; right?

21 A Correct.

22 Q And that's to show them how to teach? Is that --
23 what was the purpose of the meeting?

24 A Well, there were multiple purposes for those
25 meetings. They still continue. Part of it is curriculum
26 development. We are continuously building the curriculum
27 as we go and adapting and making changes. And part of it
28 is to ensure that the teachers are instructing in a

1 consistent fashion. So some of it is staff development.

2 Q Okay.

3 A And those meetings continue.

4 THE COURT: Mr. Broyles, could you maybe back up
5 and find out who the teachers are. That's something I
6 didn't quite understand.

7 MR. BROYLES: Your Honor, I have a separate line
8 of questioning about that, so I will definitely address
9 that if you can wait.

10 THE COURT: Sure.

11 MR. BROYLES: Is that okay?

12 THE COURT: That's all right.

13 MR. BROYLES: Okay. Thank you.

14 BY MR. BROYLES:

15 Q So you mentioned curriculum development in those
16 meetings; right?

17 A Curriculum development and staff development.

18 Q And by "staff," you mean training of the yoga
19 teachers; right?

20 A Yes.

21 Q Now, who met regularly with those teachers in
22 those weekly meetings?

23 A Primarily, my assistant superintendent, Dr. David
24 Miyashiro.

25 Q Did you attend any of those meetings, sir?

26 A I did.

27 Q How many of those meetings approximately between
28 the beginning of the school year in 2012 until today did

1 you personally attend?

2 A I've probably been to four or five.

3 Q Okay. And was there any particular reason that
4 you attended four or five of those meetings?

5 A As I do for all curriculum development and staff
6 development, I -- that's part of my job.

7 Q Was part of the reason to work on standardizing
8 how the yoga teachers taught Ashtanga yoga as a result of
9 parent complaints?

10 MR. SLEETH: Objection; lacks foundation.

11 THE COURT: Overruled on that ground. I think it
12 is a little vague, though. I mean, I'm not sure what
13 parent complaints you're --

14 MR. BROYLES: Let me back up.

15 BY MR. BROYLES:

16 Q In the fall of 2012, sometime in late September,
17 October, November, parents started complaining about the
18 yoga program; isn't that correct?

19 A That's correct.

20 Q And so when parents started complaining, to deal
21 with the parent complaints, what did you do?

22 A Well, usually we would try to meet with the
23 parents. We would explain the program. Ideally, we would
24 get them to come observe a program because some parents
25 who had concerns after they saw the program realized that
26 it was a physical fitness activity, and they were
27 generally happy with the program after seeing it
28 firsthand. Those were our usual responses to complaints.

1 Q Okay. Did you see versions of the curriculum
2 personally as it was being developed?

3 A Yes.

4 Q And versions of that curriculum was discussed in
5 some of those meetings between the yoga teachers and
6 Mr. Miyashiro --

7 A Dr. Miyashiro.

8 Q -- Dr. Miyashiro and yourself? The curriculum
9 was discussed in those meetings; right?

10 A Yes, it was.

11 Q When you discussed the curriculum, copies of
12 curriculum were at some of those meetings; correct?

13 A Yes.

14 Q And so it's fair to say that you saw some of the
15 early versions of curriculum; right?

16 A Yes.

17 Q So if I showed you an early version of the
18 curriculum let's say that was on the district's website in
19 November of 2012, you would recognize that; right?

20 A Yes.

21 Q And if I showed you a newer version of the
22 curriculum that I received in the last several weeks from
23 the district, you'd recognize that, also; right?

24 A Yes.

25 Q Okay. Now, let's talk -- strike that.

26 At some point after the parental complaints
27 started about the yoga program, were there any special
28 meetings called to discuss the parent complaints between

1 yourself, the assistant superintendent, and the yoga
2 teachers?

3 A I don't think there were any special meetings
4 called to specifically discuss that. I think it was
5 discussed as part of our discussion on weekly meetings.

6 Q Okay. And in approximately how many of those
7 meetings do you recall the issue of parent complaints
8 being discussed?

9 A Perhaps one. I --

10 Q Okay.

11 A Yeah.

12 Q And as a result of parent complaints, did you
13 make any changes to the curriculum?

14 A Early on, initially, we -- we made a conscious
15 decision to remove some cultural context. So, for
16 instance, we made sure that the Sanskrit was not used. We
17 made sure that the poses were put in kid-friendly
18 language. And that was primarily what was addressed.

19 Q Any other changes that you recall being made to
20 the program, sir, besides those you've mentioned?

21 A I think those were the primary ones that I can
22 recall.

23 Q Okay. So I'm going to address his Honor's
24 question, and hopefully it won't be too repetitive with
25 the questions I'll ask in a moment.

26 But the teachers that you and Mr. -- the
27 assistant superintendent were working with in those
28 meetings, were they certified yoga instructors?

1 A Certified by -- yes, they're certified yoga
2 instructors.

3 Q Okay. So they had -- the teachers had to have
4 prior yoga teaching experience; right?

5 A Yes.

6 THE COURT: Are these certificated employees of
7 the district?

8 THE WITNESS: No.

9 THE COURT: See, I'm --

10 THE WITNESS: Yeah.

11 MR. BROYLES: Yeah. I'm getting to all that,
12 Your Honor.

13 THE COURT: I understand. You're kind of jumping
14 in the middle, though, and I'm really not sure of how many
15 schools we're talking about.

16 We're talking about November -- or September of
17 2012?

18 MR. BROYLES: Yeah. And I will go over all that,
19 Your Honor. I'm specifically focusing on those meetings
20 for right now, and then I'll talk about the broader
21 program. I apologize if there's any confusion.

22 THE COURT: But I'm assuming that it's
23 districtwide and --

24 MR. BROYLES: Well --

25 THE COURT: -- so many schools, but maybe I'm --

26 MR. BROYLES: Let me lay the foundation for that,
27 Your Honor, to clarify that.

28 ///

1 BY MR. BROYLES:

2 Q Mr. Baird, in the fall of 2012, the yoga program
3 was in approximately four of the district schools;
4 correct?

5 A That is correct.

6 THE COURT: Four of how many schools?

7 THE WITNESS: We have nine schools.

8 THE COURT: Nine elementary schools?

9 THE WITNESS: Nine elementary schools.

10 THE COURT: And four of them had this yoga
11 program?

12 THE WITNESS: This was a component of the
13 research program that we were implementing. We started
14 in -- actually, it was five schools that we started the
15 yoga program, and we had four control schools. So the
16 control schools were not teaching yoga at that point in
17 time. They came onboard in January so that we could look
18 at differences between the two.

19 THE COURT: Okay.

20 BY MR. BROYLES:

21 Q Okay. It was in four or five schools in the
22 fall; correct?

23 A It was in five.

24 Q Five.

25 Okay. And then in the spring semester or in --
26 I'll just put it this way: As of January of 2013, it was
27 in all school districtwide; correct?

28 A That is correct.

1 THE COURT: All nine in January?

2 THE WITNESS: Yes.

3 MR. BROYLES: That's right.

4 BY MR. BROYLES:

5 Q All right. So back to the teachers.

6 You mentioned a moment ago that they were
7 certified yoga instructors; correct?

8 A Yes.

9 Q And the grant specifically required that they be
10 certified yoga instructors; correct?

11 A Yes.

12 Q Okay. And they were also trained by Jois
13 Foundation instructors; is that correct?

14 A Yes.

15 Q And the grant required that the yoga teachers in
16 your district had to be trained by Jois Foundation
17 instructors; correct?

18 A That's not absolutely correct. What the grant
19 required was that they had the ability to teach yoga as
20 assessed by Jois.

21 THE COURT: Mr. Broyles, sorry to interrupt
22 again, but I'm really unsure of something.

23 These are individuals who were provided by the
24 foundation?

25 THE WITNESS: The foundation gave us a grant.

26 THE COURT: Right.

27 THE WITNESS: Through that grant, we actually
28 worked through a third party to hire the teachers and

1 assist with curriculum development and training, and
2 that's Regur & Associates. So they're actually the
3 employer of the teachers, and we contract with that
4 employer.

5 THE COURT: It's like a walk-on coach?

6 THE WITNESS: Yes, kind of. Yeah.

7 THE COURT: And they were part-time employees of
8 the district?

9 THE WITNESS: They're not employees of the
10 district. They actually work for this third party.

11 THE COURT: All right.

12 THE WITNESS: And we contract through that third
13 party, and they're full-time employees of that third
14 party.

15 THE COURT: I see.

16 But they're not certificated employees of the
17 district?

18 THE WITNESS: They're not certificated teachers,
19 No. Some of them actually do have their certification for
20 a teaching credential, but that wasn't a requirement that
21 we put in place.

22 THE COURT: All right. So it's like a walk-on
23 coach, an assistant --

24 THE WITNESS: Kind of like a walk-on coach.

25 THE COURT: All right. I get it. Okay.

26 BY MR. BROYLES:

27 Q So back to your statement that the district is in
28 charge of the yoga program -- and we'll get back to the

1 grant MOU later, but the statement that you made that the
2 district is in charge of the yoga program seems to imply
3 that no other entity or person had any control or
4 influence of the program.

5 Is that a fair assessment of what you meant?

6 A That -- please repeat the question.

7 MR. SLEETH: Objection to that.

8 THE COURT: Sustained.

9 BY MR. BROYLES:

10 Q Well, did anybody else besides the district have
11 any influence or control over the yoga program, sir?

12 A No.

13 Q So what was your partnership in Jois based on
14 that you referred to in the grant? Why was it a
15 partnership, just because they were giving you money?

16 A I would -- they were the foundation giving us the
17 resources to implement the program.

18 Q And those teachers that you were meeting with,
19 most of them, if not all of them, were trained
20 specifically in Ashtanga yoga by the Jois Foundation;
21 isn't that true, sir?

22 A They were certified that they -- that they
23 actually had the skill set to teach yoga. That was what
24 Jois provided.

25 Q Okay. So Jois was the one who told you whether
26 they were good yoga instructors or not; correct?

27 A That's correct.

28 Q Okay. And does Jois, to your knowledge, teach

1 any other yoga besides Ashtanga yoga, sir?

2 A I'm not familiar with the Jois Yoga studio.
3 That's not my business. So I don't know what they do or
4 don't do.

5 Q Okay. So you don't know what kind of yoga Jois
6 Yoga teaches the certified -- the teachers that you were
7 going to have teaching the kids?

8 A You asked me what other types of yoga they teach.
9 I'm not a yoga specialist. I don't attend the Jois
10 studio, so I don't know what other types of yoga they may
11 or may not teach.

12 Q Well, you do know they teach Ashtanga yoga;
13 right?

14 A Yes, they do.

15 Q And in your due diligence before adopting this
16 program, you did some research on what Ashtanga yoga was;
17 right?

18 A We did not do Ashtanga research. What we did is
19 we did research yoga as a physical fitness component. We
20 did do research in that.

21 Q Sir, are you trying to tell the Court that it
22 didn't matter what kind of yoga these teachers were
23 certified in or were going to teach to the kids?

24 MR. SLEETH: Objection; argumentative.

25 THE COURT: Rephrase the question.

26 BY MR. BROYLES:

27 Q Did it matter to you whether the children were
28 going to be taught Ashtanga yoga or not?

1 A It mattered to me that the children were going to
2 be getting a quality health and wellness program which we
3 were going to be developing. The component of Ashtanga
4 was certainly that they started with certain poses. We
5 created our own program. We're not -- and I think you can
6 probably bring in Ashtanga experts that will say we're not
7 doing Ashtanga yoga in the same way you would see it in a
8 yoga studio. We do Encinitas Union School District yoga.

9 Q Well, you just told me that you didn't know what
10 type of yoga Jois taught, and yet you're telling us right
11 now that you're not teaching Ashtanga yoga.

12 How do you know you're not teaching Ashtanga
13 yoga, sir?

14 MR. SLEETH: Objection; argumentative.

15 THE COURT: Sustained.

16 BY MR. BROYLES:

17 Q All right. Now, I'm going to ask the question
18 again.

19 Are you aware whether the Jois Foundation teaches
20 any other type of yoga but Ashtanga yoga?

21 MR. SLEETH: Asked and answered, Your Honor.

22 THE COURT: Overruled.

23 Do you understand the question?

24 THE WITNESS: He's asking me the same question I
25 just answered before.

26 THE COURT: Okay.

27 THE WITNESS: I can say it again. No, I'm not --
28 still not a yoga expert.

1 BY MR. BROYLES:

2 Q Okay. Are you aware whether EUSD is teaching
3 Ashtanga today to its students?

4 A We're teaching a health and wellness curriculum
5 that we pretty much have designed from scratch. We
6 started with certain poses. It is a program that I have
7 seen our teachers and our assistant superintendent build
8 from scratch starting with certain poses.

9 Q My question, sir, is are you aware of whether
10 EUSD is today teaching students Ashtanga yoga?

11 A I would say no, we're teaching EUSD yoga.

12 Q Is there -- are you aware if there's any basis in
13 Ashtanga yoga in the type of yoga that's being taught at
14 EUSD?

15 A I would say we started from certain poses that
16 are found in Ashtanga.

17 Q Okay. And you're still doing Surya Namaskara A,
18 aren't you, with the kids?

19 THE COURT: I didn't understand the question.

20 MR. BROYLES: I know, Your Honor. I apologize.

21 BY MR. BROYLES:

22 Q Are you aware whether the district is teaching
23 Opening Sequence A or the Surya Namaskara A to the
24 children, sir?

25 A We do have an Opening Sequence A.

26 Q Okay. Are you aware that that's exactly how
27 Pattabhi Jois, who is now deceased, taught people to start
28 out Ashtanga yoga, sir?

1 MR. PECK: Lacks foundation, Your Honor.

2 THE COURT: Sustained.

3 THE COURT: Lay the foundation if you can.

4 BY MR. BROYLES:

5 Q All right. Okay. So you're aware that Opening
6 Sequence A is taught; correct?

7 A Correct.

8 Q Are you aware that that's how Pattabhi Jois
9 taught people to practice Ashtanga, by starting with that
10 sequence?

11 MR. PECK: Same objection, Your Honor.

12 MR. SLEETH: And in addition, relevance.

13 THE COURT: Well, I assume whatever this sequence
14 is is the same, but maybe not. Why don't you lay a
15 foundation.

16 BY MR. SLEETH:

17 Q Are you aware of how Ashtanga yoga is taught?

18 A No, I'm not.

19 Q So how can you say, sir, that the district is not
20 teaching Ashtanga yoga?

21 A Because I have seen our teachers and our
22 assistant superintendent create a yoga program, so I would
23 find it interesting that they created one exactly the
24 same.

25 Q But that's speculation; isn't that correct?

26 A No more than you're assuming what we do which you
27 haven't seen.

28 Q My question to you, sir, is whether you know

1 whether a certain sequence of poses is according to how
2 Jois taught it.

3 And you said, "No"; correct?

4 A I am -- I don't know how Jois taught it.

5 Q Okay. Would it matter to you if Jois taught it
6 the way it's being taught in the school today?

7 A No.

8 Q Why not?

9 A Because I don't see relevance to that.

10 Q Why not?

11 A Because I don't.

12 MR. SLEETH: Argumentative.

13 BY MR. BROYLES:

14 Q Okay. Now, you don't teach Bikram yoga in EUSD,
15 do you?

16 A No.

17 Q You don't teach Holy yoga at EUSD, do you?

18 A No.

19 Q You don't teach Broga or any other type of yoga,
20 to your knowledge, at EUSD, do you?

21 A No.

22 Q Now, once a curriculum was created, the goal was
23 to give it to the Jois Foundation so that they could
24 export Ashtanga yoga to other school districts beyond
25 EUSD; isn't that correct, sir?

26 MR. SLEETH: Lacks foundation.

27 THE COURT: Sustained.

28 Do you know?

1 THE WITNESS: I know that the program that we're
2 developing, the health and wellness program -- I would
3 phrase it differently than Mr. Broyles has -- was part of
4 what we're developing so that they can then use that with
5 other school districts, yes. I don't know that they've
6 identified the other school districts, but they would
7 like -- there's a reason for --

8 THE COURT: Who's "they"?

9 THE WITNESS: The Jois Foundation.

10 THE COURT: Okay.

11 BY MR. BROYLES:

12 Q So it's fair to say that you're developing a yoga
13 curriculum for EUSD students; correct?

14 A That's correct.

15 Q And it's fair to say that you're developing a
16 yoga curriculum for the Jois Foundation; is that also
17 true?

18 A That would be true.

19 Q Now, have you been having meetings with Jois
20 Foundation representatives or has anybody in the district,
21 to your knowledge, been having meetings with Jois
22 Foundation representatives as the curriculum is being
23 developed?

24 A Yes.

25 Q Okay. Who have you met with?

26 THE COURT: Him personally or somebody else?

27 BY MR. BROYLES:

28 Q Let's start with you personally.

1 A Primarily with Gene Ruffin.

2 Q Okay. And Gene Ruffin is who?

3 A He is the executive director, I believe, is his
4 title or the CEO of the Jois Foundation.

5 Q How many times have you met with Gene Ruffin
6 about the curriculum?

7 A I don't know if it's been about the curriculum.
8 I would say probably none about the curriculum. About the
9 program, I've met with Gene eight, ten times maybe.

10 Q Okay. And during those meetings, you discussed
11 how the program was progressing; correct?

12 A That's true.

13 Q Did you discuss with him how the curriculum was
14 progressing?

15 A I think we probably touched on that.

16 Q Okay. And did you discuss how parents were
17 beginning to complain about the program?

18 A Yes, we had talked about that.

19 Q Okay. And this case has gotten a lot of media
20 attention; right?

21 A Yes, it has.

22 Q Did you discuss how to respond to the media?

23 A Yes.

24 Q Now, besides meeting with Mr. Ruffin, have you
25 met with anybody else outside the district about the
26 curriculum?

27 A About the curriculum?

28 Q Yes.

1 A I met with Mr. Regur, who is in charge of the
2 third party that is -- that employees the yoga teachers to
3 talk about the curriculum.

4 Q Have you -- besides meetings, have you had any
5 other conversation or communications or e-mail exchanges
6 with anyone else about the curriculum or program?

7 A Parents.

8 Q Okay. But putting parents aside, I'm talking
9 about people outside the district, i.e., people with the
10 Jois Foundation or somewhere else.

11 A About the curriculum?

12 Q Yes.

13 A Not specifically about the curriculum, no.

14 Q Have you discussed the curriculum with anybody
15 from UVA?

16 A Oh, I'm sorry. I have spoken with our
17 researchers from the University of San Diego, which is our
18 primary contact. And then they work with the University
19 of Virginia, which is the other university. And yes, I
20 have spoken with those two entities.

21 Q Who at UVA did you speak with?

22 A A number of researchers. I'm blanking right now
23 on their names.

24 Q Is one of the people you spoke with at UVA John
25 Campbell about this program?

26 A I believe I did speak once with John Campbell.

27 Q And how many times did you speak with John
28 Campbell about this program?

1 A I think once.

2 Q Could you tell us the sum -- a summary of your
3 conversation about the program with Mr. Campbell.

4 A I'm blanking about that specific conversation. I
5 know in my conversations with the researchers, we've
6 talked about the program, we've talked about the outcomes
7 we're hoping to see in terms of academic improvements, in
8 terms of behavioral improvements, in terms of the health
9 and wellness improvements.

10 Q Is it fair to say, Mr. Baird, that this is the
11 first study of its kind in the United States?

12 MR. PECK: Lacks foundation.

13 THE COURT: Well, if he knows.

14 BY MR. BROYLES:

15 Q If you know.

16 THE COURT: When you say "first study," what are
17 you --

18 MR. BROYLES: The first study involving a school
19 district and children and the benefits of yoga in the
20 school district.

21 THE WITNESS: There actually are other studies
22 related to the benefits of yoga in school districts. I
23 don't think that they've been done on a districtwide
24 basis, but there are other studies out there.

25 BY MR. BROYLES:

26 Q Okay. So you're -- it's fair to say that this is
27 the first districtwide study of the impact of yoga on
28 children; right?

1 A That I'm aware of.

2 Q Okay. Now, has the Jois Foundation, anybody from
3 the Jois Foundation, ever told you that they want you to
4 study yoga generally -- strike that. That's a bad
5 question. Let me just move on for now.

6 Mr. Baird, isn't it true that other entities and
7 individuals had significant influence over the content of
8 the curriculum?

9 A Other individuals? I don't --

10 MR. SLEETH: Objection; vague.

11 THE COURT: Sustained.

12 BY MR. BROYLES:

13 Q Well, did -- are you aware of any other
14 individuals or entities who had influence over the EUSD
15 curriculum?

16 A Other than whom?

17 Q Other than the people you've already mentioned.

18 A No.

19 Q Okay. Now, back to Mr. John Campbell, in a radio
20 interview, Gene Ruffin, who you mentioned earlier --

21 THE COURT: Who is John Campbell?

22 MR. BROYLES: John Campbell works at UVA, Your
23 Honor.

24 THE COURT: UVA?

25 MR. BROYLES: University of Virginia.

26 THE COURT: Okay.

27 MR. BROYLES: Let me go over that briefly, Your
28 Honor.

1 BY MR. BROYLES:

2 Q Are you aware that Mr. John Campbell is a
3 religious studies professor at the University of Virginia?

4 A Yes, I am.

5 Q Are you aware that Mr. John Campbell heads up the
6 Contemplative Sciences Center at the University of
7 Virginia?

8 A Yes.

9 Q Are you aware that Mr. John Campbell is an
10 Ashtanga-certified yoga instructor?

11 A No, I'm not aware of that.

12 Q Okay. Are you aware that John Campbell used to
13 work for Paul and Sonia Tudor Jones teaching Ashtanga yoga
14 to Mr. Jones's employees?

15 MR. PECK: Lacks foundation as phrased, Your
16 Honor.

17 THE COURT: Overruled.

18 THE WITNESS: No, I'm not aware of that.

19 BY MR. BROYLES:

20 Q Okay. Now, back to Mr. Ruffin's statement to the
21 media. I'll represent to you this and see if you know
22 this or understand this or agree with this.

23 Mr. Ruffin stated in a media interview that John
24 Campbell was consulting with EUSD, i.e., the district,
25 about the development of the yoga curriculum there.

26 Is that a true statement, sir?

27 MR. PECK: Lacks foundation, Your Honor.

28 THE COURT: Overruled.

1 THE WITNESS: I don't believe that's a true
2 statement.

3 BY MR. BROYLES:

4 Q Why not?

5 A I don't believe he's spent time with our teachers
6 and our development team in that capacity. I think he's
7 part of the study that's looking for outcomes of the
8 study, but not in terms of designing the curriculum.

9 Q So you disagree with the statement Mr. Ruffin
10 made?

11 A I didn't hear Mr. Ruffin make the statement.

12 Q Okay. But if Mr. Ruffin did, you disagree with
13 the truth of that statement; is that right?

14 A If Mr. Ruffin made that statement, I would
15 disagree with that, yes.

16 Q Okay. Now, let me just -- you testified earlier
17 that the curriculum was being developed for the district
18 and for Jois; right?

19 A That's correct.

20 Q So my question to you, sir, is if there was a
21 conflict over the content of the curriculum, who would
22 have the final say, Mr. Baird, you or the Jois Foundation?

23 A If there was a conflict over what the curriculum
24 was, we're the ones designing the curriculum. There can't
25 be a conflict because it's just us designing the
26 curriculum.

27 Q Okay. So it's your understanding that the Jois
28 Foundation is going to take any curriculum you develop and

1 use that curriculum no matter what's in the curriculum.

2 Is that your testimony, sir?

3 A I don't know what their intent is after we design
4 a curriculum and deliver it to them. They can certainly
5 change it if they choose to do so, but we're designing the
6 curriculum. We're in charge of the curriculum. Our
7 teachers are doing this work.

8 Q Is it your understanding that the Jois Foundation
9 wants the district to develop an Ashtanga yoga curriculum,
10 sir?

11 A My -- my understanding is that we are to develop
12 a health and wellness curriculum and that health and
13 wellness will include yoga, but it also includes
14 nutrition, it includes working in the garden, it includes
15 culinary instruction, and that's what we're designing.

16 Q You didn't answer my question.

17 MR. BROYLES: Could you reread the question
18 please.

19 BY MR. BROYLES:

20 Q I'm asking specifically about Ashtanga yoga, sir.

21 (Record read.)

22 THE WITNESS: I would say in our very initial
23 conversations with Jois, the term "Ashtanga" was used.
24 That has not been used in later discussions with them
25 about the curriculum we're designing. And as we move
26 forward with our program, Ashtanga is not even part of the
27 discussion. It's the EUSD yoga program.

28 ///

1 BY MR. BROYLES:

2 Q Okay. So you would have this Court believe that
3 EUSD decided out of the blue to create a yoga program that
4 just happened to be maybe partially based on Ashtanga
5 yoga; is that true, sir?

6 MR. SLEETH: Objection; argumentative.

7 THE COURT: Sustained.

8 BY MR. BROYLES:

9 Q Now, let's talk about the yoga teachers a little
10 bit more.

11 One level of the district's control, as you
12 mentioned earlier, was control over the teachers, and they
13 were hired and paid by grant funds; right?

14 A Yes.

15 Q And it was your testimony earlier that it was
16 done through the Regur organization; right?

17 A Regur (pronouncing), yes.

18 Q So they weren't directly employees of the
19 district.

20 Is that your testimony?

21 A That is correct.

22 Q Is it the normal -- strike that.

23 Yet the district didn't require the teachers to
24 be credentialed; is that right?

25 A That's correct.

26 Q Is it the standard practice for the district to
27 hire uncredentialed teachers to teach P.E., sir?

28 A We have hired other types of specialists. We may

1 bring in specialty teachers in various fields. Sometimes
2 in the arts. We may bring in a playwright to work with
3 kids to teach playwrighting. We may bring in a dance
4 specialist to teach dance. You mentioned earlier that
5 Kinderate program that teaches karate. Those teachers are
6 not required because they're not district employees.
7 They're contracted.

8 Q Is it the -- is it the regular practice of the
9 district to seek out practitioners of specific religions
10 and beliefs and practices to hire them to inculcate those
11 very religious beliefs and practices during weekly P.E.
12 sessions to children as young as five years old,
13 Mr. Baird?

14 A Somebody is going to say -- do I need to do it?

15 MR. SLEETH: I think it was vague.

16 THE COURT: I think I know the answer, but do you
17 understand the question?

18 THE WITNESS: Well, I think he's asking me is it
19 our practice to hire religious people to come in and --

20 THE COURT: What was the right word, "inculcate"?

21 MR. BROYLES: Inculcate.

22 THE COURT: That's a big word.

23 MR. BROYLES: I apologize.

24 THE COURT: I think I know what he's going to
25 say.

26 BY MR. BROYLES:

27 Q Is that the regular practice of the district,
28 sir?

1 A No, that is not the regular practice of the
2 district.

3 Q And why not?

4 A One, because we do not promote religion.

5 Q And why else? Any other reasons?

6 A We don't do a lot of inculcating.

7 Q Well, "inculcating" is a fancy word for teaching.
8 So hopefully, you do a lot of inculcating.

9 THE COURT: If he had said yes, I think we'd all
10 get to go home.

11 BY MR. BROYLES:

12 Q Now, the genesis of the Jois foundation's
13 \$533,000 grant to the district was the 2011 and 2012 Capri
14 Elementary School's Ashtanga yoga pilot project; correct?

15 A Yes.

16 Q And we'll get back to the Capri pilot program
17 later, but right now I want you to focus on the Jois
18 Foundation grant, which expanded the Ashtanga yoga program
19 to all nine district schools this year; correct?

20 THE COURT: This is in January?

21 MR. BROYLES: This is in January.

22 THE COURT: There's another grant in January?

23 MR. BROYLES: No, no, Your Honor. I'm saying it
24 ultimately brought it to all the schools.

25 THE COURT: My understanding is there's a pilot
26 program in 2011 and '12?

27 MR. BROYLES: Yes.

28 THE COURT: Then in September of 2012, there's a

1 grant of half a million dollars?

2 THE WITNESS: Yes.

3 THE COURT: And that was initially used in four
4 of the five schools?

5 THE COURT: In five of the nine schools.

6 THE COURT: Five of the nine schools.

7 THE WITNESS: And then the other four came
8 onboard in January, yes, sir.

9 THE COURT: With a new grant or was this --

10 THE WITNESS: No. It was the same grant.

11 THE COURT: You didn't get more money?

12 THE WITNESS: No.

13 THE COURT: Okay.

14 BY MR. BROYLES:

15 Q So focusing on this school year, 2012 to '13, in
16 your trial declaration, you assert that you decided to
17 meet with Mr. Gene Ruffin of the Jois Foundation late in
18 the 2012 school year to discuss expanding the Ashtanga
19 yoga program into all EUSD schools the following year; is
20 that correct?

21 A That's correct.

22 Q Okay.

23 THE COURT: That would have been what, December?

24 THE WITNESS: No. That would have been June, I
25 believe, of last year.

26 BY MR. BROYLES:

27 Q Now, if you could look at the exhibit book in
28 front of you and turn to what's marked as --

1 THE COURT: Excuse me.

2 THE WITNESS: I think he's referring back to when
3 we started this program, we met at the end of last year
4 with the Jois Foundation, and we talked about expanding
5 the program into all of our district schools at that time.

6 THE COURT: All nine?

7 THE WITNESS: Yeah.

8 THE COURT: But I thought that was done in
9 January.

10 THE WITNESS: Well, the grant was written in
11 June. It was sort of finalized in July, August. And then
12 we started the school year. Even though we wrote the
13 grant at that point in time, we knew that we were going to
14 have a phase in of the five schools in August and then the
15 remaining four schools in January. But that agreement was
16 put in place in June, July of last year.

17 THE COURT: But we're talking January 2013.

18 THE COURT: Is when the second set of schools
19 came onboard, yes.

20 THE COURT: That's this year.

21 THE WITNESS: Yes. But the agreement was written
22 prior to that.

23 THE COURT: I see.

24 MR. PECK: Your Honor, there may be some
25 confusion between calendar years and school years. When
26 we're talking end of year, I believe he's --

27 THE WITNESS: Yeah, I'm sorry. Yeah, that's my
28 fault. Yes.

1 THE COURT: You're talking June to July?

2 THE WITNESS: Yes. Yeah. Sorry.

3 BY MR. BROYLES:

4 Q Okay. I'm going to have you look at the exhibit
5 book in front of you and turn to Exhibit 2, PTE2.

6 MR. BROYLES: For the record, it's the Ashtanga
7 yoga memorandum of understanding.

8 BY MR. BROYLES:

9 A And if you could look at it for a moment, sir.

10 THE COURT: Any objection?

11 MR. SLEETH: No objection.

12 THE COURT: All right. You're offering 2?

13 MR. BROYLES: Yes, Your Honor.

14 THE COURT: All right. 2 will be received.

15 (Exhibit 2 received into evidence.)

16 BY MR. BROYLES:

17 Q Now, do you recognize this document, sir?

18 A Yes.

19 Q And that's your signature on the document; right?

20 A Yes, it is.

21 Q Did the Jois Foundation -- a Jois Foundation
22 representative, who's authorized to enter into agreements,
23 sign any part of that document?

24 A Yes, they did.

25 Q So what we have here is -- would it be fair to
26 say is an unsigned -- well, is a partially signed version
27 of the document that was ultimately approved?

28 A Yes.

1 Q Okay. So this is the actual memorandum of
2 understanding that was entered into between Jois and EUSD;
3 correct?

4 A That's correct.

5 Q Okay. I'm going to refer you, just to get these
6 on the record, to Plaintiffs' Trial Exhibit 1, right
7 before that.

8 Do you recognize Exhibit 1, sir?

9 A Yes, I do.

10 Q Okay. And what is it?

11 A It was the grant proposal that we submitted to
12 the Jois Foundation.

13 Q And it was a grant proposal written purportedly
14 by your assistant superintendent; is that right?

15 A Yes. I think we -- we worked on it together, but
16 I think David had a lot of -- a lot to do with this, yes.

17 Q Okay. So it would be your testimony that you saw
18 the document before it was finalized and submitted to
19 Jois; correct?

20 A That's correct.

21 Q Okay. Now --

22 THE COURT: 1 is in.

23 MR. BROYLES: Excuse me?

24 THE COURT: You were offering 1?

25 MR. BROYLES: Yes, Your Honor.

26 THE COURT: It's in.

27 MR. BROYLES: All right.

28 (Exhibit 1 received into evidence.)

1 BY MR. BROYLES:

2 Q Now, looking -- just for the record so it's clear
3 to all of us that we're on the same page, Exhibit No. 1 is
4 the only the grant document; right?

5 A Are you asking me --

6 Q Yes.

7 A That was the proposal.

8 Q That was the proposal.

9 And Exhibit No. 2 is the memorandum of
10 understanding; right?

11 A That is correct.

12 Q Now, the memorandum of understanding ultimately
13 included the grant proposal as it was written; is that not
14 correct?

15 A I think the memorandum of understanding stands on
16 its own.

17 Q I know, but turn the page. See what's behind it.
18 The memorandum of understanding, is it not true,
19 incorporates the grant proposal and its terms; correct?

20 A I think the --

21 MR. SLEETH: Calls for a legal conclusion.

22 THE COURT: Huh?

23 MR. SLEETH: Calls for a legal conclusion.

24 THE COURT: I think the document speaks for
25 itself. It includes what it includes.

26 THE WITNESS: Yeah, that's --

27 BY MR. BROYLES:

28 Q Okay. So just to be clear, the grant proposal

1 attached to the memorandum of understanding is the same
2 grant proposal from Exhibit 1; correct?

3 A I don't believe the proposal is attached. I
4 think the memorandum stands on its own.

5 Q Okay.

6 THE COURT: There's no attachment to the
7 memorandum of understanding, at least the one I have.

8 MR. SLEETH: It doesn't reference an attachment.

9 MR. BROYLES: That's a clerical error, Your
10 Honor. It attached to our trial exhibits. It was done
11 properly. It's done improperly in our exhibit book.

12 Does anybody have a copy of our trial exhibits
13 that I could -- let me ask the question a different way.

14 BY MR. BROYLES:

15 Q Ultimately, the memorandum of understanding
16 incorporated the terms of grant proposal; right?

17 A I don't know if it incorporated all of them. The
18 memorandum of understanding stands on its own. Sometimes
19 I will submit a proposal, and then certain elements of
20 that proposal will end up in the MOU or the memorandum of
21 understanding. The memorandum of understanding is what
22 you actually agree to in the agreement. The rest is just
23 a proposal.

24 Q Okay. The third line in the memorandum of
25 understanding, Exhibit 2, says, "Therefore, as agreed upon
26 by both parties and detailed within the approved grant,
27 Exhibit A proposal" --

28 Do you see that, sir?

1 A I'm sorry. Where are you?

2 Q I'm in Exhibit 2, Paragraph 3. Memorandum of
3 understanding, Paragraph 3.

4 THE COURT: Paragraph 3.

5 THE WITNESS: Okay.

6 BY MR. BROYLES:

7 Q You got it?

8 A Okay. So I'm on Exhibit 2 -- okay.

9 Q "Therefore, as agreed upon by both parties and
10 detailed within the approved grant, Exhibit A proposal,
11 Encinitas Union School District will provide the oversight
12 for the implementation of a conference of instruction of
13 yoga program," and it goes on to say that.

14 Now, is it your recollection -- did I refresh
15 your recollection as to whether the grant itself was
16 incorporated within the memorandum of understanding, sir?

17 A I need to read this further. One second.

18 It does appear that the memorandum does reference
19 the proposal.

20 MR. BROYLES: Your Honor, I -- as I stated
21 just --

22 BY MR. BROYLES:

23 Q Okay. So the answer is, "Yes"?

24 THE COURT: I think -- I think the memorandum
25 references Exhibit A, but the memorandum doesn't have an
26 Exhibit A.

27 MR. BROYLES: Your Honor, and that's --

28 THE COURT: You and Mr. Sleeth and Mr. Peck can

1 work that out.

2 MR. BROYLES: Your Honor, just for the record, I
3 want to state that -- and I just looked at my other
4 exhibit list -- the memorandum of understanding, for the
5 record, did have the grant proposal and other schedules
6 attached to it.

7 BY MR. BROYLES:

8 Q Is that correct, Mr. Baird?

9 A I'm not sure, to be honest.

10 Q You're not sure. Okay.

11 A Yeah.

12 Q And let me show you my original exhibits and ask
13 you --

14 MR. BROYLES: Can I borrow these?

15 MR. PECK: Sure, but let's be clear that these
16 are not original exhibits. These are copies my office
17 made.

18 MR. BROYLES: These were copies provided to you
19 and Mr. Sleeth in preparation for trial; is that not
20 correct?

21 THE COURT: Mr. Broyles, I think we're -- I don't
22 want to get bogged down in something. I have a memorandum
23 of understanding that has no Exhibit A. The memorandum of
24 understanding references an Exhibit A. This witness says,
25 "I don't know if it was attached or wasn't." It
26 references it, so...

27 BY MR. BROYLES:

28 Q Okay. And it specifically references the grant;

1 is that not correct?

2 THE COURT: It does. No, I --

3 MR. BROYLES: All right.

4 THE COURT: Isn't there an original someplace?

5 MR. BROYLES: Yeah.

6 THE WITNESS: Yes.

7 MR. BROYLES: Your Honor, I have --

8 THE COURT: Well, I know you have it, but --

9 MR. BROYLES: Yeah, I understand. I don't have
10 it in your binder.

11 THE COURT: There has to have been an exhibit --
12 this is a public --

13 THE WITNESS: Yes, we have it.

14 THE COURT: I'm sure these --

15 MR. BROYLES: Your Honor, may I approach and show
16 him the complete document and ask him questions about it.

17 THE COURT: Sure.

18 MR. BROYLES: Okay. Thank you.

19 THE COURT: But I assume the original is
20 somewhere in the district.

21 THE WITNESS: Yes, we have the original in our
22 district files.

23 THE COURT: Wherever official documents are kept.

24 THE WITNESS: Yes.

25 BY MR. BROYLES:

26 Q Okay. I just want you to look at this.

27 All right. That's a separate document; right?

28 A Okay.

1 Q If you want to take a minute to look at it, you
2 can.

3 MR. BROYLES: And Your Honor, I normally would be
4 asking questions from there. But since we only have one
5 version, can I stand a little bit closer?

6 THE COURT: Sure. But the documents say what
7 they say.

8 MR. BROYLES: I understand, Your Honor, but it's
9 important what documents incorporate what documents, and
10 that's what I want to say here.

11 BY MR. BROYLES:

12 Q Okay. You've had a chance to look at the
13 memorandum of understanding?

14 A Yes.

15 Q Okay. And the memorandum of understanding that
16 you signed that was entered into between yourself and the
17 Jois Foundation included the grant proposal language;
18 correct?

19 A You have them sequenced together here. It
20 doesn't say Attachment A on there, so I'm not sure. But
21 in your sequencing of the documents here, you have one on
22 top of the other.

23 Q Okay. But there was a grant proposal
24 incorporated into the memorandum of understanding; right?

25 A It was the initial document that we used, yes.

26 Q Okay. And look at that document. I want you to
27 authenticate that document for me, sir.

28 Was that indeed the grant proposal that you see

1 behind the memorandum of understanding in the exhibit that
2 I'm showing you right now, sir?

3 A Yes, it is.

4 Q And that's consistent with Exhibit 1 that I just
5 showed you earlier; right?

6 A That is correct.

7 Q Now, in addition to the grant document being
8 incorporated into the memorandum of understanding, there
9 was also a budget attached; right?

10 A That is correct.

11 Q And is it the budget that you see here before
12 you, sir?

13 A Yes, it is.

14 Q Okay. So for the record, the agreement between
15 yourself -- or sorry, strike that -- the district and the
16 Jois Foundation has a memorandum of understanding;
17 correct?

18 A Yes.

19 Q The grant document that I just showed you;
20 correct?

21 A I'm not sure that's been determined yet, but it
22 was the initial document we worked from.

23 Q Do you need to read the grant document to say
24 whether this is the agreement or not, sir?

25 A It's -- the memorandum of understanding is the
26 memorandum of understanding.

27 Q And the grant document as before you -- that you
28 have before you is the actual grant document, is it not?

1 A This is the grant proposal that we did, yes.

2 Q And the grant attached to the memorandum of
3 understanding is the same grant that you agreed to when
4 you entered into the memorandum of understanding with
5 Jois; correct?

6 A It's not attached in the way that -- but -- I
7 don't know.

8 Q I'll give you a minute to read it if you need to
9 refresh your recollection.

10 A I can read it. All I'm saying is you just put
11 the two documents together here. It doesn't say
12 Attachment A. But we did use this document earlier, so...

13 Q Was there any other version of the grant proposal
14 that you're aware of that may have been substituted for
15 the document that you see before you, sir?

16 A There actually were a couple of versions of the
17 grant proposal. So this is the one I -- that we did
18 submit to the Jois Foundation.

19 Q And they accepted it; right?

20 A They did ultimately. That led to the MOU, yes.

21 Q They accepted the grant application as you wrote
22 it; right?

23 A Yes. They accepted that, yes.

24 Q Okay. And the grant application that you have
25 before you is the one that was actually accepted by the
26 Jois Foundation; is that not true, sir?

27 A That's correct.

28 MR. BROYLES: Thank you. All right.

1 MR. PECK: Mr. Broyles --

2 MR. BROYLES: Yes.

3 MR. PECK: -- may I have my exhibit?

4 MR. BROYLES: Oh, sorry.

5 MR. PECK: Thank you.

6 MR. BROYLES: I was trying to be sneaky there.

7 Kidding.

8 BY MR. BROYLES:

9 Q All right. Now, just briefly, I want you to look
10 at Exhibit 3. This should be a lot easier.

11 Do you recognize Exhibit 3?

12 A Yes, I do.

13 Q And Exhibit 3 is the memorandum of understanding
14 between the district and Regur; correct?

15 A Yes.

16 Q Related to the yoga program; right?

17 A Related to the health and wellness program, yes.

18 Q Okay. And --

19 THE COURT: 3 is in.

20 MR. BROYLES: Thank you, Your Honor.

21 (Exhibit 3 received into evidence.)

22 BY MR. BROYLES:

23 Q Do you have any reason to believe that that's not
24 the final version of the agreement between you and Regur?

25 A No.

26 Q Do you need a moment to look at it?

27 A No. This is correct.

28 Q Now, the grant proposal --

1 THE COURT: This is Exhibit 1?

2 MR. BROYLES: Exhibit 1.

3 BY MR. BROYLES:

4 Q -- was dated July 24th, 2012; correct?

5 A That's correct.

6 Q And that document, as we just established very
7 difficultly -- in a difficult manner, was actually
8 incorporated in the memorandum of understanding between
9 EUSD and Jois; correct?

10 A I'm not sure that was ever done. But this is the
11 grant proposal that was accepted by Jois, I believe is the
12 work-around you did.

13 Q And the core foundation of the program -- I'm
14 sorry. Strike that.

15 The grant proposal says, "The core foundation of
16 this program will be built around providing students,
17 staff, and families access to Ashtanga yoga throughout the
18 school year."

19 That's what the document says; correct?

20 A Where are you reading from?

21 First paragraph? Okay.

22 Q Middle of the first paragraph, left side.

23 A Yes.

24 Q And you see the words "Ashtanga yoga" there;
25 right?

26 A I do.

27 Q And you're not disputing that the document says
28 "Ashtanga yoga," are you?

1 A No, I'm not.

2 Q Okay. Now, as -- the document goes on to say,
3 "As the part of grant, the comprehensive K through 6
4 health and wellness life skills curriculum that includes,"
5 quote, "'key yoga life concepts' and other factors will be
6 taught"; is that true, sir? Is that -- am I representing
7 the document correctly?

8 A Well, the statement actually says, "'key yoga
9 life concepts,' such as self-regulation, nutrition,
10 physical education, and healthy lifestyle choices."

11 Q Okay. And what's your understanding of what "key
12 yoga life concepts" are, sir?

13 A That would be self-regulation, nutrition,
14 physical education, healthy lifestyle choices.

15 Q And did you mean anything about yoga world view
16 when you drafted this grant document, sir?

17 A No. I don't understand the question, to be
18 honest.

19 Q Okay. I'm just trying to figure out what "key
20 yoga life concepts" are.

21 Did you do any research before you agreed to
22 enter into this document -- or this agreement with Jois as
23 to what "key yoga life concepts" were besides what the
24 document says?

25 A We looked at yoga instructional programs, and
26 there -- as I mentioned earlier, there had been
27 research done on specific yoga programs in schools.
28 From that, we took that to pull key yoga concepts such

1 as strength-building, breathing regulation, balance,
2 nutrition, wellness. Those were the components we were
3 talking about when we reference "key yoga concepts."

4 Q Did you do any research as to the "key yoga life
5 concepts" of Ashtanga yoga?

6 A No.

7 Q Why not?

8 A Because that wasn't what we were putting into
9 place.

10 Q Why -- well, the document says "Ashtanga yoga"
11 there in the first paragraph, doesn't it, sir?

12 MR. SLEETH: Objection; argumentative.

13 THE COURT: Well, it's been covered. It says
14 what it says.

15 MR. BROYLES: Okay.

16 THE COURT: He's read it and reads it as the
17 Court reads it. It says it.

18 BY MR. BROYLES:

19 Q Okay. And so by "key yoga life concepts," do you
20 mean yoga life concepts beyond or besides those which were
21 found in Ashtanga yoga?

22 A I think we were referencing those yoga life
23 concepts that most practitioners of yoga would understand,
24 which is the health and wellness components.

25 Q Did it matter to you at all what the "key yoga
26 life concepts" of Ashtanga yoga were, sir?

27 A No.

28 Q Now, the grant required the outcome of a K-6

1 curricular guide with the, quote, "inclusion of life
2 skills built around key themes of yoga instruction and the
3 core themes found in yoga"; is that correct?

4 A Yes.

5 Q Now, yoga -- you understand yoga involves
6 physical asana practice, right, physical pose practice?

7 A Yes.

8 Q Okay. Yoga also involves views as to what's
9 moral or immoral; right?

10 A I don't know that -- that that's what we were
11 talking about.

12 Q Well, your curriculum ended up with yamas and
13 niyamas, didn't it, sir?

14 A Our curriculum doesn't have any yamas or niyamas
15 in it.

16 Q What about the curriculum that was published on
17 your website in November?

18 THE COURT: Of what year?

19 MR. BROYLES: 2012.

20 BY MR. BROYLES:

21 Q Did that have yamas and niyamas in it, sir?

22 A I doubt that it used that language. Perhaps it
23 did. This curriculum has undergone numerous revisions,
24 and we stand behind the curriculum that we have today.

25 Q Do you know what yamas and niyamas are?

26 A No, I don't.

27 Q Do you have any understanding as to whether the
28 curriculum as originally drafted included Hindu moral

1 teaching in it?

2 A I'm sorry. What was the question, whether it had
3 Hindu moral teaching in it?

4 Q The curriculum that was being developed by you,
5 the assistant superintendent, and the Jois-trained
6 instructors, did that curriculum have any discussion in it
7 as of November 2012, as was posted on your website -- did
8 it have any discussion of Hindu moral teaching?

9 A I don't know if it had Hindu moral teaching. We
10 do have a character development component of our health
11 and wellness program. And we teach traits such as
12 responsibility, caring for others. If that is how you're
13 defining Hindu moral, then we do teach those things.

14 Q Okay. Let me ask the question differently.

15 THE COURT: But the question really was what was
16 displayed on the district's website in November when
17 that -- and it is what it is. So we're -- I'm not sure he
18 answered that question.

19 BY MR. BROYLES:

20 Q Well, let's be specific. Take a look at
21 Plaintiffs' Trial Exhibit No. 9.

22 No that.

23 Try Exhibit No. 7.

24 Do you recognize this document, sir?

25 A I do.

26 Q Is that a version of the curriculum being
27 developed by EUSD for the yoga program?

28 A Yes.

1 Q This is specifically called the "On-the-Mat
2 Curriculum"; right?

3 A Yes.

4 MR. BROYLES: Okay. And I'm going to offer
5 Exhibit 7.

6 THE COURT: Any objection?

7 MR. SLEETH: No objection.

8 MR. PECK: No.

9 THE COURT: The whole exhibit? There's like
10 many, many pages.

11 MR. BROYLES: It's 50 pages long, Your Honor.

12 THE COURT: All right. 7 will be received.

13 (Exhibit 7 received into evidence.)

14 BY MR. BROYLES:

15 Q Now, you -- you seem to imply that you weren't
16 aware of any specific Hindu moral teaching being involved
17 in the curriculum; is that right? Is that a fair
18 assessment?

19 A I'm not an expert on Hindu moral teaching. I am
20 aware that we put some of our character education program
21 into this, yes.

22 Q Let me ask a different question.

23 If you discovered that Hindu moral teaching was
24 involved in this curriculum, would that concern you at
25 all?

26 A It depends on what that moral teaching is. If
27 it's respect, if it's perseverance, if it's some of the
28 things that coincide with our character ed develop, then

1 it should be in this program.

2 Q Now, this curriculum that we're looking at, it
3 was ultimately changed; right?

4 A There are components of the curriculum that have
5 changed. So yes, much of the curriculum has evolved over
6 time as all new curriculum does.

7 Q I want to refer you to -- I think it's about
8 Page -- oh, boy. Sorry. It's such a long document. Let
9 me -- let me just ask you a question.

10 Do you have any understanding as to whether the
11 teachers were teaching the students the lotus position?

12 THE COURT: Which teachers are you talking about
13 now?

14 MR. BROYLES: The -- sorry. The yoga teachers in
15 the district as far as in the Year 2012 to 2013.

16 BY MR. BROYLES:

17 Q Were they teaching the kids the lotus position?

18 A We have -- we have a position that's like that.
19 I don't know what we're calling it, but yes.

20 Q Is the lotus position the position you called
21 criss-cross applesauce, sir?

22 A I have used that term, yes.

23 Q Okay. To refer specifically to the lotus
24 position; right?

25 A Yes.

26 Q As a matter of fact, a parent asked you about
27 whether the lotus position was being taught by the
28 district in the fall of 2012; is that not correct?

1 A Probably. I don't know, to be honest.

2 Q Okay. Could you look at --

3 A It's very possible.

4 Q I'm going to have you look at Trial Exhibit
5 No. 11, PT11 in your book.

6 And for the record, I'll represent that it's an
7 e-mail exchange between a parent named Cindy Gray and
8 yourself over the yoga program.

9 THE COURT: Are you offering that?

10 MR. BROYLES: I need to lay a foundation first,
11 Your Honor.

12 THE COURT: Okay.

13 THE WITNESS: Okay.

14 BY MR. BROYLES:

15 Q All right. Do you recognize this document, sir?

16 A I do.

17 Q And it's an e-mail exchange between you and Cindy
18 Baird (sic) in the fall of 2012; is that correct?

19 A That's not correct. It was between me and Cindy
20 Gray.

21 Q I'm sorry. I apologize.

22 And in her e-mails to you --

23 MR. BROYLES: I want to move it into evidence,
24 Your Honor.

25 THE COURT: Any objection?

26 MR. SLEETH: Not to foundation. But to the
27 hearsay statements of the mother in the e-mail, I object.

28 THE COURT: Well, I'm not considering it for the

1 truth.

2 MR. SLEETH: Okay.

3 THE COURT: It is -- I mean, I don't -- I don't
4 think it's hearsay. I'm not considering it for the truth
5 of whatever is stated. It would be relevant to what he
6 was told.

7 MR. SLEETH: Okay.

8 THE COURT: Okay. All right.

9 BY MR. BROYLES:

10 Q Mr. Baird, Ms. Gray raised concerns that she had
11 seen children in the district spontaneously sitting in the
12 lotus position, had she not?

13 A Her concern was that in a religious situation,
14 that a child had gone into the lotus position. And my
15 response back to Ms. Gray was that our children often sit
16 in that position in the regular classroom. We call that
17 criss-cross applesauce. And so therefore, a child sitting
18 down in that position would not be unusual because they do
19 that in other settings.

20 Q Just to be clear, she was specifically concerned
21 about a specific yoga pose; correct?

22 A Yes, she was.

23 Q And the specific yoga pose she was concerned
24 about was the lotus position; correct?

25 A That is correct.

26 Q And it was your understanding her concern about
27 that was that at some kind of a religious prayer meeting,
28 a kid of a different faith who wasn't Hindu spontaneously

1 starting sitting in a criss-cross applesauce position;
2 correct?

3 A Yes.

4 Q Now -- but she specifically told you it wasn't
5 criss-cross applesauce, though; right? She doesn't use
6 that term; right?

7 A No. She said the lotus position.

8 Q She uses the term the "lotus position."
9 And you weren't there to see the child; right?

10 A Neither was Ms. Gray.

11 Q That's not my question, sir.

12 A No, I was not.

13 Q You weren't there to observe the child; right?

14 A No, I was not.

15 Q So why would you disclaim or try to lead her away
16 from the fact that the child may, in fact, be sitting in
17 the lotus position?

18 THE COURT: Can I just -- I've got to make
19 findings here, and we're getting kind of -- it's almost
20 like you're having your own private conversation here.

21 MR. BROYLES: Sorry, Your Honor.

22 THE COURT: I'm looking at this exhibit, and
23 there's an e-mail from somebody named Cindy, and he's
24 responding to it.

25 MR. BROYLES: Uh-huh.

26 THE COURT: And he says, "I also wanted to
27 address the little kindergarten girl who sat down to
28 worship in the lotus position."

1 That's what --

2 THE WITNESS: She had said that a little child
3 had sat down to worship in the lotus position in her
4 e-mail earlier, yes.

5 THE COURT: And you responded to that?

6 THE WITNESS: I did.

7 THE COURT: Okay.

8 BY MR. BROYLES:

9 Q And in your response, you didn't --

10 THE COURT: But neither one of them was there to
11 see what they were responding to?

12 MR. BROYLES: And that's -- that's not the issue,
13 Your Honor.

14 THE COURT: What's the issue, though?

15 MR. BROYLES: The issue is how he -- how he
16 characterized it.

17 THE COURT: Okay.

18 MR. BROYLES: And I'm going to ask him questions
19 about that.

20 BY MR. BROYLES:

21 Q So you didn't characterize the event as a yoga
22 event; right?

23 A No, I did not.

24 Q You characterized this event that no one saw as a
25 cross-cross applesauce event; right?

26 A Yes, I did.

27 Q And you characterized the event as, in the old
28 days, what we called sitting Indian style; right?

1 A That's correct.

2 Q Mr. Baird, why did you characterize it that way
3 in this exchange?

4 A Because Ms. Gray was characterizing it as a
5 religious event, and I said there are other reasons why a
6 child might sit down like that because every day in
7 kindergarten class, her teacher would ask her to sit that
8 way. So I was giving her another example of why a child
9 might sit that way.

10 Q But you don't deny that when she wrote you that,
11 children in the district were being taught the lotus
12 position by your teachers; right?

13 THE COURT: How was the child sitting? I think I
14 know, but I'm not sure.

15 MR. BROYLES: I don't want to rip my clothes,
16 Your Honor.

17 THE COURT: I guess it used be called Indian
18 style. I guess.

19 THE WITNESS: Yes.

20 MR. BROYLES: Yes.

21 BY MR. BROYLES:

22 Q Okay. Mr. Baird, you also at board meetings,
23 when the lotus position came up when parents were
24 complaining, also characterized that position as
25 criss-cross applesauce; isn't that true?

26 THE COURT: Are we talking about sitting with
27 your legs --

28 THE WITNESS: Yeah. As you said, like Indian

1 style, yes.

2 Kids sit like that frequently, and that's -- I
3 was just responding to Ms. Gray's concerns that somehow
4 this child was associating a pose in yoga with a religious
5 experience. And I gave her an example of why a child
6 might just sit that way because they do much of the day.

7 BY MR. BROYLES:

8 Q But you didn't agree with her that it was a lotus
9 position, did you?

10 A I -- what I said was I'm not disagreeing that
11 criss-cross applesauce is not the same as the lotus
12 position. What I was giving her was another context why a
13 child might sit that way.

14 Q Well, criss-cross applesauce isn't the same as
15 the lotus position, is it, sir?

16 A I think it is, but I could be wrong.

17 Q And you don't deny that the lotus position was
18 being taught to students in the EUSD district in the fall
19 of 2012, do you?

20 A It's one of the poses in our program, yes.

21 Q Okay. And you don't deny that when they were
22 sitting in this position, that some of the children were
23 being taught to do this with their thumbs and forefingers,
24 do you?

25 A I don't believe -- I don't know that that's true.

26 Q If they were, would that concern you, sir?

27 A I don't know. I'd have to talk to our curriculum
28 people as to whether that was. I haven't seen that.

1 Q Okay. Have you -- well, strike that.

2 Now, isn't it true, Mr. -- Dr. Baird, that a
3 stated purpose of the grant we've been discussing was, at
4 a minimum, to teach the students a yoga-based world view?

5 A Where are you quoting from?

6 Q The grant. I'm not quoting from the grant. I'm
7 asking a question based on the grant.

8 A No, I don't believe that's -- we were
9 incorporating some elements of yoga into the program,
10 which we characterized as health and wellness elements.

11 Q Now, the Jois Foundation is named after Shri K.
12 Pattabhi Jois; right?

13 A I assume so.

14 Q And he's the Indian guru who brought Ashtanga
15 yoga into Encinitas many years ago; correct?

16 MR. SLEETH: Objection; lacks foundation.

17 THE COURT: Do you know?

18 THE WITNESS: I've read that in your brief.

19 BY MR. BROYLES:

20 Q Okay. You have no independent knowledge about
21 how the Jois Foundation got started, sir?

22 A I don't. We work with lots of foundations. I
23 don't generally research the foundation to the elements of
24 their origin.

25 Q And I believe earlier you acknowledged that the
26 Jois Foundation teaches Ashtanga; correct?

27 A No. The Jois Foundation doesn't teach Ashtanga
28 yoga. They're a foundation. I don't think they -- they

1 teach anything. They raise money and give money.

2 Q Okay. Well, then why would Ashtanga yoga be in
3 the grant, sir?

4 MR. SLEETH: Objection; argumentative.

5 THE COURT: Well, do you know?

6 THE WITNESS: Well, I think you're confusing the
7 Jois yoga studios with the Jois Foundation, is -- would be
8 my answer to that. The Jois yoga studio teaches Ashtanga
9 yoga. The Jois Foundation raises money and gives money to
10 beneficiaries.

11 BY MR. BROYLES:

12 Q And when they gave the money to you, they wanted
13 Ashtanga yoga to be taught; is that not true, sir?

14 A That was in our initial proposal, yes.

15 Q Okay. And Ashtanga yoga wasn't taken out of your
16 proposal before it was agreed upon, was it, sir?

17 A No.

18 Q Now, you mentioned a good distinction. That's a
19 distinction between the Jois Foundation and the Jois yoga
20 studios; right?

21 A Yes.

22 Q But they're connected -- they're parent and
23 sister or brother and sister corporations, are they not?
24 Don't they work together?

25 A I don't know what their relationship is.

26 Q Okay. And the teachers that taught yoga to the
27 students needed to be certified and trained by Jois yoga
28 instructors; correct?

1 A Their skills were assessed to make sure that they
2 were able to teach yoga by Jois certified instructors,
3 yes.

4 Q And those Jois certified instructors, at least in
5 part, came from the local Jois shala in Encinitas; right?

6 A From the yoga studio, yes.

7 Q Okay. And they only teach Ashtanga yoga there,
8 to your knowledge; right?

9 A No. I've already said I don't know what else
10 they teach or what they teach, but...

11 Q Okay. Now, do you know what the goals of the
12 Jois Foundation are as an organization, why they exist?
13 You said they exist to give money to schools, but why do
14 they give money to schools? What's the purpose of them
15 giving money to schools?

16 MR. SLEETH: Objection; relevance.

17 THE COURT: Overruled.

18 Do you know?

19 THE WITNESS: I don't know what their purpose is,
20 but I can tell you that our purpose in -- anytime we work
21 with a foundation --

22 BY MR. BROYLES:

23 Q That's not -- I'm just going to --

24 A Yeah.

25 Q -- cut you off because that's not the question I
26 asked.

27 A I don't know their stated purposes.

28 Q Did you do any due diligence or research as to

1 what the stated purpose of the Jois Foundation is, sir,
2 before you entered into a partnership with them?

3 A Not as to their stated overall goals. We do
4 know -- they did express to me that one of their goals was
5 to improve the health and wellness in students. They were
6 concerned about student obesity, diabetes. And in many of
7 my conversations, we had similar goals. So that was --
8 that set of goals matched our goals, and that's why we
9 formed the partnership.

10 Q Are you aware that Jois Foundation
11 representatives have repeatedly publicly stated that their
12 goal is to teach the -- or spread the teaching of Shri K.
13 Pattabhi Jois?

14 MR. PECK: Lacks foundation.

15 THE COURT: Overruled.

16 THE WITNESS: I'm not aware of that. That's
17 never been expressed to me, that they were doing that.

18 BY MR. BROYLES:

19 Q Are you aware that the Jois Foundation, part of
20 their reason for existence is to spread Ashtanga yoga
21 nationwide and worldwide in public schools, sir?

22 A They have -- they have expressed that they would
23 like to spread a health and wellness program that consists
24 of yoga and other elements to other school districts.

25 Q So are you denying that their goal is to spread
26 Ashtanga yoga, sir?

27 A I would tell you that in our early conversations,
28 the term "Ashtanga yoga" was used. That has not been used

1 in -- as our relationship has evolved and as our
2 curriculum has evolved, that has not been used. So I
3 don't know if that's their stated purpose today.

4 Q So you've read none of the media reports that say
5 that their goal is to spread specifically only Ashtanga
6 yoga?

7 A I have not heard them say that or seen that. I
8 do know that they have a desire to spread yoga programs to
9 other school districts that include health and wellness
10 elements and that we are developing that.

11 Q Now, under the terms of the grant, if a teacher
12 wanted to teach yoga in your school district, but the Jois
13 Foundation wouldn't put their seal of approval on them,
14 you wouldn't allow them to teach yoga, would you?

15 A If they did not meet the minimum requirements to
16 be able to teach yoga, that is correct.

17 Q Okay.

18 A They wouldn't canter into our pool to be selected
19 from.

20 Q So you look to a pool of candidates that comes
21 from Jois; right?

22 A No. We look for a pool of candidates that are
23 certified to teach yoga and have the capability to teach
24 yoga.

25 Q Sir --

26 A But Jois has helped us determine that pool of
27 candidates.

28 Q Okay. So it's a very narrow pool of candidates,

1 is it not?

2 A I don't know how narrow that pool is. We had
3 some P.E. teachers within the district who were able to
4 teach yoga that are now part of our yoga program. So
5 candidates came from lots of different places.

6 Q Okay. But let me ask you the question this way:
7 If I'm a yoga teacher and I come to the district in the
8 fall of last year and I want a job, okay, and I'm
9 certified by -- to teach Bikram yoga, okay, that's not
10 enough, is it?

11 A You would have to --

12 Q No, no. Just answer the question.

13 A -- assess --

14 Q Is it enough that I'm certified to teach Bikram
15 yoga? Is that enough?

16 A Enough for what?

17 Q Enough to be hired by -- to teach in the
18 district.

19 A No.

20 Q Okay. And the reason it's not enough is because
21 there was an additional requirement of the teacher; right?

22 A We looked for lots of elements. I -- so even if
23 you just showed up and you could teach a different type of
24 yoga, we look for lots of elements before we hired or
25 selected people.

26 Q Let me be more specific.

27 A Yeah.

28 Q The other requirement that I'd have to have

1 besides being a certified yoga instructor in Bikram yoga
2 would be that the Jois Foundation or Jois yoga shala would
3 have to put their stamp of approval on me, too; isn't that
4 correct, sir?

5 A They would have to let us know that this person
6 had the ability to teach yoga, yes.

7 Q So you weren't entirely in control of the
8 teachers, were you?

9 MR. SLEETH: Objection; argumentative.

10 THE COURT: Sustained.

11 BY MR. BROYLES:

12 Q Was the district in complete control of who these
13 teachers were?

14 A We selected the teachers. They needed to have
15 minimum requirements in terms of being able to teach yoga.

16 Q But there's lots of different types of yoga out
17 there; right?

18 A Yes, there are.

19 Q Okay. And --

20 THE COURT: Can I ask a question just before I
21 forget?

22 MR. BROYLES: Yes, Your Honor.

23 THE COURT: Was part of the certification that
24 they teach yoga to children or were these people that
25 could teach it to everybody?

26 THE WITNESS: I think that some of our
27 instructors have had experiences teaching with children,
28 but not all necessarily when they came in.

1 BY MR. BROYLES:

2 Q So it's fair to say that Jois could veto an
3 instructor because Jois did not approve of that
4 instructor?

5 A Jois could tell us that the instructor did not
6 have the skill set necessary to teach yoga, and they would
7 not have been considered, that's correct.

8 Q So even if they were certified by Bikram or a
9 hundred others yoga studios or groups or organizations out
10 there, if they weren't approved by Jois, you wouldn't hire
11 them; is that correct?

12 A If Jois did not tell us they had the skill set to
13 teach yoga, that would be correct, we wouldn't have looked
14 at them in the pool.

15 Q Okay. Now, I'm assuming that as an executive
16 director of the district, you did your due diligence
17 before agreeing to invite the Jois Foundation onto your
18 nine school campuses; is that correct?

19 A I'm not sure what you're asking.

20 Q Well, I'm -- before -- the grant says you
21 partnered with the Jois Foundation; right? Is that
22 correct?

23 A That's correct.

24 Q All right. And in your partnership, the Jois
25 Foundation at least had some say into who you were hiring;
26 right?

27 A They had to approve the skill set. They didn't
28 help us select who we hired.

1 Q Okay. But they were determining, at least in
2 part, who your teachers might be; right?

3 A They didn't select the teachers.

4 Q They didn't hire the teachers, but they helped
5 select the teachers; isn't that true, Mr. Baird?

6 A They didn't help select the teachers. They
7 certified that they had the yoga skills necessary, and
8 from that pool we selected the teachers.

9 Q Okay. My question is this, sir: Before you'd
10 entered this partnership into the Jois Foundation, did you
11 do due diligence about the Jois Foundation and what they
12 believed and what they promoted?

13 A I'm not sure what you're asking me. What -- we
14 knew that they had common goals in terms of promoting
15 student health and welfare with young people and
16 developing school programs to do that work.

17 Q Okay. I'm going to back up for one moment and
18 ask you the question a different way.

19 The set of teachers -- or the pool of teachers
20 from which you hired -- were hiring was -- was the pool --
21 a pool of teachers that would only include Jois-approved
22 teachers; is that correct?

23 A They had to assess whether they had the yoga
24 skills to teach the program.

25 Q So the answer is yes; right?

26 A Well, it depends on how you ask it. But yes,
27 they had to approve that they had the yoga skills. They
28 did not select the teachers.

1 Q Do you know -- do you know what criteria the Jois
2 Foundation used to put their stamp of approval on these
3 instructors before you ultimately hired them?

4 A I assume they assessed whether they could do the
5 poses correctly and whether they had a working
6 understanding of yoga. That's part of the reason that we
7 partnered with an expert in the field to do that.

8 Q Sir, respectfully, I don't want to know what you
9 assume. I want to know what you know. And so let me ask
10 the question a different way.

11 Do you know whether one of the criteria that Jois
12 used before they put their stamp of approval on potential
13 hirees of the district was that those individuals had to
14 be certified in Ashtanga yoga?

15 A No.

16 Q So you don't know that --

17 A No.

18 Q -- either way?

19 A No.

20 Q So they might have used that criteria; is that
21 correct?

22 A I -- I don't believe they did because I know we
23 had two P.E. teachers who were selected to serve in the
24 program. So -- and I don't believe they were, but I --
25 but no, I don't know that for sure.

26 Q Okay. Now, sometime in October of November of
27 2011, the district put out a document called the
28 "Frequently Asked Questions."

1 Do you recall that document, sir?

2 A I do.

3 Q Could you look at Exhibit No. 5.

4 Do you recognize this document?

5 A I do.

6 THE COURT: Are you offering 5?

7 MR. BROYLES: Yes, Your Honor.

8 THE COURT: Any objection?

9 MR. SLEETH: No objection.

10 THE COURT: Okay. 5 is in.

11 (Exhibit 5 received into evidence.)

12 BY MR. BROYLES:

13 Q Now, Dr. Baird, did you review this document
14 before it was published?

15 A I did.

16 Q Okay. And this was a document that was created
17 by the district after a parent complaint started; right?

18 A That's correct.

19 Q And after there were some reports that were
20 starting in the media about this whole program; right?

21 A Yes.

22 Q Okay. Now, in the document which you indicated
23 that you reviewed, the district claims to be in charge of
24 the curriculum and in charge of the training of the
25 teachers; right?

26 A That is correct.

27 Q So that's consistent with your prior testimony;
28 right?

1 A Yes.

2 Q Why was it -- this document starts out in the
3 very early paragraphs on Page 1 noting that the district
4 was in charge of the curriculum and the teachers; correct?

5 MR. SLEETH: Objection; misstates the document.
6 It doesn't start out with that.

7 BY MR. BROYLES:

8 Q Okay. Let me go to -- Question 2, which is the
9 second question on Page 1, talks about you being in charge
10 of the curriculum; right?

11 A Yes.

12 Q And by "you," I mean the district; right?

13 A Yes.

14 Q That's consistent with your earlier testimony;
15 right?

16 A That is correct.

17 Q And you also -- it's also stated in this document
18 that the district is training the teachers; right?

19 A Yes.

20 Q And that the teachers meet on a weekly basis for
21 staff development; right?

22 A That is correct.

23 Q So that's consistent with your prior testimony;
24 right?

25 A Yes.

26 Q All right. Now, in this document, I don't see --
27 in all three pages of this document, I don't see the word
28 "Ashtanga" mentioned anywhere.

1 Is that an accurate statement?

2 A That's an accurate statement.

3 Q Okay. Why, Dr. Baird, was Ashtanga yoga not
4 mentioned once in this document that's called the
5 Encinitas Union School District Yoga Program?

6 A Because this document was written later in the
7 school year. I think the only documents that you have
8 referred to that have Ashtanga in it were at the
9 developmental stage of the program.

10 After our teachers and our assistant
11 superintendent began designing and developing this
12 program, we realized that we were creating the Encinitas
13 Union School District Yoga Program. It isn't Ashtanga.
14 It's not Broga. It's not any of the other things you
15 mentioned. I think it's our unique program. And
16 therefore, it would be wrong to call it Ashtanga.

17 Q Now, Dr. Baird, earlier you said you didn't
18 really know what Ashtanga yoga was; is that true?

19 A That's correct.

20 Q So if -- if the program created by Encinitas was
21 actually Ashtanga yoga, you wouldn't know, would you, sir?

22 A No, but I would know that my teachers would know,
23 and they have mentioned this.

24 Q But you're the one who's in charge; right?
25 You're the captain of the ship; right?

26 A Yes.

27 Q And you couldn't tell me, as we sit here today,
28 whether a program is Ashtanga-based or not Ashtanga-based,

1 could you, sir?

2 A No, I couldn't unless somebody told me, which
3 they did.

4 MR. BROYLES: Move to strike, Your Honor.
5 Nonresponsive.

6 THE COURT: All right.

7 BY MR. BROYLES:

8 Q Now, isn't, it true that the district
9 intentionally omitted the word "Ashtanga" because it was
10 trying to distance itself from appearing entangled with a
11 very religious form of yoga, specifically Ashtanga yoga?

12 MR. SLEETH: Objection; argumentative.

13 THE COURT: Overruled.

14 THE WITNESS: No.

15 BY MR. BROYLES:

16 Q Why did you omit Ashtanga yoga from this
17 document, sir?

18 A Because at this point in our curriculum
19 development, our teachers, who are well-versed in what
20 Ashtanga yoga is, stated in our curriculum development
21 meetings that we were doing something different and that
22 we were creating our own unique version of a yoga program.
23 At that point in time, we decided that it did not make
24 sense to use the term "Ashtanga" because it doesn't apply.

25 Q Well, your goal in writing this document was to
26 get information and truth out to the public; right?

27 A Yes.

28 Q And by the "public," we mean parents who were

1 concerned about the program in the district; right?

2 A Yes.

3 Q By the "public," we also mean the media; right?

4 A Yes.

5 Q Okay. Anybody else we mean by the "public"?

6 A Our community.

7 Q Okay. So you wanted to be truthful with the

8 community by preparing this document; right?

9 A Yes.

10 Q These weren't just talking points; right?

11 A Right.

12 Q All right. So why, Mr. Baird, did you not say

13 clearly, "We are not teaching Ashtanga yoga in the

14 district"?

15 A Nobody seemed to be worried about that.

16 Q So didn't parents complain to you at board

17 meetings about Ashtanga yoga specifically, sir?

18 A I don't know that they were complaining about the

19 yoga specifically. I know that you mentioned Ashtanga

20 yoga at our board meetings, but I don't believe that that

21 was the crux of the concern. I think what we were hearing

22 were some of these other things that are addressed here in

23 the frequently answered questions.

24 Q Well, sir, you received dozens of e-mails from

25 several different parents, right, about the program?

26 Right?

27 A Thousands.

28 Q Okay. And some of those e-mails that were

1 concerned about the program specifically mentioned
2 Ashtanga yoga; right?

3 A Some did.

4 Q And Ashtanga yoga was brought up at at least two
5 or three school board meetings; isn't that true?

6 A It was mentioned.

7 Q Okay. Why do you not -- if it's not Ashtanga
8 yoga, why aren't you telling the public, the media,
9 concerned parents, "This is not Ashtanga yoga"?

10 A I think we answer that in some of the questions
11 indirectly when we talk about how this program differs
12 from other programs and why we're doing it and what some
13 of the goals of the program are.

14 Q Now, on Page 1, the district claims the yoga --
15 quote, "The yoga program taught in Encinitas Union School
16 District provides no religious instruction whatsoever.
17 There is no discussion of spiritualism, mysticism, or
18 religion in any context."

19 Do you see that, Mr. Baird?

20 A Yes, I do.

21 Q And you saw this before it went out; right?

22 A Yes.

23 Q And you approved it; right?

24 A I wrote it.

25 Q You wrote it.

26 So these are your words?

27 A Yes.

28 Q You already told us that you were not an expert

1 on Ashtanga yoga; right?

2 A Correct.

3 Q Okay. Are you an expert on world religion, sir?

4 A No.

5 Q Are you an expert on how to define religion?

6 A No.

7 Q Are you an expert on how to define spiritualism?

8 A No.

9 Q Are you an expert on how to define mysticism?

10 A No.

11 Q And as we've already established, you certainly
12 are not an expert in Ashtanga yoga; correct?

13 A That's correct.

14 Q Okay. How could you make this statement, sir, if
15 you don't know?

16 MR. SLEETH: Objection; argumentative.

17 THE COURT: How could he make what statement?

18 It's not --

19 BY MR. BROYLES:

20 Q How can you make the statement that it's not
21 religious in any context, not spiritual, mystic, et
22 cetera, et cetera? How could you make this statement if
23 you don't know?

24 MR. SLEETH: Argumentative.

25 THE COURT: Sustained. It's argumentative.

26 BY MR. BROYLES:

27 Q What's the basis for your statement here, sir?

28 A Well, I am an expert in curriculum. I am an

1 expert in physical education. And I've observed hundreds
2 our classes. In those classes, this is P.E. The kids are
3 being told to stretch, to work out. There is no
4 discussion in those classes of these elements.

5 Q What elements?

6 A Of spiritualism, mysticism, or religion. We
7 don't teach that. There's not part of that.

8 Q If I could demonstrate to you from your
9 curriculum and what was happening in those classes that
10 there were those elements in there, what would you do,
11 Mr. Baird?

12 A Well, it depends on what your demonstration would
13 consist of. If it demonstrates to you, your own
14 perception, I can't change your perception.

15 Q I'm asking if I could demonstrate to you in your
16 perception, sir.

17 A If there was religion in our program, we would
18 take it out because we do not teach religion.

19 Q But how would you know, sir, that there was
20 religion in your program?

21 MR. SLEETH: Relevance.

22 THE COURT: Well --

23 MR. SLEETH: Argumentative.

24 THE COURT: I'm not sure how productive this is
25 or probative it is. It's kind of an amorphous -- like
26 fighting phantoms, if I might.

27 MR. BROYLES: Your Honor, I appreciate that.

28 ///

1 BY MR. BROYLES:

2 Q You wrote this; right?

3 A Yes.

4 Q Could you please describe to the Court what you
5 understand spiritualism to mean.

6 A When we wrote -- when I wrote this, you know, I
7 was assuming spiritualism to mean something related to a
8 religious nature, something involving divine beings, a
9 dogma.

10 Q Please describe to the Court what you understand
11 mysticism to mean.

12 A Similar.

13 Q Mysticism.

14 What's mysticism?

15 A Yes, similar answer; relating to religion.

16 Q Please describe for the Court what you understand
17 religion to mean.

18 A Relating to the worship of higher beings.

19 Q And so it's your testimony that if the program
20 included any of those elements that we just went over,
21 that it doesn't belong in your school; right?

22 A If it included something that an average student
23 would take to be religion, then, yes, I -- we follow the
24 Constitution.

25 Q Okay. Now on Page 2 of the frequently asked
26 questions, you explain that the district has made the yoga
27 program more kid-friendly by removing cultural references;
28 right?

1 A Yes.

2 Q What do you mean by "cultural references"?

3 A That would be items such as the use of Sanskrit
4 or references to the origin of yoga coming from India.

5 Q Okay. And why were you concerned about
6 connections of yoga coming from India, references to that?

7 A Because some of our parents exhibited concerns
8 about that. Frankly, it's all things come from somewhere,
9 and usually we do bring in cultural references.

10 Q Would you admit that some cultural references are
11 religious references?

12 A Many. Our culture --

13 Q As a matter of fact, different cultures have
14 different religious; right?

15 A Right.

16 Q And some of those cultural references are
17 religious references, right, or many of them are? Right?

18 A I think culture -- much of culture originates
19 from religion, yes.

20 Q Then why didn't you use the word here "religious"
21 references, that you were removing "religious" references,
22 sir?

23 A Because we weren't removing religious references.
24 We were removing cultural references. Sanskrit is a
25 language in the same way that Hebrew is not a religion.
26 It's a language.

27 Q One of the things that was taken down from the
28 walls after parents started complaining was an Ashtanga

1 tree that showed the different levels of the eight limbs
2 of Ashtanga in Sanskrit; right?

3 A There was one classroom that had that on it, yes.

4 Q And --

5 THE COURT: Mr. Broyles, I notice that we have
6 about four minutes till noon, and I want to give you a
7 good breaking point, if this is it.

8 MR. BROYLES: We're almost there, Your Honor. We
9 have a couple more minutes.

10 THE COURT: Okay. I'm going to break at noon or
11 before. So...

12 MR. BROYLES: Okay. Thank you, Your Honor.

13 BY MR. BROYLES:

14 Q Those words were in Sanskrit; right?

15 A They were.

16 Q And to your -- do you know whether those were
17 explained to the children in English?

18 A I don't.

19 Q Do you know what "samadhi" means, sir?

20 A No, I don't.

21 Q If I told that you one of the words was -- on
22 that wall was "samadhi," would you be surprised?

23 A I don't know what I would feel, sir.

24 Q Do you know -- are you aware that "samadhi" means
25 union with the divine or absorption into the universal?

26 A I told you I don't know what the word means.

27 Q If "samadhi" does mean an absorption into the
28 universal or union with the divine, would you call that a

1 cultural reference or a religious reference or both?

2 A Possibly both, but probably cultural because it's
3 a yoga poster, and there are elements of yoga in
4 mainstream culture that utilize some of those terms.

5 Q But that's -- at least -- if that's what
6 "samadhi" means, that's at least a religious reference, is
7 it not?

8 A It -- it could be a connection back to the
9 religious origination, but that doesn't make it religious
10 necessarily.

11 Q Is union with the divine or absorption into the
12 universal -- could that mean anything but a religious
13 basis, sir?

14 A Well, again, this was a poster on a wall in one
15 classroom that was there I believe to promote yoga. So
16 was it there to promote religion, I don't believe so.

17 THE COURT: Mr. Broyles, on that note, I think
18 we're running out of time.

19 MR. BROYLES: All right. Thank you, Your Honor.

20 THE COURT: So we'll resume at 1:30. Have a good
21 lunch. We'll see you at 1:30.

22 - - -

23 (The lunch recess was taken at 11:59 a.m.)

24 - - -

25

26

27

28

1 SAN DIEGO, CALIFORNIA, MONDAY, MAY 20, 2013; 1:31 P.M.

2

3

THE COURT: All right. We're back on the record.

4

MR. BROYLES: Yes, your Honor.

5

THE COURT: Mr. Baird, you're still under oath.

6

Ready to proceed, Mr. Broyles?

7

MR. BROYLES: Yes, your Honor.

8

9

RECROSS-EXAMINATION

10

(Resumed)

11

BY MR. BROYLES:

12

Q Mr. Baird, before lunch, I asked you about some additional documents about the yoga program. I want to continue with that line of questioning.

13

As you sit here today, is it your testimony that the EUSD is in compliance with the Jois EUSD grant?

14

15

A Are we in compliance with the memorandum of understanding?

16

17

Q The grant.

18

A The grant proposal was a proposal. The memorandum of understanding is the document that is the binding document. We are in compliance with the memorandum of understanding.

19

20

21

22

Q Okay. And as attached to the memorandum of understanding and incorporated therein was the grant; correct?

23

24

THE COURT: You know, we went over this this morning, and I'm not sure that was established. The

25

26

27

28

1 document refers to Exhibit A.

2 BY MR. BROYLES:

3 Q Look at Exhibit A one more time, sir.

4 A Is that No. 1?

5 Q Yes.

6 THE COURT: The problem is the document doesn't
7 have an Exhibit A. The original might or might not.

8 MR. BROYLES: Your Honor, he testified that there
9 was --

10 THE COURT: I know what he testified.

11 MR. BROYLES: -- something attached to it and it
12 looked like -- appears to be the same document as the
13 grant.

14 THE COURT: I'm not sure that's exactly what he
15 testified.

16 THE WITNESS: That's not --

17 THE COURT: That's not what he testified to.

18 BY MR. BROYLES:

19 Q Was the grant attached to the memorandum of
20 understanding that you signed with the Jois Foundation,
21 sir?

22 A I don't believe that that particular
23 necessarily -- the proposal was a separate document. We
24 sent the proposal. The memorandum of understanding stands
25 on its own.

26 THE COURT: Can I --

27 THE WITNESS: Yeah.

28 THE COURT: The memorandum of understanding

1 refers to Exhibit A.

2 Do you know what Exhibit A --

3 THE WITNESS: Not without seeing it.

4 THE COURT: Okay.

5 BY MR. BROYLES:

6 Q Okay. Look at that grant, Exhibit 1, you have in
7 front of you.

8 A Yes, the proposal.

9 Q Okay. Does it appear to be the same document
10 that was incorporated into the MOU? Are there any
11 differences that you recall by looking at that document?

12 A I don't know. We had a couple of proposals that
13 were done prior to the MOU.

14 Q Okay.

15 A And that's my hesitation. This was a proposal,
16 yes.

17 Q Okay. And the question I have, sir, is looking
18 at that document -- and I want you to look at it. It's
19 not that long. It's only one page; right?

20 A No. It's two pages.

21 Q Okay. The two pages that you're looking at, do
22 you see anything by looking at that document that was
23 different from the grant -- the grant proposal that was
24 attached ultimately as Exhibit A to the MOU?

25 A I would need to compare them side by side if
26 we're looking for differences between a proposal and a
27 formal MOU.

28 Q I showed you the complete document earlier, and

1 you --

2 A No. You showed me this document behind the other
3 document. It did not say Attachment A. It was not the
4 formal document, sir.

5 THE COURT: Excuse me, Mr. Broyles, we've been
6 over and over this. I mean, we're getting kind of in a
7 rut here. There is no original document, if I understand
8 the state of record. What you showed him was something
9 that was a copy of a copy. And the document refers to
10 Exhibit A. We don't know, I don't know, he apparently
11 doesn't know what Exhibit A is or was. It probably was a
12 proposal. I'm assuming that. That's a pretty safe
13 assumption.

14 MR. BROYLES: Okay.

15 THE COURT: But do you know sitting here whether
16 the document you signed, which is Exhibit 2, had an
17 Exhibit A and, if it did, what that was?

18 THE WITNESS: It references an Exhibit A, but we
19 had a couple of different proposals that we had worked on,
20 so I can't tell you specifically whether it is this exact
21 one.

22 THE COURT: I don't think we're going to get any
23 better than that at this point unless we get an original
24 document with his original signature.

25 MR. BROYLES: Your Honor, I will just represent
26 for the Court that the document that we showed him earlier
27 was a document provided pursuant to a public records
28 request from the district.

1 THE COURT: Well --

2 MR. BROYLES: And --

3 THE COURT: Then he would, I guess, recognize it.
4 I don't know.

5 MR. BROYLES: Well, I can go paragraph by
6 paragraph through Exhibit A and ask him if he recalls
7 whether that was included, but this is --

8 BY MR. BROYLES:

9 Q Mr. Baird, I'm going to read you a paragraph.
10 "The following proposal puts into place a partnership
11 between the Jois Foundation and the Encinitas Union School
12 District."

13 MR. BROYLES: And by the way, your Honor, the
14 foundation admissibility of these documents, because they
15 were from the district, was already stipulated to. And
16 so --

17 THE COURT: Okay.

18 MR. BROYLES: -- we're --

19 THE WITNESS: I'm not disputing that this was one
20 of the proposals that we had worked upon.

21 MR. BROYLES: Okay. I will proceed.

22 BY MR. BROYLES:

23 Q "The following proposal puts into place a
24 partnership between the Jois Foundation and the Encinitas
25 Union School District to deliver a world-class mind/body
26 wellness program at all nine Encinitas elementary
27 schools."

28 To your understanding, Mr. Baird, was that

1 language in -- ultimately in Exhibit A attached to the
2 MOU?

3 A I'm sorry. I'm going to have to repeat myself,
4 your Honor, that I don't know, without looking at the
5 formal signed MOU with the exhibit, what specific language
6 was used.

7 MR. BROYLES: One moment, your Honor.

8 THE COURT: Mr. Baird, are you aware of any other
9 document that might have been attached as Exhibit A to the
10 MOU besides Exhibit 1, the grant proposal we have here
11 before us?

12 THE WITNESS: If you're asking were there other
13 proposals, yes, there were.

14 THE COURT: All right. Where were these
15 proposals?

16 THE WITNESS: There are proposals that we had
17 worked on that ultimately we took component parts from
18 those proposals to put into the MOU.

19 BY MR. BROYLES:

20 Q Okay. But the MOU incorporates Exhibit A; right?

21 A There was an Exhibit A it references, yes.

22 Q Okay. Now, did those other potential versions of
23 Exhibit A exclude Ashtanga yoga or not include Ashtanga
24 yoga?

25 A Without looking at them, I can't tell you what
26 specific language was used, to be honest.

27 Q Okay. As we sit here today and as you look at
28 Exhibit A, do you have any reason to believe that it

1 wasn't ultimately -- this document wasn't ultimately
2 attached as Exhibit A to the MOU? I'm sorry. The grant
3 proposal.

4 A Is the question do I know that this wasn't the
5 document?

6 Q Yeah.

7 Do you have any reason to believe it's not the
8 document?

9 A This may have been the document.

10 Q Okay. Now, my question, then, is as you look at
11 the document in front of you, hypothetically assuming that
12 the grant you have in front of you was ultimately attached
13 to the MOU, is there anything in that document, Exhibit 1,
14 that, to your knowledge, the district has not complied
15 with?

16 A The grant proposal is not an agreement. It's a
17 proposal. And so I would say that the proposal began with
18 certain concepts that have evolved over time.

19 Q So is it your testimony that you're not in
20 compliance with the grant proposal, sir?

21 A I don't know that you can be in compliance with a
22 proposal. A proposal is a proposal. You can be in
23 compliance with a memorandum of understanding.

24 Q Okay. Well, let me ask you that question.

25 Are you in compliance -- is the district in
26 compliance with the memorandum of understanding between
27 the Jois Foundation and EUSD --

28 A I believe --

1 Q -- as we sit here today?

2 A I believe we are.

3 Q Now, Exhibit 3 I believe I might have touched on
4 already. I'd like you to turn to Exhibit 3, please.

5 Do you recognize this document?

6 A Yes, I do.

7 Q Okay. It's the RDG memo between Encinitas Union
8 School District and Regur Development Group; correct?

9 A Yes, the Regur.

10 Q I'm sorry. The Regur.

11 MR. BROYLES: Do we already have this in
12 evidence?

13 THE COURT: Yes.

14 MR. BROYLES: Okay.

15 BY MR. BROYLES:

16 Q As we sit here today, is EUSD in compliance with
17 the memorandum that we've marked as Exhibit 3?

18 A Yes.

19 Q Okay. Now, the purpose of this MOU, at least in
20 part, was to clarify and manage expectations for the
21 effective implementation of the grant provided by the Jois
22 Foundation; correct?

23 A Yes.

24 Q By the grant provided by the Jois Foundation,
25 we're talking about the MOU and grant that generally we've
26 marked as Exhibit 1 and 2; correct?

27 A No. Exhibit 2, I believe, is the MOU.

28 Q Okay. So this document, then -- I'm sorry.

1 "Accordingly," it says here, "the details and expectations
2 outlined within this MOU are contingent upon EUSD
3 receiving funds from the Jois Foundation."

4 Do you see that, sir?

5 A No.

6 Where are you reading from?

7 Q The end of Paragraph 2 on Page 1.

8 THE COURT: Of what exhibit?

9 MR. BROYLES: Exhibit 3, your Honor. I
10 apologize.

11 THE WITNESS: Yes, I see that.

12 BY MR. BROYLES:

13 Q So was it your understanding that if the district
14 didn't comply with the terms of this agreement, the
15 district wouldn't be paid by the Jois Foundation?

16 A I'm sorry. Would you repeat the question.

17 Q Is it your understanding that -- from what I just
18 read that if EUSD failed to comply with this document,
19 that the Jois Foundation wouldn't pay you?

20 A No, that's -- you're reading it backwards. What
21 this is saying is if we don't get paid, then this
22 agreement is null and void, not vice versa.

23 Q Okay. Now, it says here, "EUSD agrees to," in
24 the first paragraph there under "EUSD/RDG
25 Responsibilities," "EUSD agrees to coordinate with RDG to
26 ensure that development of any curricular materials is in
27 alignment with the expectations of the grant."

28 Do you see that, sir?

1 A You're on the first paragraph now?

2 Q Yeah. I'm sorry. Subparagraph E near the bottom
3 of the first page.

4 Do you see that?

5 A Yes.

6 Q Okay. So EUSD was agreeing to coordinate with
7 RDG to ensure the development of curricular materials;
8 right?

9 A Yes.

10 Q Okay. And specifically it says, "in alignment
11 with the expectations of the grant."

12 Do you see that?

13 A Yes.

14 Q It doesn't say in alignment with expectations of
15 the MOU, does it, sir?

16 A No. It says, "grant."

17 Q Okay. By the grant, we're referring to some
18 version of Exhibit 1; right?

19 A Well, no. That was a proposal. The grant was
20 contingent upon the MOU. A proposal was a proposal. A
21 MOU is an agreement.

22 Q But this says the grant. It doesn't say the MOU,
23 sir.

24 A Well, I would say that the grant was given on
25 condition of the MOU. The proposal laid out some initial
26 ideas. The MOU laid out the conditions of the grant. And
27 the conditions of the grant that are being referenced here
28 are that a curriculum would be developed that was a health

1 and wellness curriculum that incorporated yoga.

2 Q Okay. Now, let's turn to Page 2. It says here
3 under G, "RDG agrees to, A, employer contract, Jois
4 Foundation certified instructors who will provide
5 instruction in health and wellness" -- I'm sorry -- "in
6 health and wellness instructors at all nine schools."

7 That seems to be a typo there.

8 A Yes.

9 Q The question I want to ask is, it says that RDG
10 is specifically going to employ and/or contract Jois
11 Foundation certified instructors.

12 Do you see that, sir?

13 A Yes, I do.

14 Q Okay. My question is that is in compliance or in
15 alignment with the grant terminology that required Jois to
16 be involved in certifying the yoga instructors; correct?

17 A Yes, that they have yoga skills specific so that
18 they could actually do the yoga poses and the sequences.
19 That's what Jois did for us to make sure that they could
20 actually teach yoga.

21 Q And it says here they're actually Jois Foundation
22 certified instructors, doesn't it, sir?

23 A Yes, it does.

24 Q Okay. So wasn't Jois yoga or the Jois shala --
25 it was the Jois Foundation specifically that was
26 certifying these Ashtanga yoga instructors; isn't that
27 true, sir?

28 A Well, it says "foundation," but I believe that

1 was a typo as well. But the foundation doesn't have the
2 expertise to certify instructors.

3 Q Now, it says also here -- that's not what the
4 document says, though; right?

5 A Pardon me?

6 Q That's not what the document says; right?

7 A No, it's not.

8 Q Okay. So it would be your testimony it wasn't
9 really the Jois Foundation certifying the instructors, it
10 was really the Jois shala Encinitas that was certifying
11 the instructors.

12 Is that your testimony?

13 A My testimony is that they assured us that they
14 had the yoga skills necessary to teach in our classrooms
15 in our health and wellness program.

16 Q When you say "they," who are you talking about?

17 A The Jois studio.

18 Q Okay. So you're saying it was really the studio,
19 not the foundation.

20 Is that your testimony?

21 A Yes, that's correct.

22 Q Did you -- did you notice that when you --

23 A No. And I also missed the typo after that --

24 Q Hold on.

25 A -- says health and wellness instructors instead
26 of instruction.

27 Q There's no pending question. Let me finish
28 before you cut me off.

1 To your knowledge, what expertise does the Jois
2 Foundation have?

3 A To my knowledge, they are more of a foundation
4 than -- they're a business entity. They raise money and
5 they distribute it to worthwhile causes.

6 Q Okay. Now, it says here that, "RDG agrees to
7 employee and/or contract with curriculum developers to
8 help create replicable and scalable curriculum to support
9 health and wellness instructors."

10 Do you see that, sir?

11 A Yes.

12 Q And that mimics language that we saw in
13 Exhibit 1, the grant document; right?

14 A I don't know. I'd have to go back to see that.
15 I don't think the grant document talks about Regur
16 Development at all.

17 Q No, but it talks about developing a replicable
18 and scalable curriculum, doesn't it, sir?

19 A Yes, it does. Yes.

20 Q Okay. So that's consistent with what we've
21 talked about in Exhibit 1; correct?

22 A Yes, in terms of we're developing a health and
23 wellness curriculum.

24 Q Okay. And then it goes on to say, if you go down
25 to Paragraph E, Subparagraph E, "RDG agrees to pilot this
26 curriculum in EUSD schools gathering feedback from
27 district representatives and representatives from the Jois
28 Foundation to improve the curriculum."

1 Do you see that, sir?

2 A I do.

3 Q So the Jois Foundation was directly involved in
4 the development of this curriculum, wasn't it, sir?

5 A No, they weren't.

6 Q Then why would it say that feedback -- why was
7 any feedback from the Jois Foundation necessary to improve
8 the curriculum, then?

9 A I don't know why that would be there, but the
10 Jois Foundation did not help us develop the curriculum.

11 Q Well, did you ask to strike that language from
12 the agreement after you saw it there, sir?

13 A No, I did not.

14 Q Why not?

15 A This was in the very early stages of our
16 development of this program. But I can tell you from
17 firsthand experience that it has been our yoga teachers,
18 our health and wellness teachers, with our assistant
19 superintendent that has created this program.

20 Q And you want the Court to believe that Jois yoga
21 had little to nothing to do with its selection of the
22 instructors; is that true?

23 MR. SLEETH: Objection. That's argumentative.

24 THE WITNESS: Jois --

25 THE COURT: Sustained.

26 THE WITNESS: Jois yoga is not mentioned in here.

27 BY MR. BROYLES:

28 Q I'm talking about the Jois Foundation, sir.

1 You want the Court to believe that the Jois
2 Foundation didn't have anything to do with the development
3 of the curriculum; is that true?

4 MR. SLEETH: Objection; argumentative.

5 THE COURT: Yeah. Just rephrase the question. I
6 think he's already answered the question, but --

7 BY MR. BROYLES:

8 Q The Jois Foundation, you want the Court to -- you
9 want us to believe that Jois Foundation had nothing to do
10 with the curriculum; is that true?

11 MR. SLEETH: Same objection.

12 THE COURT: Well, you just -- I think he's
13 already answered it, but ask did the Jois Foundation have
14 anything to do with the curriculum.

15 BY MR. BROYLES:

16 Q Did the Jois Foundation have anything to do with
17 the curriculum?

18 A With developing the curriculum?

19 Q Yes.

20 A No.

21 Q Did the Jois Foundation have anything to do with
22 hiring the teachers?

23 A No.

24 Q And yet in this document, this document actually
25 indicates that the Jois Foundation was heavily involved
26 both in the hiring of the teachers and the development of
27 the curriculum; isn't that true, Mr. Baird?

28 MR. SLEETH: Objection; argument.

1 MR. PECK: Document speaks for itself.

2 THE COURT: Sustained on both grounds.

3 BY MR. BROYLES:

4 Q Okay. Now, let's move to Page 3 of the document,
5 sir.

6 THE COURT: We're still on Exhibit 3?

7 MR. BROYLES: Yes, Your Honor.

8 BY MR. BROYLES:

9 Q About three or four lines down, it says,
10 "Regarding key dates, July, Jois Foundation provides
11 training to certify candidates to serve as health and
12 wellness instructors."

13 Do you see that, sir?

14 A On July?

15 Q July, yes.

16 A "To employ or contract as health and wellness
17 instructors." Oh, I see it, the one above, yes.

18 Q It says, "Jois Foundation provides training to
19 certify candidates to serve as health and wellness
20 instructors."

21 Do you see that, sir?

22 A I do.

23 Q And, in fact, in July of 2012, the Jois
24 Foundation did provide training to certify candidates to
25 serve as health and wellness instructors; isn't that true?

26 A They provide yoga training. There was no
27 curriculum to provide training in at that time. We were
28 writing the curriculum.

1 Q I'm not asking about the curriculum, sir. I'm
2 asking about what this document says.

3 It says right here, again, "The Jois Foundation
4 provides training to certify candidates to serve as health
5 and wellness instructors."

6 Do you see that?

7 A Yes, they did get training in yoga.

8 Q So Jois was specifically training teachers who
9 would teach in your classroom in yoga; is that correct?

10 A Yes.

11 Q All right. Now, look at the next line. It says,
12 "District representatives" -- also in July, "District
13 representatives, school administrators, and Jois
14 Foundation members are providing -- or provided the
15 opportunity to present candidates to RDG to employ or
16 contract as health and wellness instructors."

17 Do you see that, sir?

18 A Yes, I do.

19 Q Okay. So the candidates that you received -- or
20 that you considered came from different sources; right?

21 A That is correct.

22 Q One of those sources was the Jois Foundation
23 members; is that not correct, sir?

24 A That's correct.

25 Q All right. Now, let's move down to November 1,
26 2012 about eight or nine lines below that.

27 It says, "November 1, 2012, estimated date of
28 first draft of development materials for feedback and

1 revisions based on implementation results. Revisions to
2 be made ongoing."

3 And does that reflect when you expected to have
4 the first draft of the curriculum completed?

5 A Of -- portions of the yoga only curriculum.
6 We've not completed all of the health and wellness
7 curriculum.

8 Q Okay. And I showed you earlier Exhibit 7, the
9 "EUSD On the Mat" curriculum; correct?

10 A That is correct.

11 Q And that document was posted on the EUSD website
12 on or about November of 2012; is that right?

13 A I believe so, if that's what you say.

14 Q Well --

15 A It was on our website. I don't know when exactly
16 it was on the website.

17 Q That was in compliance with this Regur contract;
18 right?

19 A Not necessarily. This contract was signed in
20 July, I believe it was. And these are estimated dates of
21 completion.

22 Q Okay. But sometime --

23 A They're August, actually.

24 Q Sometime in the fall, a curriculum was developed;
25 right?

26 A Yes.

27 Q And that curriculum appears to be the curriculum
28 that's talked about here in this document; correct?

1 A Well, yes. It's -- you know, a curriculum
2 continues to evolve, and we have -- we've actually changed
3 curriculum within the last couple of weeks even. We're
4 constantly evolving the curriculum. It's not done.

5 Q I understand that, sir. And I'm not
6 presenting -- I'm not trying to argue that that was the
7 final version.

8 I'm just saying that that version of the
9 curriculum appears to be in compliance with this
10 agreement; right?

11 A I don't know if it was done by November 1st or
12 not, if that's what you're asking. And I don't know when
13 that was on the website since you haven't -- you haven't
14 shared that with me yet. So...

15 Q Okay. Now, earlier when you first started
16 testifying, you mentioned that meetings were occurring to
17 develop the curriculum; right?

18 A Yes.

19 Q And at that meeting, your assistant
20 superintendent was there; right?

21 A Yes.

22 Q And Jois-certified instructors were there; right?

23 A There are -- health and wellness teachers were
24 there, yes.

25 Q Who were certified by the Jois Foundation; right?

26 A In their yoga skills, yes.

27 Q And they were actually trained in July in those
28 yoga skills; right?

1 A Yes.

2 Q And at these meetings, the curriculum was being
3 developed; right?

4 A Yes.

5 Q Did the assistant superintendent before this year
6 have any experience with yoga, as far as you know?

7 A I don't know what experience he has. Probably
8 not --

9 Q Okay.

10 A -- but I don't know.

11 Q So as far as at least the yoga component of your
12 health and wellness program, who was making the
13 recommendations of how to teach yoga in your school?

14 A Well, we actually had a curriculum specialist
15 that was hired through Regur Development that was helping
16 us with some of the components related to yoga.

17 Q Okay. And does that person teach yoga, as far as
18 you know, or have a background in yoga?

19 A I don't know what her background in yoga is. But
20 from my observations in the meetings, she's very
21 conversant in the yoga curriculum.

22 Q And some of the people providing the input in
23 those meetings were, in fact, Jois-certified yoga
24 instructors; correct?

25 A Yes. Our health and wellness teachers did
26 participate in that.

27 Q As well as you?

28 A Yes.

1 Q As well as the assistant superintendent; correct?

2 A Yes.

3 Q And as well as your curriculum specialist; right?

4 A Yes.

5 Q And was anybody else in those meetings that that
6 we haven't covered already?

7 A I believe Mr. Regur was in those meetings as well
8 at times.

9 Q Okay. Now, let's go back to the frequently asked
10 questions that we were talking about earlier, and then I
11 will conclude. It's Plaintiffs' Trial Exhibit 5.

12 MR. BROYLES: Is that already in evidence?

13 THE COURT: What number?

14 MR. BROYLES: 5.

15 THE COURT: No.

16 THE CLERK: 5, it is.

17 THE COURT: Is that the frequently asked
18 questions?

19 MR. BROYLES: Yes, Your Honor.

20 THE COURT: Yes, it is in.

21 BY MR. BROYLES:

22 Q Now, before lunch I was asking you about that
23 document, and you indicated that you not only participated
24 in the preparation of the document, but you actually wrote
25 the document; is that correct?

26 A That's correct.

27 Q All right. So these words are generally your
28 words; is that correct, Mr. Baird?

1 A That's true, yes.

2 Q Now, let me just find the right place.

3 Okay. Here it is.

4 If you turn to Page 2 of that document, sir,
5 there's a -- the first question in bold says, "How is the
6 Encinitas yoga program different from a yoga program that
7 might be offered in adults" -- I'm sorry -- "to adults in
8 a yoga studio?"

9 Do you see that?

10 A Yes.

11 Q Okay. And you go on to explain the changes that
12 were made to the poses; is that correct?

13 A Yes.

14 Q And you say here, "The district has made many
15 changes to the yoga program to make it more kid-friendly
16 and to address some of the concerns voiced by a few of our
17 parents. All cultural references to our yoga program have
18 been removed. We do not teach students Sanskrit phrases,
19 and all the yoga poses have been renamed into
20 easy-to-remember words such as gorilla or mountain."

21 Do you see that, sir?

22 A I do.

23 Q Okay. It's the next line, then, I'm interested
24 in here. And you go on to say, "Although the poses
25 themselves are the same physically demanding poses used in
26 adult yoga, students have an easier time remembering our
27 terminology."

28 Do you see that, sir?

1 A I do.

2 Q Now, what do you mean by that?

3 A Well, as I understand -- and I'm not a yoga
4 expert. As I understand, the same poses are used in
5 pretty much all forms of yoga, and our students are using
6 those kind of poses. But they do it at a slower pace,
7 they do it in a way that's -- incorporates correct
8 developmental workouts for kids, and we changed some of
9 the terminology to make it more kid-friendly as well.

10 Q Okay. I appreciate that you're repeating what
11 you said earlier, but I'm asking about what this document
12 says, sir.

13 And here it says, "Although the poses themselves
14 are the same physically demanding poses used in adult
15 yoga."

16 You're not saying there that the poses themselves
17 have been modified, are you, sir?

18 A No, I'm not.

19 Q You're saying above that that the names of the
20 poses have been changed, aren't you?

21 A Yes.

22 Q You're not communicating by these words that the
23 poses themselves have been modified for kids, are you,
24 sir?

25 A No.

26 Q Okay. Now, the question I have is are you aware
27 of the Mayo Clinic recommendations about Ashtanga yoga?

28 A Yes. One of our parents sent that to me.

1 Q Okay. And did you look at it?

2 A I did.

3 Q Did it concern you at all?

4 A No. Because after --

5 Q That's --

6 A Okay. No, it did not.

7 Q That's a yes-or-no question.

8 A No.

9 Q And assuming that you looked into it like you say
10 you have, the Mayo Clinic recommends that there are two
11 types of yoga that young children should not participate
12 in; is that correct?

13 A That was correct.

14 Q Okay. And those two types of yoga are Bikram
15 yoga; correct?

16 A Yes.

17 Q And the other type of yoga is specifically
18 Ashtanga yoga; is that correct?

19 A That's correct.

20 Q All right. Now, let's look at the bottom of
21 Page 2.

22 The context of this, the question is, "Is yoga
23 the only physical education students get all week?"

24 Do you see that, sir?

25 A I do.

26 Q Okay. And again, you provide an answer. It
27 says, "No, yoga is only one component of the district's
28 P.E. program."

1 Do you see that?

2 A I do.

3 Q Okay. And so I'll just ask the next question.

4 "In most of our schools, yoga amounts to
5 approximately half of our instructional minutes devoted to
6 physical education."

7 Do you see that?

8 A I do.

9 Q Okay. "In addition to yoga, our students
10 participate in a variety of other activities, including
11 cardiovascular training, sports, dance, and games";
12 correct?

13 A Yes.

14 Q Now, as a superintendent of the district, you're
15 aware that public schools have an obligation to offer 200
16 minutes of P.E. to students every ten days; correct?

17 A Correct.

18 Q All right. So assuming that EUSD schools were
19 meeting those requirements, yoga would compromise, as you
20 say here, approximately a hundred minutes every two weeks
21 or, if we break it down to a weekly basis, approximately
22 50 minutes per week in most schools according to the FAQ
23 that you wrote; correct?

24 A That's incorrect. You're assuming --

25 Q What?

26 A No, that's incorrect.

27 Q Okay. I have to ask the question.

28 A Please do.

1 Q Why is that incorrect, Mr. Baird?

2 A Because you're assuming that our total number of
3 minutes matches the minimum state requirement for P.E.
4 For example, at El Camino Creek where our plaintiffs are
5 family and students, the teacher provides a hundred and
6 twenty minutes of P.E., and the yoga is on top of that.
7 So if you added the yoga to our total physical education
8 minutes, it would exceed the State minimum requirement for
9 P.E.

10 Q But, sir, that doesn't even closely match what
11 you wrote here.

12 What you wrote here, sir, was that as a component
13 of the total P.E. minutes, yoga was approximately 50
14 percent of that component; isn't that true, sir?

15 MR. SLEETH: Objection; argumentative.

16 THE COURT: Sustained. It's argument.

17 MR. BROYLES: Well --

18 THE COURT: Just ask him a question.

19 BY MR. BROYLES:

20 Q All right. So you say specifically yoga is only
21 one component of the district's P.E. program; right?

22 A Correct.

23 Q So you're telling parents that yoga was
24 considered a component of the overall P.E. program;
25 correct?

26 A Correct.

27 Q It wasn't on top of or different from or in
28 addition to; right?

1 A It's a component of the P.E. program, yes.

2 Q So it's part of P.E., it's not part of something
3 else?

4 A It could be considered part of health and
5 wellness and various other things.

6 Q No.

7 But you counted those minutes in yoga towards the
8 P.E. requirements at that point, didn't you, sir?

9 A That's -- I think you're making that assumption.
10 What I'm telling you is that, for instance, the example I
11 gave you, at El Camino Creek, our students participate in
12 other P.E. activities for a total of a hundred and twenty
13 minutes. And on top of that, in addition to our physical
14 education program, we provide even more physical
15 education, which is the yoga component. So our students
16 meet the minimum State standards, but they still don't
17 have to participate in the yoga to do so. And I believe
18 you have a deposition from our principal stating that.

19 Q I'm not asking about the principal, sir. I'm
20 asking what you wrote here.

21 A Okay.

22 Q Okay. Do you recall telling parents in a board
23 meeting where they were complaining about not getting
24 enough P.E. minutes that the school district did not have
25 the resources to make up lost P.E. minutes if they opted
26 their kids out of the program?

27 A The question was asked from a parent who had not
28 yet been implemented into a yoga program. It was a school

1 that was going to come online in January. And what the
2 question was is, "Will you run a dual P.E. program at that
3 time to accommodate for my child?"

4 And we said, "No."

5 The -- you know, we preferred that everybody stay
6 within our regular P.E. program. However, our teachers --
7 and I've already referenced El Camino Creek. Our teachers
8 provide the hundred and twenty minimum minutes through
9 classroom P.E. The yoga component is an extension of that
10 as part of our district P.E., which exceeds the State
11 minimum.

12 Q You keep saying a hundred and --

13 THE COURT: Can I ask a question?

14 MR. BROYLES: Yes.

15 THE COURT: Mr. Baird, I just want to make sure.

16 Are you saying if the yoga program were
17 eliminated, your students in all nine schools would still
18 get a minimum of 200 hours of P.E. every ten days?

19 THE WITNESS: Yes.

20 THE COURT: That's what you're saying?

21 THE WITNESS: Yes. I know there was concern
22 early on that we run a dual program, but our teachers
23 provide that backup.

24 THE COURT: Independent of the yoga?

25 THE WITNESS: Yes.

26 BY MR. BROYLES:

27 Q But at the time you wrote this, that wasn't being
28 provided, was it, sir?

1 A At the time we wrote this, those schools hadn't
2 implemented yet. And we were being asked to run a second
3 P.E. program, and we said we would not be able to do that.

4 Q I'm not talking about schools that didn't
5 implement it, sir. I'm talking about schools that did
6 implement it at this time.

7 You wrote this in November or December of 2012;
8 is that not true, sir?

9 A I don't know exactly what date I wrote this
10 document. Sometime in the fall.

11 Q Okay. It was the fall of this year, 2012; right?

12 A Yes.

13 Q All right. And here you're saying we have this
14 category called P.E.; right?

15 A Yes.

16 Q And part of P.E. -- a component of P.E. is our
17 new yoga program; right?

18 A Yes.

19 Q And another component of that is what else --
20 whatever else teachers teach in their classrooms; correct?

21 A Yes.

22 Q And that's a hundred percent of the universe of
23 P.E. at that time that you wrote this document; right?

24 A Yes.

25 Q There's no other P.E. that's being offered
26 besides those areas; right?

27 A Well, there is. We have -- in some of our
28 schools, we have P.E. specialists that will teach other

1 components of P.E. Some of our schools have dance
2 programs, for instance.

3 Q Okay.

4 A So yes, there are other programs.

5 Q Okay. But those all fit in with the universe of
6 either what the teacher is teaching, what yoga is doing,
7 or what some extra-curricular like Kinderate or --

8 A Yes.

9 Q -- programs have --

10 A Yes.

11 Q So there's only 100 percent of your P.E.
12 requirements; right?

13 A No, that's not correct. We can exceed a State
14 minimum.

15 Q No, no. I understand. I haven't said it was 200
16 minutes or 500 minutes.

17 A Yeah, yeah. That's -- 200 minutes, is what I
18 understand.

19 Q I'm just trying to make sure we're talking about
20 the same universe of P.E.

21 A Yes.

22 Q Within that universe at a minimum every five
23 days --

24 A Yes.

25 Q -- you need to teach 100 minutes; right?

26 A Yes.

27 Q And every ten days, you need to teach 200-minute
28 minimum; right?

1 A Well, actually, the only requirement is every ten
2 days, the 200 minutes.

3 Q Okay.

4 A Yeah.

5 Q We'll be clear, then. Every ten days, you have
6 200 minutes to provide.

7 In this universe that you're describing here, you
8 are saying, "Yoga amounts to approximately half of our
9 instructional minutes devoted to physical education," are
10 you not, sir?

11 A Yes.

12 Q And that was true at the time you wrote it?

13 A Yes, but you're --

14 Q So -- well --

15 THE COURT: Wait.

16 BY MR. BROYLES:

17 Q Let me just -- okay. So how -- however much time
18 you have. So it could -- if you had 200 minutes, right,
19 assuming you had -- a particular school had 200 minutes,
20 50 percent of those would have been yoga, 50 percent of
21 those would have been something else; correct?

22 A If you make that assumption.

23 THE COURT: But you're assuming that it's limited
24 to 200 minutes.

25 MR. BROYLES: For that question, I am.

26 BY MR. BROYLES:

27 Q But let's make it 500 minutes; right?

28 A Okay.

1 Q If the school offers 250 minutes of yoga --

2 A Right.

3 Q -- and 250 minutes of something else, that gets
4 us to 500 minutes; right?

5 A Right.

6 Q Okay. So you would admit that at this point in
7 most of your schools, yoga was making up about half of
8 your P.E. minutes?

9 THE COURT: Which point, this point today or this
10 point back in November?

11 MR. BROYLES: This point November of 2012.

12 THE WITNESS: That's not true. Because, first of
13 all, half our schools weren't doing the yoga program at
14 that time.

15 BY MR. BROYLES:

16 Q I'm not asking --

17 A You just did, about all of my schools.

18 Q You're talking about yoga in the schools that
19 it's already in in this document, aren't you?

20 A Yes.

21 Q Okay. And that's all I'm asking about.

22 A Okay.

23 Q I'm asking about what you're writing about --

24 A Okay.

25 Q -- not something that's going to happen in
26 January of the next year, okay?

27 So if you're -- okay. So at this time in schools
28 that were offering yoga, however many minutes of P.E. they

1 were offering, approximately 50 percent of it was yoga; is
2 that correct?

3 A Yes.

4 Q Okay.

5 A I would say less.

6 Q So this statement is true; right?

7 A It's a generality. Some of our schools did
8 different things. All of our schools had various P.E.
9 programs.

10 Q Okay, but -- yeah. I understand each school is
11 different. Each classroom is going to be different.

12 A Yes, right.

13 Q But generally, this is a true statement; right?

14 A Generally.

15 Q Okay. Now, let's turn to the next page. The
16 question that you pose and answer is, "What if a family
17 does not want their child to participate in yoga?"

18 Is that -- that's your question; right?

19 A Yes.

20 Q And your answer was, quote, "Our preference would
21 be that all children participate in this important
22 component of their P.E. program. However, we are
23 sensitive to our families' needs. If a parent, after
24 taking their child's principal" -- I'm sorry -- "talking
25 with their child's principal asks to opt their child out
26 of the program, each school will provide alternative
27 activities during the regular yoga instruction."

28 Do you see that?

1 A Yes.

2 Q Okay. And then it goes on to say, "Due to
3 staffing restrictions, these alternative activities may
4 not always be physical education, and in these cases
5 parents will be asked to help ensure their children are
6 getting an appropriate amount of weekly exercise."

7 Do you see that, sir?

8 A Yes, I do.

9 Q Okay. So my understanding of what you're saying
10 here is that you do provide alternatives -- alternative
11 activities for the kids who opt out in the fall of 2012 in
12 your district; right?

13 A Yes.

14 Q Okay. And not all of those activities are
15 physical education or P.E.; correct?

16 A Correct.

17 Q Okay. So for those families who opt their kids
18 out, you're encouraging them to make sure their kids get
19 enough exercise; right?

20 A Correct.

21 Q And the reason you're encouraging them to help
22 their kids get enough exercise is because their children
23 will be getting less than the State minimum requirement of
24 200 minutes; isn't that true, sir?

25 A That's not true.

26 Q And why is that?

27 A Because that's not what it says here. What it
28 says here is -- excuse me -- during the time when their

1 class is in yoga, we aren't guaranteeing that there is
2 going to be a P.E. program at that time. However, their
3 teacher -- and again, I'll reference back to El Camino
4 Creek -- their teacher provides the hundred and twenty
5 minimum minutes of physical education required.

6 Students that are opting out of yoga are getting
7 less physical education than the rest of our students at
8 El Camino Creek, and so we're encouraging parents to,
9 "Make sure your kids stay physically active." But our
10 students at El Camino Creek where our plaintiffs are from,
11 their teachers provide classroom instruction P.E. for the
12 200 minutes every ten days. On top of that, in addition
13 to that, our P.E. program does incorporate yoga
14 instruction as well.

15 Q And did you ever tell parents at any of the board
16 meetings that answer, sir?

17 A We answered a lot of stuff. I can't tell you
18 exactly what I said word for word at a board meeting.

19 Q Did you ever tell parents that their kids were
20 getting 200 minutes and yoga was only on top of that 200
21 minutes, sir?

22 A I believe that your clients have been told that
23 their children are getting 200 minutes, if that's what
24 you're asking.

25 Q Did you ever send out any specific letter saying,
26 "Hey, there's nothing to worry about here in the last six
27 to seven months since this issue came up," saying,
28 "There's nothing to worry about here. All kids are

1 getting 200 minutes even if they opt out of yoga"?

2 A I believe that the parents who have opted out
3 have spoken with their principals and have been told that,
4 yes. I have not sent out a mass mailer to our families
5 stating that.

6 Q Well, it's an important issue whether these
7 parents get 200 minutes; isn't that true, sir?

8 A It's an important issue that they get their P.E.
9 requirement, yes.

10 Q And that was an issue of some of the parental
11 complaints you were getting in the fall; right?

12 A That was one of the components.

13 Q So why didn't you trumpet that you had fixed the
14 problem?

15 A As I stated, I believe that we did and that we
16 expressed that through our principals.

17 Q So let's take a school and a kid and work out the
18 math here.

19 200 minutes of P.E. every ten days; right? So if
20 we have a kid who opts out of 60 minutes of yoga a week,
21 two 30-minute sessions in several elementary schools;
22 right?

23 A Yes.

24 Q Isn't that the norm, there's two 30-minute
25 sessions for the younger kids?

26 A Yes.

27 Q You multiply that by two weeks, we get a hundred
28 and twenty minutes; right?

1 A Yes.

2 Q So that child is -- who is supposed to be getting
3 200 minutes minimum, if they opt out, they're getting a
4 hundred and twenty minutes -- they're not getting a
5 hundred and twenty minutes, correct, unless it's replaced
6 with something else; right?

7 A Right.

8 Q Okay. Just make sure I'm doing my math right.
9 I'm an attorney, not an accountant.

10 THE COURT: It's two 30-minute sessions a week?

11 MR. BROYLES: For the younger kids of yoga.

12 THE WITNESS: Yes.

13 THE COURT: Okay.

14 BY MR. BROYLES:

15 Q So that child, unless it's replaced, is getting
16 80 minutes; right?

17 A No.

18 Q No, no. I'm saying unless it's replaced with
19 something else.

20 A Yes.

21 Q If they opt out of yoga; right?

22 A Yes.

23 Q So that's a hundred and twenty minutes of yoga
24 instruction out of the 200 minimum every two weeks; right?

25 A I don't know. We've gotten up into math here.
26 Yes.

27 THE COURT: 30 times four.

28 THE WITNESS: Yes. That's -- but it's the same

1 thing we've been saying. Yes. It's a hundred and twenty
2 minutes over the course of the two weeks, yes.

3 THE COURT: So yoga is 30 times four?

4 THE WITNESS: Yeah.

5 THE COURT: I mean he's correct?

6 THE WITNESS: Yes.

7 MR. BROYLES: We're all on the same page.

8 BY MR. BROYLES:

9 Q So if that person opting out of yoga is missing a
10 hundred and twenty minutes, okay, they're getting 80;
11 right?

12 THE COURT: But they're --

13 BY MR. BROYLES:

14 Q So to make it up --

15 THE COURT: They're opting out of yoga and
16 they're not -- there's no P.E. to replace it.

17 MR. BROYLES: Well --

18 THE COURT: Right? I mean, that's a hypothetical
19 question, but --

20 MR. BROYLES: He's saying there is.

21 THE COURT: -- it's part of your hypothetical
22 that that child is not getting any substitute P.E.; no
23 yoga, and they're not doing any P.E. --

24 MR. BROYLES: Yeah, that's part of my
25 hypothetical.

26 THE COURT: -- to replace the yoga. Okay.

27 BY MR. BROYLES:

28 Q So that kid right now until anything else happens

1 is getting a hundred and twenty minutes -- is a hundred
2 and twenty minutes deficit; right?

3 A No. He's 80 minutes deficit. If you -- oh,
4 you're talking about the yoga.

5 Q The yoga opter-outer is losing a hundred and
6 twenty minutes every two weeks?

7 A Yes.

8 Q They're getting 80 minutes. They're losing --
9 they're missing of the hundred and -- 200 minimum, they're
10 losing a hundred and twenty; right?

11 A Right.

12 Q So to make up that difference from the loss of
13 yoga, they would need how many more minutes?

14 A It would be a hundred and twenty minutes.

15 Q Hundred and twenty.

16 A Yes.

17 Q So what you want us all to believe is that on top
18 of yoga, every student in that school is being offered an
19 extra hundred and twenty minutes?

20 MR. SLEETH: Objection; argumentative.

21 THE COURT: Well, I -- I'm not sure it's
22 argumentative, but I --

23 THE WITNESS: Asked and answered.

24 THE COURT: Well, you already -- you already -- I
25 think, unless I'm missing something, you already testified
26 that the student is getting --

27 THE WITNESS: Yeah.

28 THE COURT: -- more than a -- than a hundred and

1 twenty --

2 THE WITNESS: Yes.

3 THE COURT: -- minutes. So the student is
4 getting 320 minutes, a hundred and twenty minutes of which
5 are yoga; right?

6 THE WITNESS: That's correct.

7 THE COURT: That's, I think, what he's already
8 testified to.

9 MR. BROYLES: Your Honor, that's exactly what I'm
10 moving towards.

11 BY MR. BROYLES:

12 Q So that hypothetical student would have to have
13 be offered at least a total of 320 minutes; is that
14 correct?

15 THE COURT: He's already --

16 THE WITNESS: Yes. They get the 200 minutes with
17 their classroom teacher or other sources.

18 THE COURT: Plus a hundred and twenty minutes.

19 THE WITNESS: Yes.

20 THE COURT: And if the student says no yoga, then
21 it's 200 minutes.

22 THE WITNESS: Yes.

23 BY MR. BROYLES:

24 Q So it's your testimony that the local school
25 district -- or the local schools that we're talking about
26 have enough time in their calendar now to offer that much
27 P.E. to everyone?

28 A That's -- that's what we're doing.

1 Q Is that --

2 THE COURT: 200 minutes.

3 MR. BROYLES: Well, more than 200 minutes.

4 THE COURT: 200 minutes plus yoga.

5 MR. BROYLES: Yes.

6 THE COURT: Yes.

7 BY MR. BROYLES:

8 Q 200 minutes plus yoga would be 320.

9 Every child in every school in your district that
10 now has yoga, you would have to be offering over 320
11 minutes of P.E. to those children.

12 Is that what's happening in your schools, sir?

13 A Yes.

14 Q And you have the time to offer those minutes?

15 A Their classroom teachers do this through a
16 variety of ways, yes.

17 Q And you --

18 A Yes.

19 Q What you really want us -- well, strike that.

20 So you're exceeding the two -- the ten-day
21 requirement -- minimum requirement actually by, what, a
22 hundred and forty minutes every two weeks?

23 THE COURT: Hundred and twenty.

24 MR. BROYLES: I'm sorry?

25 THE COURT: Hundred and twenty.

26 BY MR. BROYLES:

27 Q A hundred and twenty minutes every two weeks in
28 your schools?

1 A Yes.

2 Q And you guys have time to fit that all in now?

3 A Yes.

4 Q As of November of 2012 when you wrote this
5 document, though, was that -- was that occurring then? In
6 the schools that had yoga, was that occurring then, sir?

7 A What we explained to parents -- and again, at the
8 time, we were not building an alternative P.E. during the
9 time that yoga was taking place. And so it was on an
10 individual basis we had to determine what students, what
11 grade level, what was taking place.

12 And, you know, all principals then reviewed their
13 schedule and made sure that if they had students that were
14 nonparticipating, that their classroom teacher was making
15 sure that that class got 200 minutes of P.E. So --

16 Q So --

17 A -- I would say in most of our classes, the
18 students are participating in yoga. So not every one of
19 our classes in all of our schools are doing 320. There
20 are some, such as I mentioned where your plaintiffs
21 attend, that we do have that in place.

22 Q With due respect, Dr. Baird, you've failed to
23 answer my question, which was as of November when you
24 wrote this FAQ, were the kids who had yoga taught in their
25 schools being offered a total of 320 minutes of P.E.

26 A I believe that -- at that time, I couldn't tell
27 you specifically about each and every student. We were
28 making individual provisions at that time. I will tell

1 you that in the fall, we instructed our principals that if
2 students were not getting the 200 minutes through their
3 classroom teacher and they were opting out, then the class
4 should make sure that they get the 200 minutes every ten
5 days.

6 Q So what you're saying is as of November of 2012,
7 you really don't know what was happening --

8 A I --

9 Q -- with these yoga kids -- with these kids who
10 opted out of yoga; isn't that correct, sir?

11 A I can't tell you the specific time, but I can
12 tell you that all kids are getting their 200 minutes of
13 instructional P.E.

14 Q You keep say, "are getting."

15 A Yes.

16 Q I'm talking about November, sir. Let's focus on
17 November of 2012, please, because I've seen the
18 declaration now that is claiming all district schools are
19 offering 320 minutes plus of P.E., and I'm just amazed by
20 it. But I want to focus --

21 A That's not what they're saying.

22 Q I want to focus -- well, they're saying that
23 on --

24 THE COURT: Ask a question.

25 MR. BROYLES: Okay.

26 BY MR. BROYLES:

27 Q Sir, at the time you wrote this document, you
28 were not a hundred percent sure that the kids who opted

1 out were getting their P.E. minutes; isn't that true, sir?

2 A We weren't -- I would agree with that. We didn't
3 know which kids were opting out and where they were and
4 which classrooms. We did know that we were offering 200
5 minutes of P.E.

6 Q So -- and why -- that's why you wrote the
7 paragraph we just went over, isn't that true, that yoga
8 was approximately half of the requirement -- or the P.E.
9 universe and that parents needed to help supplement their
10 kids' P.E. because you weren't sure at the time you wrote
11 this that all kids were having their P.E. requirements
12 met; isn't that true, sir?

13 THE COURT: Do you understand the question?

14 THE WITNESS: Not really.

15 THE COURT: I think he's testified he wasn't 100
16 percent sure in November. I think that's the answer that
17 I have so far.

18 THE WITNESS: Yeah.

19 MR. BROYLES: Okay. And I'm tracking with that.

20 THE COURT: Maybe he was 99 percent sure. I
21 don't know. But it wasn't a hundred percent.

22 BY MR. BROYLES:

23 Q Okay. So sometime after November and sometime
24 after you wrote this FAQ, the district made changes in how
25 P.E. was offered to try to make up the lost minutes; is
26 that correct?

27 A That's correct. Half of our students were not on
28 the program at this time, so we were designing it prior to

1 implementation for all of our schools.

2 Q Again, I'm not talking about the half that
3 weren't. I'm talking about the half who were at the time.

4 And just to be clear, all schools today are
5 offering a minimum of 200 minutes to kids, you're saying,
6 whether they opt out of yoga or not?

7 A Yes.

8 Q And so some schools, that's possibly as much as
9 320 minutes of yoga; is that correct?

10 A No.

11 Q Why not?

12 A Because you said 320 minutes of yoga.

13 Q I'm sorry. 320 minutes of P.E.

14 A That's correct.

15 Q Okay. Now, again, one last time, did you ever
16 notify parents of that change between November and today?

17 A The notification of parents was done on an
18 individual basis. We have very few families that have
19 opted out. Our principals worked with those families to
20 design specific programs for the families that best met
21 the interest of the family, and we were able to do it
22 within the constraints of what we were available to offer.

23 That's why this didn't go out on a districtwide
24 letter to parents, because it was a very few number of
25 families. And we did it individually based upon the
26 individual needs of the families.

27 Q Isn't it true, Dr. Baird, that you made these
28 changes just in the last 30 or more days as a response to

1 this lawsuit?

2 A No.

3 Q When did you make this change, sir?

4 A We have made changes in our program throughout
5 the course of starting it and to where we are today.

6 Q I'm not talking about other changes, sir. I'm
7 talking about this change to offer that much P.E. to all
8 children in your district, sir.

9 When did you make that change?

10 THE COURT: Mr. Broyles.

11 THE WITNESS: We never made that change, sir. We
12 don't offer that program to all students in our district.

13 THE COURT: I'm not sure that he's testified
14 regarding a discrete change. What I have so far is that
15 in November, he wasn't a hundred percent sure that
16 students that dropped out of yoga were getting their 200
17 minutes, and now he is sure.

18 So I suppose inferentially or impliedly there's a
19 change. But I don't know -- when you're referring to a
20 change, you're assuming that there was some discrete
21 change, and I don't think he's established that. So I
22 just want to make sure that you're on the same page or I'm
23 not going to get a meaningful answer.

24 MR. BROYLES: Well, your Honor, what he said
25 is --

26 THE COURT: I'm just saying, that's what I'm
27 gathering at this point.

28 ///

1 BY MR. BROYLES:

2 Q So is it your testimony that EUSD has always
3 offered more than 320 minutes to students in its schools
4 since this yoga program started?

5 THE COURT: He's not --

6 THE WITNESS: No, I didn't say that.

7 THE COURT: -- a hundred percent sure of that in
8 November, but he is now.

9 THE WITNESS: That's correct.

10 THE COURT: That's the testimony that I got.

11 BY MR. BROYLES:

12 Q Do you have any idea how that -- the new
13 additional minutes, how that came to be, sir?

14 THE COURT: You mean why he's sure now as opposed
15 to --

16 MR. BROYLES: Yeah, why he's sure now and why he
17 wasn't sure then.

18 THE WITNESS: Because --

19 THE COURT: Do you understand that question.

20 THE WITNESS: I think so, your Honor.

21 You know, a number of our schools came online in
22 January. We were working with parents prior to that. And
23 we needed to see where the students were that were opting
24 out, what classes they were in, what other programs we
25 offered at that same time.

26 So to say that we would have a program in place
27 at the beginning in January, in November, whatever, would
28 have been premature. You had to address the solution to

1 the issue. And the issue was once we identified where the
2 families were, we rectified it. So...

3 BY MR. BROYLES:

4 Q How many instructional minutes are available per
5 week in your schools total for elementary schools? How
6 many instructional weeks -- what's the universe of
7 instructional minutes in a school week for you?

8 A I don't know. I'd have to -- I'm not sure. We
9 go from 8:00 to 2:20. Fridays are a short day. That's --

10 Q All right. Now, you indicated in your trial
11 declaration that Capri, in partnership with the Jois
12 Foundation, had taught Ashtanga yoga at Capri during the
13 2011 to 2012 school year.

14 And that was a type -- a sort of pilot program
15 for Ashtanga yoga; is that correct?

16 A No. I believe I testified that we had had a yoga
17 program at Capri. I don't believe I used the word
18 "Ashtanga" in my declaration.

19 Q All right. The person who taught that course,
20 she teaches at the Jois shala; right?

21 A I don't know what she does on her own time. She
22 teaches for our program Monday through Friday.

23 Q Okay. So you don't know what the basis of the
24 yoga that was being taught at Capri in that school year
25 was?

26 A No.

27 THE COURT: This is 2011?

28 MR. BROYLES: Yes, the year before.

1 THE COURT: And this is the pilot program?

2 MR. BROYLES: Yes.

3 BY MR. BROYLES:

4 Q Now, you claim that you saw student improvements
5 at Capri, including increased --

6 THE COURT: Excuse me. The pilot program was
7 just started in one school?

8 THE WITNESS: Just one school. It was actually
9 started as a school initiative, not a district initiative.
10 We had nothing from a district level to do with the
11 curriculum, the training of the teacher, the selection of
12 the teacher. That was done at the school site. We got
13 involved as a district in 2012.

14 THE COURT: Okay.

15 BY MR. BROYLES:

16 Q I'm going to refer you briefly to Exhibit 8.

17 Do you see the document? It's a GLPD gazette.

18 A Yes.

19 Q Okay. I'm talking about the right-hand column
20 under "Health, wellness, and yoga."

21 Do you see that, sir?

22 A Yes, I do.

23 Q And the date of this document is September 2012;
24 correct?

25 A Correct.

26 Q And is Parkdale Lane one of the schools in your
27 district?

28 A Yes, it is.

1 MR. BROYLES: I want to offer this into evidence,
2 your Honor, as Exhibit 8.

3 MR. SLEETH: No objection.

4 THE COURT: All right. 8 will be received.

5 MR. BROYLES: Okay.

6 (Exhibit 8 received into evidence.)

7 BY MR. BROYLES:

8 Q Looking at this document, sir, and under "Health,
9 wellness," it says, "Inhale, Ms. Echo and
10 Ms. Gierbauer" -- I'm sorry if I pronouncing that
11 incorrectly -- "will be our yoga and health teachers this
12 year at PDL." Then it says, "Exhale."

13 I guess inhale/exhale is referring to breathing?

14 MR. PECK: So stipulated, your Honor.

15 BY MR. BROYLES:

16 Q "Our school district has been given a generous
17 grant by the Jois Foundation, and it's part of a big
18 three-year research study."

19 Do you see that, sir?

20 A I do.

21 Q And that's true; right?

22 A I would say the research study is in place to
23 study the program. I don't think it's part of the
24 research study. It's semantics perhaps.

25 Q But is it a big three-year research study?

26 A There is a three-year research study in place,
27 yes.

28 Q And you're excited about this research study as a

1 school district; right?

2 A Yes.

3 Q And you've even appeared in Jois Foundation promo
4 videos to promote the program nationwide, haven't you,
5 sir?

6 A Yes, I have.

7 Q Now, let's look at the second paragraph here. It
8 says, "It includes a process of gathering data, i.e.,
9 teaching grades K through 6 to take and record their own
10 resting heart rates weekly to see how a mindful approach
11 to health through yoga, meditation, and nutrition promotes
12 positive relationships, academic achievement, and students
13 who are ready to learn."

14 Do you see that, sir?

15 A I do.

16 Q Do you see the word "meditation" there?

17 A I do.

18 Q Does that word concern you at all as the
19 superintendent of this district?

20 A It's not a word that we're using in our
21 discussion of the program, but I didn't write this
22 document.

23 Q The FAQ that we just reviewed that you wrote, you
24 didn't talk about meditation there, did you, sir?

25 A No.

26 Q Now, it goes on to say in the next paragraph,
27 "We'll begin practicing the basics of Ashtanga yoga
28 starting with a primary series."

1 Do you see that, sir?

2 A Yes.

3 Q Okay. And that's saying that Ashtanga yoga is
4 going to be taught at Parkdale Lane; isn't that correct?

5 A Yes. This document was probably written from the
6 same source documents that you've been referencing, but
7 yes. It was done before school started.

8 Q All right. So do you dispute that Ashtanga yoga
9 was taught at Parkdale Lane, sir?

10 A I would say that the yoga that was taught at
11 Parkdale Lane is the EUSD yoga, and this was -- I'm sure
12 that whoever wrote this -- I don't know if it was the
13 principal or our parents do some of this work -- used the
14 same source documents you did, which, if you had looked at
15 the source documents from August or July, you would have
16 seen the word "Ashtanga."

17 Q I'm not talking about source documents. I'm not
18 talking about the grant. I'm talking about what this
19 document says, sir.

20 A I'm sure that's what led to this document.

21 Q Okay. So somehow you shared the source documents
22 with teachers in your schools?

23 A Yes.

24 Q So you gave them a copy of the grant? You showed
25 it to them?

26 A I think lots of people saw some of the source
27 documents, yes.

28 Q So you -- are you trying to imply that Ashtanga

1 yoga was not taught at Parkdale Lane, sir?

2 A I think that the yoga that -- and I've already
3 testified to this. The yoga that we're teaching at
4 Parkdale Lane as well as our other eight schools is our
5 version of yoga.

6 Q I didn't ask you what yoga you were teaching as
7 if you're teaching it today.

8 I'm talking about when this document was written
9 in September of 2012, do you have any reason to dispute or
10 any basis for -- to dispute that Ashtanga yoga was being
11 taught at Parkdale Lane?

12 A I would -- I would state that this document was
13 probably written before school started. And therefore, no
14 yoga was being taught when this document was written. We
15 start school in mid-August, and this is probably the first
16 flier that went home prior to the program getting off the
17 ground.

18 Q Did you personally observe the classes in early
19 2012 at Parkdale Lane, sir?

20 A Yes, I have.

21 Q I mean at Parkdale Lane, the yoga classes.

22 A I've been to all of our schools and observed.

23 Q But -- you've been. I'm asking as of September
24 of 2012, did you go and observe the class?

25 A I'm sure I saw the class at Parkdale Lane. If
26 you're asking me my calendar on what day and what time, I
27 can't tell you, sir.

28 Q Okay. So my question is earlier you stated you

1 really don't know what Ashtanga yoga is; isn't that
2 correct?

3 A That's correct.

4 Q So if you saw Ashtanga yoga being practiced at
5 Parkdale Lane in September of 2012, you wouldn't know;
6 isn't that true, sir?

7 A That's probably true.

8 Q All right. Now, it says starting with the
9 primary series.

10 Do you see that?

11 A Yes.

12 Q Do you know what the primary series is?

13 A I don't know what they're referencing unless
14 they're talking about the opening sequence, which we've
15 already talked about.

16 Q And that's also known as surya namaskara;
17 correct?

18 A If you say so.

19 Q No, I'm asking --

20 A I don't know what else -- we call it the Opening
21 Sequence A.

22 Q Now, I need to do some yoga apparently.

23 Okay. I will move on.

24 So before -- oh, back to the improvements, the
25 question I was asking before we got distracted.

26 Now, you claim that you saw improvements at
27 Capri.

28 Specifically you say in your trial declaration

1 that you saw increased academic gains at Capri; right?

2 A That is correct.

3 Q And you also said that there were principal --
4 I'm sorry -- there were principal reports of improved
5 playground and classroom behavior --

6 A Correct.

7 Q -- is that true?

8 Okay. Was there a rigorous scientific study done
9 at Capri of Capri students during the 2011 to 2012 school
10 year, sir?

11 A Not if you're talking about a university study,
12 no.

13 Q Yeah, I'm talking about a peer-reviewed study
14 that would pass the smell test in science.

15 Was there any type of study done of the Capri
16 students?

17 A No.

18 Q Okay. So as we sit here today, you really don't
19 know what caused any of the improvements, if any, in those
20 Capri students; is that correct?

21 A We certainly can point at certain things. We
22 look at lots of evidence without getting peer-reviewed
23 studies. There are very few peer-reviewed studies that
24 districts use to drive curriculum development.

25 Q But if their grades were better, you don't know
26 what caused their grades to be better, do you, sir?

27 A We can look at certain elements. If you've
28 implemented new programs, you can say these are the new

1 programs that have been implemented.

2 Q Well, kids' grades can be based on many factors;
3 right?

4 A Right, but I think as --

5 Q Well --

6 A Yes.

7 Q It could be how things are at home; right?

8 Correct?

9 A Yes, yes. Many things go into grades.

10 Q How the weather is; correct?

11 A Yes.

12 Q Whether they're being tutored; right?

13 A Right.

14 Q Okay. And you didn't control for any of those
15 factors before you decided to expand the program; right?

16 A No, we didn't.

17 Q Okay. So you took a few anecdotal stories and
18 some overall vague grade improvement, and then you
19 expanded the program districtwide; is that correct?

20 MR. SLEETH: Objection; argumentative.

21 THE COURT: Overruled.

22 THE WITNESS: We looked at data that we thought
23 was pertinent, and we expanded the program. Because as
24 the judge clearly stated earlier, we get to control the
25 curriculum. And I don't believe that's what this is
26 about, whether it's a good program or a bad program. We
27 believe it's a good program, and we saw evidence at Capri
28 that led us to say this is worth expanding.

1 BY MR. BROYLES:

2 Q Okay. Now, you didn't discuss any specific
3 results or attach any proof of improvements to your
4 declaration filed with this Court, did you?

5 A No, because it wasn't relevant.

6 Q Well, you thought it was relevant, though, to
7 tell us that the students saw improvement, though, didn't
8 you?

9 A It was relevant for me to make the decision as
10 the educational expert to do that, to make a decision
11 about the curriculum that we have. As it pertains to this
12 case, I don't believe it's relevant because that's my --
13 that's my -- under my control.

14 Q And a study regarding the EUSD's Ashtanga yoga
15 program wouldn't even begin until the following year, this
16 year; right?

17 A Correct.

18 Q And that's the study that we've been talking
19 about that's being done this year by two universities;
20 right?

21 A Yes.

22 Q And so not knowing the true impact of the program
23 on children, sir, positive or negative, at least not
24 scientifically speaking, you decided to meet with Mr. Gene
25 Ruffin of the Jois Foundation late in that school year to
26 discuss expanding the program into all EUSD schools this
27 year; is that correct?

28 A That's correct.

1 MR. SLEETH: Objection; argument. Motion to
2 strike argument.

3 THE COURT: It's untimely.

4 BY MR. BROYLES:

5 Q And you say in your declaration that the net
6 result of that meeting was a decision to expand the
7 program into all nine EUSD schools the following year;
8 correct?

9 A That's correct. It's all in the deposition.

10 Q Okay.

11 A Or the declaration. I'm sorry.

12 MR. BROYLES: One moment, your Honor.

13 THE COURT: Sure.

14 MR. BROYLES: All right. No further questions.

15 THE COURT: All right. Mr. Sleeth, direct exam.

16 MR. SLEETH: Thank you.

17

18 DIRECT EXAMINATION

19 BY MR. SLEETH:

20 Q Let's break down the 200 minutes. It sounds like
21 a lot of minutes.

22 How many minutes is that a day in that ten-year
23 period -- in that ten-day period?

24 A It's 20.

25 Q Do you have time to provide 20 minutes of
26 physical activity to your students per day?

27 A Yes.

28 Q And how often do the yoga classes meet in the

1 elementary schools?

2 A Usually twice a week, 30 minutes a day -- or 30
3 minutes a time.

4 So that would be -- on the days that the yoga
5 class met, how many minutes would be spent doing physical
6 activity total?

7 A On the days that the yoga class -- just 30
8 minutes.

9 Q Plus?

10 A Plus the 20. It would be 50 minutes.

11 Q 50 minutes.

12 All right. And you have time --

13 A Yes.

14 Q -- in your schedule to do that and teach the
15 other things you have to teach?

16 A Yes.

17 Q All right. Focusing your attention on the
18 plaintiffs in this case, what school are they attending?

19 A They attend El Camino Creek.

20 Q And to your knowledge, did they ever become
21 involved in the yoga program at all, ever?

22 A No. To my knowledge, I don't believe they have
23 observed the program. Their child has not participated in
24 the program.

25 Q Did each of the --

26 A Or their children, I should say.

27 Q Did each of the two plaintiff children get 200
28 minutes every ten days during the first semester of this

1 school year from September 2012 to January 2013?

2 A Yes, that is correct.

3 MR. BROYLES: Objection; lacks foundation.

4 THE COURT: How do you know that?

5 THE WITNESS: I know that because there wasn't
6 even a yoga program in place during that first time
7 period. They weren't at one of our pilot schools.

8 THE COURT: Overruled.

9 BY MR. SLEETH:

10 Q After they opted out of the program, did they
11 continue to get 200 minutes every ten days?

12 MR. BROYLES: Objection; lacks foundation.

13 THE WITNESS: Yes.

14 THE COURT: Lay some foundation.

15 BY MR. SLEETH:

16 Q Did you look into the number of minutes that the
17 plaintiff children were getting after the beginning of the
18 full program in January?

19 A Yes. I contacted the principal, discussed it
20 with the principal, who reviewed with both teachers and
21 looked at lesson plans, and they were getting 200 minutes
22 every ten days in P.E. outside of the yoga program.

23 Q All right. Moving away from the subject of the
24 plaintiffs in this case, you said you weren't a hundred
25 percent sure that all of the students who opted out during
26 the beginning of the program last year got their full 200
27 minutes.

28 How confident are you that the students got --

1 most of the students got their 200 minutes?

2 MR. BROYLES: Objection.

3 THE COURT: In November?

4 MR. SLEETH: Yes. Between September and the
5 beginning of this new semester.

6 MR. BROYLES: Objection; lacks foundation, asked
7 and answered.

8 THE COURT: Well, he's -- that was when you asked
9 him, but I think he's got the right to follow up on that.
10 But I'm not sure what your -- what are we talking about,
11 November --

12 MR. SLEETH: Let's --

13 THE COURT: -- of 2012 or now or how confident is
14 he now going back then or now?

15 MR. SLEETH: I'll do now in a minute, but I was
16 doing between September -- well, there is a foundation
17 question that I ought to ask right there.

18 BY MR. SLEETH:

19 Q Did all of the parents who had the option to opt
20 out --

21 THE COURT: When --

22 BY MR. SLEETH:

23 Q -- of the yoga program opt out at the same time?

24 A No, they did not.

25 Q How did you deal with the determination of the
26 number of P.E. minutes those students were getting as they
27 opted out?

28 A Well, generally the opt-out was a very personal

1 conversation and decision between the parent and the
2 principal. Generally, we would meet with them. We would
3 try to give information to the parents. We would ask them
4 to observe a class, if they would, so they could see what
5 was actually happening.

6 But at the end of the time, we wanted to respect
7 our parents' beliefs, and so we would allow for the
8 opt-out, and then we would work out whatever unique
9 situation we needed to work out to address the needs of
10 the child.

11 THE COURT: But we're talking about from --
12 September to January, we're talking about five schools.
13 From January to now, we're talking about nine schools.

14 THE WITNESS: All nine schools, yes.

15 THE COURT: So there are almost twice as many
16 students involved?

17 THE WITNESS: Yes, that's correct.

18 THE COURT: So there might be twice as many
19 opt-outs?

20 THE WITNESS: Yes. And --

21 THE COURT: Maybe more; maybe less?

22 THE WITNESS: Yes. It varied.

23 BY MR. SLEETH:

24 Q During that first semester?

25 THE COURT: With five schools.

26 BY MR. SLEETH:

27 Q With five schools, between September and December
28 of 2012, how many students --

1 A I don't know exactly how many students opted out.
2 I do know that we met individually with each of the
3 students, and the principals would work out a plan with
4 those -- with the families.

5 Q When you said you weren't a hundred percent sure
6 that all of those students got their 200 minutes, how sure
7 are you?

8 A That's -- I'm confident that we're providing that
9 now, and I'm confident that the principals worked with
10 those families to make it happen. So yeah.

11 Q All right. Now that -- now let's move to January
12 2013 up to the present.

13 Have other parents opted out?

14 A We have had parents opt out after our second
15 round of schools came on, yes.

16 Q And have you looked into whether those students
17 are obtaining their 200 minutes of P.E. after opting out
18 of the yoga program?

19 MR. BROYLES: Objection; vague, lacks foundation.

20 THE COURT: Overruled.

21 THE WITNESS: We -- I haven't individually every
22 student who's opted out. But what we have worked through
23 our principals to make sure that teachers are providing
24 the 200 minutes.

25 BY MR. SLEETH:

26 Q In fact, your principals reported to you that all
27 of the students are now receiving their 200 minutes?

28 A Yes. They reported through the assistant

1 superintendent, who has reported to me that our students
2 are getting their 200 minutes of P.E.

3 Q Okay. And as superintendent, do you rely on your
4 staff?

5 A I do rely on my staff.

6 Q Let me change to the subject of religion now, but
7 I'd like to have some of your background for the Court
8 here.

9 Could you give us just a thumbnail sketch of your
10 educational background.

11 A Yes. I have a doctorate from the University of
12 Southern California in educational policy. I have a
13 master's degree from Cal State Fullerton in educational
14 leadership, and I have a bachelor's in history from Cal
15 State Fullerton in educational leadership. I have a
16 teaching credential from Cal State Fullerton, and I'm 32
17 years in the educational business, the last ten served as
18 a superintendent.

19 Q In the course of your career in education, have
20 you taught in an elementary school?

21 A I have. I taught for six years in the Irvine
22 Unified School District.

23 Q How long ago was that?

24 A That was a while ago.

25 Q Do you have an occasion now from time to time to
26 go into elementary school classrooms?

27 A Yes. I'm in elementary school classrooms all the
28 time.

1 Q All right. Are you able to observe a class
2 activity and tell us whether a reasonable student would
3 feel that they were being indoctrinated with religion or
4 their religion was being interfered with by looking at the
5 class?

6 MR. BROYLES: Objection; lacks foundation. He's
7 not qualified as an expert, your Honor.

8 THE COURT: Sustained.

9 Rephrase the question.

10 BY MR. SLEETH:

11 Q Did you see anything when you looked at the
12 program as it is currently constituted in your classes
13 that gave you the impression that a reasonable student
14 would feel that they were being indoctrinated with
15 religion?

16 MR. BROYLES: Same objection.

17 THE COURT: Overruled.

18 THE WITNESS: I have seen nothing that would
19 indicate that students are being indoctrinated. In my
20 training as a teacher, as a principal, as an assistant
21 superintendent, and as a superintendent, we do get clear
22 and specific training about religious entanglement.

23 THE COURT: That's a pretty simple --

24 THE WITNESS: Yes.

25 THE COURT: He's not asking for an expert
26 opinion, I don't think.

27 THE WITNESS: Okay. No. So I have seen nothing
28 that would demonstrate indoctrination.

1 BY MR. SLEETH:

2 Q Okay. You know, you said that you were at Park
3 Lane and saw the program at its inception.

4 A Yes.

5 Q Last year?

6 A Yes.

7 Q Were they using Sanskrit words then to describe
8 the poses?

9 A No.

10 Q Were they doing anything then that gave you the
11 impression that it would indoctrinate a student?

12 A No.

13 Q Was there anything that you saw in there that was
14 of a flavor of religion in the classroom last year?

15 A None whatsoever.

16 Q Have there been changes to the curriculum between
17 that time in September, October, November of last year to
18 the present to make the program less offensive to people
19 who objected to it?

20 A There have been changes made over time. I think
21 most of them actually occurred very early in the program
22 development.

23 Q Do you know if that eight-limbed poster of yoga
24 was up in a classroom? There was some talk about --

25 MR. BROYLES: Objection; vague as to time.

26 THE WITNESS: I believe that was during the pilot
27 school year that we're talking about.

28 ///

1 BY MR. SLEETH:

2 Q Do you know how long it was up?

3 A I think it was just for a day. And when somebody
4 had objected, then it was taken down.

5 Q All right. And was there ever a time that you
6 saw instructors in your classroom using any of the
7 Sanskrit names for any of the positions?

8 A No. Once we started developing the curriculum,
9 that has not been part of it.

10 MR. SLEETH: Just a moment.

11 THE COURT: Mr. Sleeth, while you have a minute,
12 can I ask a question?

13 MR. SLEETH: Sure.

14 THE COURT: When you talked about observing the
15 yoga class and the question is did you observe something
16 that would tend to give these students something with a
17 religious flavor, my understanding of the question is
18 pretty broad, which would include a broad spectrum of
19 religion. Not just Western religion, but other religion.
20 And I guess we're getting from specific religion and
21 denominations to spiritualism and mysticism, and that's
22 what we're talking about here.

23 You understood that?

24 THE WITNESS: I understand that, and it's -- to
25 do that, you would have to speak to origination myths or
26 you would have to teach a doctrine. What happens in our
27 classes is is that we --

28 THE COURT: I mean, was there anything that you

1 observed that would --

2 THE WITNESS: Nothing like that.

3 THE COURT: -- that would impart religion in a
4 very broad sense?

5 THE WITNESS: Nothing.

6 THE COURT: Okay.

7 MR. SLEETH: I liked your question, your Honor.

8 I'd like to ask another one just almost like that.

9 BY MR. SLEETH:

10 Q Was there anything that you saw the teachers
11 teaching that would attempt to impart any kind of a belief
12 at all?

13 A Only in health and wellness. Really there was
14 instruction in physical movement, in stretching, in
15 breathing, in nutrition, and our character education
16 development program which we've already had in place
17 throughout the district.

18 Q And describe with some more detail the character
19 program.

20 A The character program really is promoting those
21 kind of things that we would like our students to exhibit;
22 things such as responsibility, perseverance, caring. And
23 so there is usually a character education component as
24 part of the curriculum that's being developed where
25 students will learn about responsibility, and then they'll
26 maybe, you know, read a story about it and then carry that
27 conversation out not just in the yoga class, but also back
28 in their homeroom class.

1 Q What was the primary reason that the district
2 became involved in the yoga program?

3 A To improve the health and wellness of our
4 students.

5 MR. SLEETH: Nothing further, your Honor.

6 THE COURT: Mr. Peck.

7 MR. PECK: I have a few questions, your Honor.
8 Your Honor, if I may stay at counsel table, it will
9 probably save some time.

10

11 DIRECT EXAMINATION

12 BY MR. PECK:

13 Q Good afternoon, Dr. Baird.

14 The yoga program in the district you've
15 referenced as the EUSD program?

16 A Yes.

17 Q Do you teach Ashtanga yoga in the program?

18 A No.

19 Q And yoga, I believe Ashtanga, Bikram, EUSD, it
20 consists of poses; is that correct?

21 A That's correct.

22 Q And those poses can be performed in a variety of
23 sequences.

24 Is that your understanding, too?

25 A That's my understanding.

26 Q Now, Mr. Broyles brought up a study apparently
27 performed by the Mayo Clinic or a commentary by the Mayo
28 Clinic that talked about Ashtanga perhaps being less than

1 ideal for children.

2 Do you recall that?

3 A I do.

4 Q Was that the poses, the sequences, was it the
5 religion or the potential for religious indoctrination?
6 What was it that the Mayo Clinic had concerns about?

7 A What I read in the article was it was not the
8 poses themselves. It was the sequencing and how quickly
9 you went through the sequencing. And it was designed --
10 the study that they were reviewing was Ashtanga yoga that
11 has been designed for adults being given to children, and
12 that's not what we're doing.

13 So when I read the article and I saw the
14 references that they were making, they were talking about
15 taking an adult yoga program and delivering that same
16 program to children. That's not what we're doing, and
17 that's why I did not have concerns about that program.

18 Q So if I understand you correctly, Dr. Baird, even
19 though the district is using some of the same poses as
20 adults might perform, the actual sequencing is wholly
21 different?

22 A And the pacing, I think, is really important
23 there as well, yes.

24 Q Now, does the district have authority to
25 terminate any of the yoga instructors it desires and
26 terminate its relationship with these instructors?

27 A Yes.

28 Q Does the Jois Foundation have any say in that?

1 In other words, do you have to get the Jois Foundation's
2 blessing before you can terminate a relationship?

3 A No, not at all.

4 Q If I heard you correctly, Dr. Baird, two of the
5 current yoga instructors were, in fact, teaching at the
6 district prior to implementation of the yoga program?

7 A That is correct.

8 Q And they were already approved by the district
9 for educating our students?

10 A That is correct.

11 Q And they went and got this certification through
12 the Jois Foundation and came back and continued teaching
13 those students; true?

14 A Yes.

15 Q Did either of those two educators indicate that
16 they had undergone any sort of religious transformation
17 between the time they taught the students and the return
18 to teaching the yoga program?

19 A No. In fact, as I understand it, there's very
20 little speaking that goes on during the practice. They
21 just demonstrate the poses and then show them the right
22 way to hold the pose and how to do sequences.

23 Q So the certification process is what you're
24 referring to?

25 A Yes.

26 Q And it's your understanding that, in fact, that
27 certification process is more physical than it is
28 educational in the sense of learning origins?

1 A Yes. It's only physical.

2 THE COURT: Mr. Peck, can I ask a question before
3 I forget?

4 MR. PECK: Absolutely.

5 THE COURT: I want to make sure I understood your
6 answer to something.

7 If a yoga instructor who has been certified by
8 Jois does something inappropriate, I assume that would be
9 seen by the other teacher or teachers in the class?

10 THE WITNESS: Yes.

11 THE COURT: In other words, this is not a teacher
12 in a class without other teachers.

13 THE WITNESS: We -- it's done in various ways at
14 different schools. In many of our schools, the teacher
15 goes in the classroom with them and other ways. But the
16 answer to your question is is that we can dismiss that
17 teacher through our arrangement with --

18 THE COURT: No. All I'm saying is, though, that
19 this yoga instructor is part of a teaching team.

20 THE WITNESS: Yeah. Usually, yes.

21 THE COURT: It's not like the yoga teacher is
22 there for the day and nobody else is around.

23 THE WITNESS: They may be. A number of our
24 teachers have teaching credentials as well.

25 THE COURT: But the ones that don't.

26 THE WITNESS: Yeah, they're usually with either
27 another teacher or the classroom teacher is there.

28 THE COURT: If, for whatever reason, the district

1 gives -- the principal finds out or someone goes to the
2 principal about a yoga teacher doing something
3 inappropriate, what would be the protocol to get rid of
4 that teacher?

5 THE WITNESS: Well, we would go through --

6 THE COURT: This would be a non-certificated
7 employee.

8 THE WITNESS: We'd still go through our due
9 process to make sure that the complaint is valid and
10 verifiable. Depending upon what the issue was, we would
11 take appropriate stances. If it was something serious
12 enough to dismiss that person, we would simply contact
13 Regur and say that we're asking that that teacher be
14 removed from our contract, and it would happen
15 immediately.

16 THE COURT: So they don't have a hearing with
17 Regur or Jois? It's just up to the district?

18 THE WITNESS: It's up to the district. We would
19 have a contract with Regur & Associates to provide us with
20 the nine teachers that we get to pick, and train, and that
21 we get to dismiss if we don't want them.

22 THE COURT: And if this were a certificated
23 employee, then you'd have to go through the --

24 THE WITNESS: Not even then because they don't --
25 they technically are not our employees. We contract
26 through a company to work with them. We have similar
27 contracts with some of our speech and language folk where
28 we can just say, "We'd rather that teacher not come back,"

1 and they don't.

2 THE COURT: Have you had to dismiss?

3 THE WITNESS: We have not. We have excellent
4 teachers.

5 THE COURT: Okay.

6 MR. PECK: I think you took about three of my
7 four questions there, your Honor. I appreciate that.

8 BY MR. PECK:

9 Q Dr. Baird, on your frequent visits to these
10 elementary classrooms, would it be correct to say that
11 you're looking for inappropriate as well as appropriate
12 teaching methods?

13 A Exactly.

14 Q And if you notice anything that would be
15 inappropriate, what would be the district's typical
16 response?

17 A Well, if it was something minor, for instance,
18 perhaps one of our teachers were not, you know, solving a
19 problem among students in an appropriate way, we would
20 give them training in terms of how to do that. And that's
21 been part of the staff development that we've provided,
22 which is classroom management control and various other
23 elements of effective teaching.

24 Q And you expect the yoga instructors in the
25 district to follow the EUSD curriculum; correct?

26 A Yes.

27 THE COURT: How much more time do you have? I
28 want to give the reporter a break.

1 MR. PECK: Last question, your Honor.

2 BY MR. PECK:

3 Q Dr. Baird, do you have any reason to believe that
4 the EUSD yoga instructors are actually trying to inculcate
5 these students in Hinduism or Eastern mysticism or any
6 other kind religious philosophy?

7 A No.

8 THE COURT: Recross?

9 MR. BROYLES: Briefly, your Honor. Very briefly.

10 THE COURT: Well, I don't want to cut you off. I
11 want to give the reporter a break.

12 Would this be a good time to take a break or do
13 you want to --

14 MR. BROYLES: I will be probably five to seven
15 minutes.

16 THE COURT: Five to seven?

17 MR. BROYLES: Yeah, maybe less.

18 THE COURT: Maybe eight?

19 Unless you really want --

20 MR. BROYLES: We can break, your Honor.

21 THE COURT: Okay. I think it would be fine.
22 Let's take a break. Let's take 15 minutes, and we'll be
23 back at 3:15.

24 (Recess.)

25 THE COURT: All right. Mr. Broyles, recross.

26 MR. BROYLES: Yes, Your Honor.

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REXCROSS-EXAMINATION

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BY MR. BROYLES:

Q Now, there was testimony about what would happen regarding if a yoga teacher wasn't doing their job and had to be fired; right?

A Yes.

Q Do you remember that testimony before we broke?

A Yes.

Q Okay. So if a teacher is fired who's teaching yoga, they would be replaced by a teacher who was trained by the Jois Foundation; isn't that correct?

A Who would be certified that they have the yoga skills, yes.

Q Yeah.

But that would be a requirement of the rehired -- the rehire for that position where the teacher was fired; right?

A Yes.

Q So that requirement hasn't changed; right?

A No.

Q Okay. Now --

THE COURT: Well, when you said "Right," he's right.

THE WITNESS: Yes.

THE COURT: Okay.

THE WITNESS: Yes, correct.

BY MR. BROYLES:

Q So you seemed to have your recollection refreshed

1 a little bit when Mr. Peck asked you about the yoga
2 program and Ashtanga yoga.

3 I asked you a question earlier, and you seemed to
4 indicate that you weren't really sure about Ashtanga yoga
5 and what is involved with it; is that correct?

6 A Specifically, no.

7 Q Let me be specific, then.

8 A Yeah.

9 Q You indicated to Mr. Peck new information to me
10 which was that somehow the order or the sequence or the
11 speed of the poses in the series of poses was somehow
12 modified for EUSD; is that correct?

13 A Yes.

14 Q Yet in your FAQ when you address -- I took it
15 out. Will you look at Exhibit No. 5 for me, sir. You
16 said, didn't you, quote --

17 THE COURT: Wait, where are you?

18 MR. BROYLES: Exhibit 5, your Honor.

19 THE COURT: Yeah, where?

20 MR. BROYLES: Page 2, top of the page, first
21 question and first answer.

22 THE COURT: Do you have that there?

23 THE WITNESS: Yes.

24 BY MR. BROYLES:

25 Q The question was, "How is Encinitas yoga program
26 different from a yoga program that might be offered to
27 adults in a yoga studio?"

28 Do you see that?

1 A Yes.

2 Q Now, programs that might be offered to adults in
3 a yoga studio include Ashtanga yoga taught by Jois;
4 correct?

5 A Yes.

6 Q So that's one of the yoga programs that you might
7 be referring to.

8 Now, what you said here, though, sir, contradicts
9 what you actually told Mr. Peck earlier. It says, quote,
10 "Although the poses themselves are the same physically
11 demanding poses used in adult yoga, students have an
12 easier time remembering our terminology."

13 Do you see that?

14 A I see that, yes.

15 Q So what you meant by that is the poses themselves
16 aren't changed; isn't that true, sir?

17 A Yes.

18 Q Okay. And you meant that the poses are still
19 strenuous or physically demanding; correct?

20 A Yes.

21 Q And that's why you have it as a part of the P.E.
22 program; isn't that true?

23 A Yes.

24 Q Okay. So since you don't really understand or
25 know what's involved in Ashtanga yoga, you wouldn't really
26 know whether the poses themselves were modified; isn't
27 that true?

28 A I didn't say the poses were modified. What I

1 said was the pacing was modified and the sequencing, and I
2 got that from the article that talked about this is more
3 of an adult focus type yoga. So...

4 Q I'm not asking about the article, sir. I'm
5 asking about the actual practices and teachings in your
6 district.

7 Do you understand that?

8 A So please repeat the question.

9 Q Okay. So my question is in your district, the
10 poses that are being done are the same physically
11 demanding poses used in adult yoga studios; isn't that
12 true, sir?

13 A Yes, my understanding is the poses are the same.

14 Q Okay. Now, regarding the funding of this
15 program, I asked an inartful question earlier. Let's get
16 away from the documents themselves and just let me ask you
17 a practical question.

18 If EUSD, for whatever reason, had decided in
19 December of 2012 before they decided to expand the program
20 to all nine district schools to end the program, to stop
21 proceeding under the grant, you would not have received
22 any further Jois grant funding; isn't that correct, sir?

23 A Yes.

24 Q Now, regarding the opt-out, why did you allow
25 students to opt out of the program?

26 A We were trying to listen to our parents and find
27 a middle ground for them. Our preference would be that
28 they didn't opt out because we believe it's a solid

1 program that students should participate in.

2 Q Do you allow students to opt out of math classes
3 in your district, sir?

4 A No, generally we don't.

5 Q Do you allow children to opt out of history
6 lessons in your district?

7 A No.

8 Q If you didn't believe -- if you don't believe, as
9 you clearly stated, that the program is in any way
10 religious or has any religious content, why then did you
11 provide an opt-out to the parents?

12 A We did it to try to meet the needs of the
13 parents.

14 Q Now, there was some confusing testimony in
15 response to Mr. Sleeth's question that raised an issue
16 that I'm learning here for the first time.

17 It's my understanding that the majority of yoga
18 classes that are being taught in your district are taught
19 by single teachers; is that correct, sir?

20 A Yes.

21 Q Okay. And the usual experience for those
22 teachers is to be teaching that yoga class alone; isn't
23 that true, sir?

24 A Not always, no. Classroom teachers accompany in
25 many cases.

26 Q In some cases, they accompany; right?

27 A I would say many.

28 Q What do you mean by "many," sir?

1 A A number of. More than a few.

2 Q Okay.

3 THE COURT: Mr. Broyles, can I ask a question? I
4 just want to make sure I understand.

5 MR. BROYLES: Sure.

6 THE COURT: These students are in a classroom?

7 THE WITNESS: Yes.

8 THE COURT: And the classrooms are -- what's a
9 classroom, 20, 30 students in a classroom?

10 THE WITNESS: Yeah. 24, 30, yes.

11 THE COURT: But the yoga's taught in the
12 multi-purpose room?

13 THE WITNESS: In many cases. Not always.
14 Sometimes in the classroom.

15 THE COURT: Oh.

16 THE WITNESS: Yeah.

17 THE COURT: Okay. But if it's taught in a
18 multi-purpose room, this is a much bigger room? This is
19 like an auditorium; right?

20 THE WITNESS: Yes.

21 THE COURT: Gymnasium?

22 THE WITNESS: Yes.

23 THE COURT: And there is more than one class?

24 THE WITNESS: No. Usually, it's just one.

25 THE COURT: Oh, okay. But isn't the
26 multi-purpose room more conducive to yoga?

27 THE WITNESS: It is, but we often have other
28 things going on; if there's a play, for instance, that's

1 taking place or something. So it's nice -- some of our
2 schools have found that it's better to have a dedicated
3 space so that the yoga can always go on so that you're not
4 continually moving that whenever there's a play or a
5 musical performance.

6 THE COURT: But doesn't yoga require a room
7 without furniture?

8 THE WITNESS: Yes.

9 THE COURT: So what do you do in the classroom?

10 THE WITNESS: Well, what we do is we've got
11 dedicated classrooms that are set up for our yoga
12 instruction.

13 THE COURT: So the kids in a classroom with desks
14 would move to another --

15 THE WITNESS: Yes.

16 THE COURT: -- either the multi-purpose room or a
17 vacant classroom, and they put their yoga mats down?

18 THE WITNESS: Yes. And we've done this before
19 with our other P.E. programs that were indoors, too, where
20 we had a dedicated class.

21 THE COURT: Would they go with the yoga teacher
22 or would the yoga teacher be there or would their
23 classroom teacher take them?

24 THE WITNESS: All of the above.

25 The COURT: I see. Okay.

26 BY MR. BROYLES:

27 Q You just said that in some of the classrooms,
28 there may periodically be someone besides the yoga

1 teacher; is that correct?

2 A Yes.

3 Q And sometimes it's only the yoga teacher and the
4 students; isn't that correct?

5 A Yes.

6 Q And some of the videos that you'll be showing us
7 later, it seems to be only taught by or led by one
8 teacher; is that correct?

9 A Yeah, that's usually the case.

10 Q That's usually the case.

11 So it's actually more rare that another adult
12 teacher would be in the room; isn't that correct,
13 Mr. Baird?

14 A No. What you asked earlier was is it led by one
15 person. That would be, yes, a yoga teacher. Oftentimes,
16 the teacher is in the class, and sometimes they're doing
17 the yoga with the students or sometimes they're just
18 observing in the back.

19 THE COURT: And the class is a half an hour?

20 THE WITNESS: Yes.

21 THE COURT: Never more; never less?

22 THE WITNESS: No. Sometimes it's 40 minutes,
23 too.

24 THE COURT: About a half an hour?

25 THE WITNESS: In that range, yes.

26 THE COURT: Okay.

27 BY MR. BROYLES:

28 Q And sometimes the extra teacher that you're

1 referring to, this hypothetical extra person, is not
2 there; correct?

3 A Yes.

4 Q So it's --

5 THE COURT: Is there ever more than one class?
6 Like if you got the multi-purpose room, are there
7 sometimes two classes --

8 THE WITNESS: I don't think --

9 THE COURT: -- having yoga at the same time?

10 THE WITNESS: We usually don't do that.
11 Sometimes we have a couple of instructors at one time
12 where that's happened, but most -- our general practice is
13 that it's one class at a time.

14 THE COURT: Of how many students, 20 to 30?

15 THE WITNESS: 24 to 30, yeah.

16 BY MR. BROYLES:

17 Q All right. You testified earlier that Sanskrit
18 was an element of the original yoga curriculum; correct?

19 A Sanskrit was part of the pilot class that took
20 place at Capri.

21 Q Okay. To your knowledge, why was Sanskrit in the
22 original curriculum, sir?

23 A I believe that Sanskrit is because in most yoga
24 studios, you will hear the poses called in Sanskrit terms.

25 Q Do you know what the Sanskrit terms that were on
26 the wall meant?

27 A No.

28 Q Okay. Do you know if there are any students who

1 may have understood what the Sanskrit meant?

2 A Not that I'm aware of.

3 Q And so you don't know whether the yoga instructor
4 explained the meaning of the Sanskrit terms on the wall to
5 the students, do you, sir?

6 A At what point in time are we talking about? Are
7 you talking about during the pilot year?

8 Q During the pilot year.

9 A I don't know what was done during that year.
10 That was not our district program that we're addressing
11 now.

12 Q Okay. And there's been testimony actually from
13 some of your witnesses and some of our witnesses that the
14 yoga tree with eight branches and the Sanskrit terms were
15 actually also on a classroom wall in the beginning of this
16 year.

17 Do you understand that?

18 A Yes. Now that you've -- I was thinking that was
19 last year, but I think that was at the very beginning of
20 the school year. And that was the case, where it was
21 taken down after one day.

22 THE COURT: Are we talking about August or
23 September or July?

24 THE WITNESS: Yeah. We're talking about in the
25 very beginning of school year, like September-ish, I
26 think, yeah.

27 BY MR. BROYLES:

28 Q Okay. So that was done -- when I say "that," I

1 mean there was a yoga tree on the wall with Sanskrit
2 terms -- last year at Capri; correct?

3 A Yes.

4 Q And there was a yoga tree with Sanskrit terms on
5 the wall in the beginning of this school year; correct?

6 A Yes. I think it was in the same classroom at
7 Capri, but I think that poster was just left up.

8 THE COURT: In one school?

9 THE WITNESS: Yes.

10 BY MR. BROYLES:

11 Q Okay. And do you know if any of the students
12 understand Sanskrit, sir?

13 A No, I don't.

14 Q Okay. Do you believe -- strike that.

15 Do you understand that for Hindus, Sanskrit is a
16 holy and religious language, sir?

17 MR. PECK: Lacks foundation.

18 MR. SLEETH: Objection; lacks foundation.

19 THE COURT: Overruled.

20 If you know.

21 THE WITNESS: No, I don't know that.

22 BY MR. BROYLES:

23 Q Okay. If you didn't know that Sanskrit was a
24 holy and religious language to Hindus, why would you have
25 that tree with the Sanskrit removed from the classroom,
26 sir?

27 A We had a parent that complained about it, and we
28 were trying to comply and make our parents feel

1 comfortable.

2 MR. BROYLES: No further questions.

3 THE COURT: Mr. Sleeth, anything further?

4 MR. SLEETH: Nothing, your Honor.

5 THE COURT: Mr. Peck, anything further?

6 MR. PECK: Nothing, your Honor.

7 THE COURT: All right. Can this witness step
8 down?

9 MR. SLEETH: Yes.

10 THE COURT: Okay. Thank you, sir.

11 THE WITNESS: Thank you.

12 THE COURT: Mr. Broyles, next witness.

13 MR. BROYLES: Your Honor, because of the speed at
14 which we're going and the availability of my expert, I
15 would like to call her out of order next.

16 THE COURT: Sure.

17 MR. BROYLES: We call Candy Brown, Dr. Candy
18 Brown.

19 THE CLERK: Thank you, ma'am. Would you please
20 have a seat at the witness stand.

21 MR. CARELLI: Your Honor, if I may, just before
22 the witness starts, I'm going to be leaving at 4:15. Jack
23 will be here, Mr. Sleeth. He'll take care of the witness.

24 THE COURT: Fine. Okay.

25 THE CLERK: Ma'am, would you please state your
26 name for the record and spell both your first and last
27 name.

28 THE WITNESS: My name is Candy Gunther Brown,

1 C-a-n-d-y B-r-o-w-n.

2 THE CLERK: Thank you.

3

4

CANDY GUNTHER BROWN,

5

having been called as a witness by the plaintiffs,

6

was first duly sworn and testified as follows:

7

8

DIRECT EXAMINATION

9

BY MR. BROYLES:

10

Q Good afternoon, Dr. Brown.

11

Could you tell the Court where you live.

12

A I currently live in Oxford in the United Kingdom

13

where I'm on sabbatical until July of this year. My

14

permanent home is in Bloomington, Indiana.

15

Q What is your profession, Dr. Brown?

16

A I'm a tenured university professor of religious

17

studies.

18

Q How long have you been a professor of religious

19

studies?

20

A I've been teaching religious studies to

21

university students for the past 16 years. My first two

22

full-time appointments were in history and American

23

studies departments, and I've had my current appointment

24

in religious studies department for seven years.

25

Q Whom do you work for currently?

26

A Indiana University.

27

Q How long have you been a professor at Indiana

28

University?

1 A For seven years.

2 Q What courses have you taught at Indiana
3 University?

4 A Religion, Illness, and Healing; Religion Health
5 and Healthcare Management; Sickness and Health; Religion
6 and American Culture; Introduction to Christianity;
7 Evangelical America; and Women and Religion. I've also
8 advised about 24 dissertations and theses.

9 Q Did you teach anywhere before Indiana University?

10 A Yes. I taught in the religion and in the history
11 and literature programs at Harvard University from 1996 to
12 1999 and at -- in the comparative literature department at
13 Lesley University in 1998. I taught in the history
14 department at Vanderbilt University for one year from 2000
15 to 2001, and I taught in the American studies department
16 at Saint Louis University from 2001 to 2006. And then I
17 started my appointment at Indiana University as an
18 associate professor of religious studies in 2006 until the
19 present, and then my department has just voted to put me
20 up for promotion to full professor at Indiana.

21 Q Congratulations.

22 Have you taught any courses relating to Hinduism,
23 Buddhism, Western metaphysics, or yoga?

24 A Yes, I have.

25 Q How long have you been teaching courses related
26 to Hinduism, Buddhism, Western metaphysics, and yoga?

27 A For seven years.

28 Q What courses have you taught relating to

1 Hinduism, Buddhism, Western metaphysics, and yoga?

2 A Religion, Illness, and Healing; Religion Health
3 and Healthcare Management; Sickness and Health; Religion
4 and American Culture; and Women and Religion.

5 Q Professor Brown, would you please tell the Court
6 what colleges or universities you've attended and what
7 courses of study you've pursued.

8 A All of my degrees are from Harvard University. I
9 received a B.A. summa cum laude in History and Literature
10 in 1992, and my honors thesis was on religion, women and
11 religion. My M.A. is in the history department also at
12 Harvard in 1995. And my Ph.D was in the History of
13 American Civilization or American Studies department in
14 2000.

15 Q Is it usual or the normal course for Harvard
16 undergraduates to continue their graduate studies at
17 Harvard?

18 A No, it isn't because it's actually much more
19 difficult to get accepted to the graduate programs if you
20 were there as an undergraduate.

21 Q What is required to earn a Ph.D in history of
22 American civilization at Harvard?

23 A First there are two years of coursework, then
24 there are comprehensive oral examinations in four fields.
25 Two of my four fields were in religion divided
26 chronologically and then in history and in literature.
27 And then there's a dissertation that's approved by two --
28 by three committee members. Two of my members, including

1 my primary advisor, were at the Divinity School and with
2 the committee on religion, and my third professor was in
3 the literature department and focused on religion.

4 Q Did any of your coursework at Harvard pertain to
5 Hinduism, Buddhism, Western metaphysics, or yoga?

6 A Yes.

7 Q Okay. Would you please tell us about those.

8 A I studied scholarly books about world religions
9 in my coursework preparing for my religion oral exams.
10 And between 1993 and 2000, I was part of a twice weekly
11 research colloquium at the Divinity School that was
12 attended by graduate students and faculty from the greater
13 Boston area who were presenting works in progress on all
14 the world religion traditions as well as theory and method
15 in the study of religion.

16 Q Have you ever taken or attended any special
17 courses, seminars, lectures, or instructional programs in
18 religious studies since you received your Ph.D. from
19 Harvard?

20 A Yes, I have.

21 Q Could you please describe those.

22 A I regularly attend and present at professional
23 society meetings such as those of the American Academy of
24 Religion and the American Society of Church History. And
25 I'm also a part of a lecture series and workshops of works
26 in progress hosted by the Center for Religion and American
27 Culture in Indianapolis and by the Indiana University
28 department of religious studies. And those topics range

1 across all the world's religious traditions.

2 Q Did you focus on or pursue any specialized
3 academic areas after graduating?

4 A Yes. My research contributes to several areas in
5 religious studies. These include religion and science,
6 ethics, globalization, spiritual healing practices,
7 complementary and alternative medicine including yoga and
8 meditation, comparative religions, Evangelical/Pentacostal
9 Christianity, Hinduism, Buddhism, Taoism, and Western
10 metaphysics.

11 Q Tell the Court how you keep up with the latest
12 developments in the area of religious studies.

13 A I keep abreast of recent books and articles, I
14 attend national conferences, and I'm on the Research Prize
15 Committee for the American Society of Church History. And
16 in that capacity, I read basically all the recent
17 publications in the field.

18 Q Is there anything else you do to keep up with the
19 latest developments in Hinduism, Buddhism, Western
20 metaphysics, or yoga?

21 A Yes. I'm always browsing publisher catalogs and
22 looking at recent titles, I'm on list-serves, I do book
23 reviews, and I'm constantly conducting Internet searches.

24 Q Now, before we continue with your qualifications,
25 Professor Brown, you were retained by the National Center
26 for Law and Policy to review, evaluate, and render expert
27 opinion testimony about the yoga program in the Encinitas
28 Union School District, weren't you?

1 A Yes.

2 Q Okay. Are you being paid for your professional
3 services in this case by the National Center for Law and
4 Policy or anyone else?

5 A No, I'm not.

6 Q So just to be clear, you will not be paid for any
7 of your testimony in court today; is that correct?

8 A That is correct.

9 Q All right. I'm going to be asking you now about
10 professional societies and organizations.

11 A Okay.

12 Q Professor Brown, are you or have you been a
13 member of any professional associations?

14 A Yes.

15 Q Could you please describe them for the Court.

16 A I'm a current member of the American Academy of
17 Religion, the American Society of Church History, the
18 Society for the Scientific Study of Religion, and the
19 Sociology -- or the religion section of the American
20 Sociological Association.

21 Q Have you held any offices or special positions in
22 the American Academy of Religion?

23 A Yes. I've served on the Evangelical Theology
24 Group's steering committee from 2006 to 2010 and as chair
25 of that committee from 2008 and 2010. And just to explain
26 what that committee -- or that what organization is is the
27 American Academy of Religion is the world's largest
28 professional society of scholars of religion. It has

1 about 10,000 members worldwide.

2 Q Thank you.

3 What is the American Society of Church History?

4 A It is an association of professional scholars of
5 Christianity and culture including the relationship
6 between Christianity and other world religions.

7 Q Have you held any offices or special positions in
8 the American Society of Church History?

9 A Yes. I served as chair of the Membership
10 Committee from 2007 to 2010, on the Council from 2008 to
11 2010, on the Nominations Committee in 2010, and on the
12 Research Prize Committee from 2012 to the present.

13 Q Dr. Brown, what is the American Sociological
14 Association section on sociology of religion?

15 A It's an association of scholars who use sociology
16 to study religion in society.

17 Q Professor Brown, have you done any speaking,
18 writing, or lecturing on subjects relating to Hinduism,
19 Buddhism, Western metaphysics, or yoga?

20 A Yes, I have.

21 Q Can you tell us a little bit about the different
22 topics you've spoken on and the groups or organizations
23 you've spoken to?

24 A I've given a number of lectures on complementary
25 and alternative medicine including yoga and meditation at
26 various professional societies and universities. So
27 including at the American Academy of Religion; at the
28 Indiana Wesleyan School of Nursing; the Oxford Center for

1 Mission Studies; United Theological Seminary in Ohio;
2 Lancaster University in the UK; Uppsala University in
3 Sweden; and I'm scheduled to give related talks at
4 ASCH/AAR annual meetings and at those of the American
5 Society of Church History; at Birmingham University in the
6 UK; at IU Health Ball Memorial Hospital in Muncie; and at
7 the Union Presbyterian Seminary in Virginia.

8 I've also given a number of lectures in the field
9 of religion and science and how the terminology of
10 "religion" and "science" are used often in cultural
11 debates, including for the Americans Studies Association
12 annual meeting, at Yale University, Heidelberg University
13 in Germany, Virginia Commonwealth University, Butler
14 University, Boston College, Vanguard University in
15 California, and for the Secular Alliance of Indiana
16 University.

17 THE COURT: You had mentioned alternative
18 medicine.

19 THE WITNESS: That is correct.

20 THE COURT: Like meditation?

21 THE WITNESS: Yes.

22 THE COURT: And acupuncture.

23 THE WITNESS: Yes.

24 THE COURT: Okay.

25 THE WITNESS: As well as chiropractic and
26 alternative cancer remedies and a variety of other kinds
27 of alternatives that people use.

28 ///

1 BY MR. BROYLES:

2 Q Dr. Brown, have you published any articles or
3 books dealing with the topics of Hindusim, Buddhism,
4 Western metaphysics, or yoga?

5 A Yes, I have.

6 Q Please describe the books or articles for the
7 Court.

8 A Well, first of all, if I could just explain some
9 of the general research that I've done in this area, and
10 then get to the books.

11 Is it okay if I do that?

12 Q Sure.

13 A I've been conducting this general program of
14 research on complementary alternative medicine. I'll just
15 say CAM for short. So including yoga, meditation, and
16 these other practices we've mentioned and the relationship
17 specifically to religious traditions, including
18 Christianity, Hinduism, Buddhism, Western metaphysics.
19 And I've been doing this for the past ten years.

20 The research includes historical and literary
21 analysis of both written texts and audiovisual materials.
22 It includes ethnographic research, surveys, interviews,
23 observation. It includes sociological study, including
24 qualitative and quantitative analysis, including
25 statistics. My work includes biomedical and clinical
26 studies of the empirical effects of health practices or
27 healing practices on health, and it includes the analysis
28 of scientific publications and systematic reviews of

1 medical literature in clinical studies.

2 And this research builds upon training and
3 experience that I've had since 1989 in historical,
4 literary, religious, and cultural analysis, including
5 close readings of texts, historical and cultural
6 contextualization of practices and documents, assessments
7 of what people mean when they use terminology such as
8 "religion" and "science," and comparisons of scientific
9 research with popular use of scientific language.

10 And so this has resulted in a number of books.

11 Did you have --

12 THE COURT: You're kind of talking over my head.

13 THE WITNESS: Okay. So --

14 THE COURT: But for -- what I get out of what
15 you're saying is somebody that claims that they were cured
16 of a disease by positive thinking would be in your
17 statistical analysis when somebody says they weren't
18 cured. In other words, that's what your --

19 THE WITNESS: When I'm using statistical
20 analysis, that will generally be one of two types of
21 research that I've done. It could be survey research
22 where I'm doing statistics on the results of that
23 research, and it's also been clinical studies.

24 So, for instance, of praying for healing and kind
25 of statistically is it significant what the improvements
26 being reported after the prayer practice was or is it not
27 statistically significant?

28 THE COURT: It can be -- prayer, it can be

1 meditation, it can be something --

2 THE WITNESS: Exactly

3 THE COURT: -- out of mainstream of --

4 THE WITNESS: Exactly.

5 THE COURT: -- drugs and surgery.

6 THE WITNESS: Exactly. And my research spans

7 both. So prayer practices and then also kind of this

8 realm of yoga and meditation and related practices.

9 THE COURT: Okay. All right. What about fasting
10 and that --

11 THE WITNESS: Yeah, that's all within the same
12 realm. Yes, I've done a broad kind of survey of these
13 topics.

14 THE COURT: Okay.

15 THE WITNESS: And so then this has resulted,
16 then, in -- a number of the publications on my CV are
17 related specifically. And I'll just try to briefly
18 highlight a few of those, and then if you have further
19 questions.

20 My most recent book is called *The Healing Gods,*
21 *Complementary and Alternative Medicine in Christian*
22 *America*, which is forthcoming from Oxford University Press
23 in August of this year, and the galley copies are now
24 circulating.

25 The book explains how and why complementary and
26 alternative medicine or CAM has become mainstream even
27 though much of CAM is religious, but not specifically
28 Christian and there's a lack of scientific evidence

1 generally of either safety or efficacy. I explore the
2 relationship between CAM and religious traditions, such as
3 Hinduism --

4 THE COURT: What is CAM?

5 THE WITNESS: I'm sorry. Complementary and
6 Alternative Medicine; and so again, specifically the yoga,
7 meditation, acupuncture, et cetera. I deal with about ten
8 practices in the book. And one of the chapters is
9 specifically on yoga, and then there are sections on yoga
10 in several of the other chapters. And there's several
11 chapters that talk about mindfulness meditation as well as
12 transcendental meditation and other kinds of meditation.

13 THE COURT: And shamans?

14 THE WITNESS: I don't talk as much about shamans
15 in this particular book, but it's in the broader realm of
16 things.

17 THE COURT: They're kind of out of style now,
18 aren't they?

19 THE WITNESS: They are, actually, right, because
20 they're very explicitly religious in what they talk about.
21 They're not as -- they don't use the language of science
22 quite as well.

23 THE COURT: I've never gone to one, so I don't
24 know.

25 MR. BROYLES: Your Honor, you know, what you do
26 on your own time is fine with me.

27 THE WITNESS: The -- in the book, I start off by
28 asking the question, "What is religion?"

1 THE COURT: No. I think I --

2 THE WITNESS: And I've got a chapter on that.

3 THE COURT: I understand --

4 THE WITNESS: And I review scientific evidence of
5 efficacy and safety. I've got a couple of chapters that
6 do that. And then I explain also how this language of
7 religion and science are used often in cultural debates.

8 A second book which was published by Harvard
9 University Press in 2012 makes comparisons between
10 Christian spiritual healing practices and healing
11 practices from other religious traditions, including
12 Buddhism and Hinduism. And the book also reviews
13 scientific evidence of efficacy and safety, and it also
14 talks about this relationship between what religion is and
15 what science is.

16 An edited book that I did, *Global Pentacostal and*
17 *Charismatic Healing*, which was published by Oxford
18 University Press in 2011, includes chapters on the
19 relationship between these Christian healing practices and
20 Hindu healing practices.

21 And then I've also -- I'll just highlight a few
22 of my journal articles. There's "Balancing Personalized
23 Medicine and Personalized Care" published in *Academic*
24 *Medicine* in 2011 -- or I'm sorry -- in 2013. It's a
25 peer-reviewed medical journal article that I co-authored
26 with an M.D. And the article explores how frustrations
27 with regular biomedicine often leads people to experiment
28 with complementary medicine that has religious influences

1 within it.

2 Another medical journal article that I was lead
3 author for was a "Study of the therapeutic effects of
4 proximal intercessory prayer on auditory and visual
5 impairments in rural Mozambique." That's a little bit of
6 a mouthful. Also, co-author with two M.D.s. And it's
7 another peer-reviewed medical journal author -- or
8 article -- I'm sorry -- that looks -- it's a clinical
9 study of the effects of prayer on health. And it's
10 specifically hearing and vision.

11 Also, an article on "Chiropractic and
12 Christianity" published in *Church History* in 2010, a
13 peer-reviewed journal article that explains the close ties
14 between chiropractic and Western metaphysics and also how
15 chiropractic often integrates other types of healing
16 practices, including yoga and its ties to Hinduism often
17 in that context.

18 A textbook chapter I wrote is called "Practice"
19 published in a book *Religion in American History* in 2010,
20 and that textbook chapter explains how physical practices
21 from different world religions embody religious beliefs
22 and religion.

23 And then finally, I'll just mention "Touch and
24 American Religions" published in *Religion Compass* in 2009.
25 It's another peer-reviewed journal article, and this one
26 compares Christian and Buddhist ethics and specifically
27 ethics of touch.

28 ///

1 BY MR. BROYLES:

2 Q Thank you.

3 Dr. Brown, have you received any awards or
4 special recognition for your work relating --

5 THE COURT: What do you mean by "touch"?

6 THE WITNESS: In the context of that article,
7 it's empathy touch or touch in healing practices.

8 THE COURT: Laying on of hands?

9 THE WITNESS: Laying on of hands or other kinds
10 of touch. And there's kind of a belief that touch can
11 actually be very ethical because it communicates in a way
12 that language doesn't. So touching can tell someone
13 something, and it can actually change their beliefs in a
14 way that talking doesn't.

15 And so we think often in the American context
16 about beliefs being shaped by words, but this -- the
17 premise of this article and the theorists from Buddhism
18 I'm talking about talk about how touch often communicates
19 on this kind of primordial, preverbal level and actually
20 can communicate a lot more than words can.

21 THE COURT: And you get into Tai Chi and that
22 whole thing?

23 THE WITNESS: Yeah, and that's actually another
24 big section of this book on the healing gods that's coming
25 out. I talk a lot about Tai Chi.

26 THE COURT: Okay. Sounds interesting.

27 THE WITNESS: It's been fun.

28 ///

1 BY MR. BROYLES:

2 Q And that book, *The Healing Gods*, comes out when?

3 A In August of this year.

4 Q Dr. Brown, have you received any awards or
5 special recognition for your work related to teaching,
6 lecturing, or writing about Hinduism, Buddhism, Western
7 metaphysics, or yoga?

8 A Yes, I have.

9 Q Okay. Could you please tell us about those.

10 I've been awarded \$241,000 in grants, not quite
11 as much as EUSD, to support this research. I've been
12 interviewed by the media a number of times, including an
13 appearance on the National Geographic Television Show
14 *Taboo* as an expert on "Devils and Demons."

15 This component of my research contributed to my
16 being awarded a trustee's teaching award and an
17 Outstanding Junior Faculty Award from Indiana University.

18 Q All right. Now, Dr. Brown, you mentioned your --
19 I'm sorry -- you provided me with your curriculum vitae,
20 which has been attached to several documents in this case,
21 including your expert witness declaration and our original
22 petition. And I believe your -- you would like to provide
23 us all with an updated version of your CV.

24 A Yeah. I've published a couple more things since
25 the last version.

26 Q Just for clarity's sake and for the record, could
27 you just tell us what change or changes you made.

28 A For one thing, the title changed. I think the --

1 the title of *The Healing Gods* changed from the first
2 version to the second, and then I think one or two more
3 articles are added later. But there aren't major changes.
4 It's not really worth -- I think I did a couple more media
5 interviews. Anything new will just be a little bit higher
6 up if you look at the top of each category. And I have
7 four copies of this here.

8 MR. BROYLES: Your Honor, just so we're all on
9 the same page literally, I'd like to offer her updated CV
10 as Trial Exhibit 13.

11 THE COURT: Any objection?

12 MR. SLEETH: No objection.

13 THE COURT: All right. The updated CV will be
14 received.

15 (Exhibit 13 was received into evidence.)

16 MR. BROYLES: And would counsel like copies right
17 now? Because I don't want to forget to give them.

18 MR. SLEETH: At your pleasure.

19 MR. BROYLES: May my co-counsel approach, your
20 Honor?

21 MR. REYNOLDS: I'll just grab these and pass them
22 out and grab a new water jug while I'm over here.

23 THE COURT: You're supposed to be doing that.

24 THE BAILIFF: They're up there, your Honor.

25 BY MR. BROYLES:

26 Q All right. Just to make sure I haven't forgotten
27 anything, Ms. Brown -- or Professor Brown, if we have not
28 covered it already or it has not been included in your CV,

1 please describe for the Court what special knowledge,
2 skill, experience, training, or education you have that
3 are not -- I'm sorry -- that are sufficient to qualify you
4 as an expert on the subject to which your testimony
5 relates in this case, specifically Hinduism, Buddhism,
6 Western metaphysics, and yoga.

7 A I think we've covered everything.

8 Q Thank you very much.

9 Have you been asked to render opinions in this
10 case?

11 A Yes, I have.

12 Q Okay. Now, I want to -- before I ask you about
13 those opinions, I want to ask about the evidentiary
14 foundation for those opinions.

15 Professor Brown, what documents or other
16 information did you review related to the yoga program at
17 the Encinitas Union School District?

18 A I've reviewed basically everything that's been
19 submitted to the Court by both sides and both sets of
20 defendants and co-counsel. And I guess for the record
21 I'll list them.

22 So that includes the MOU between EUSD and the
23 Jois Foundation; the EUSD grant proposal to the Jois
24 Foundation; the MOU between EUSD and the RDG; the EUSD
25 yoga program FAQ; the GLPD Gazette dated 9/12; both the
26 original and revised --

27 THE COURT: Ms. Brown, we've got a court reporter
28 who is going to need some alternative medicine or

1 something.

2 THE WITNESS: Apologies.

3 Are you okay up to the GLPD Gazette dated 9/12?

4 THE REPORTER: Yes.

5 THE WITNESS: Both the original and revised EUSD
6 On the Mat curriculum; the Capri quiz study guide; the
7 Ashtanga Yoga Institute asana poster; the ABCs of Yoga for
8 Kids poster; the Timothy Baird e-mail to the parents; the
9 Sedlock letter to the EUSD board; the Gray-Baird
10 correspondence dated 10/12; C-Ville article on UVA CSC;
11 the Southern California NPR interview; trial briefs by
12 plaintiffs, defendants, and YES; respondents' answer to
13 verified petition; declarations by Eady, Hevrin, Gray,
14 True, Nordal, Vigil, Sedlock, Baird, Miyashiro, Carrie
15 Brown, Reich, O'Keefe, Weber, McCloskey, Cooney, Bergeron,
16 Campbell, Paul, Ruzic, Gerbarg, Enjedi, J. Brown, Wood,
17 Chapple, Singleton, Hartsell, Borak, designations of
18 expert witnesses and motion to exclude expert testimony
19 and motion in limine, and also publications that are
20 listed in my bibliography related to my long-term research
21 on yoga, meditation, and CAM, a true and correct copy of
22 which is appended as Exhibit B to my declaration
23 originally.

24 I've also spoken with parents from EUSD who --
25 families who have observed EUSD yoga classes, and I've
26 also read written statements by those parents beyond the
27 declarations that were submitted today. And I've done
28 Internet searches on organizations and individuals who are

1 referenced in the trial materials, including websites and
2 linked videos from the Jois Foundation; JoisYoga.com; K.
3 Pattabhi Jois Ashtanga Yoga Institute, Mysore, India;
4 Ashtanga Yoga Center; Ashtanga.com; Core Power; Radiantly
5 Alive; Integral Yoga Institute; as well as news articles
6 and blogs reporting or commenting on this case.

7 BY MR. BROYLES:

8 Q Now, before we get into the specifics about the
9 program in Encinitas, I want to ask you a few more
10 background questions.

11 Dr. Brown, what is religion?

12 A Very simple question. The term "religion" has
13 obviously been defined in a variety of ways. Many
14 scholars prefer what are called functional to substantive
15 definitions of religion. So, in other words, we find it
16 more useful not just to try to tick off a list, for
17 instance, of what you'd find in a dictionary definition of
18 religion. So is there a god worshipped or is there belief
19 in a deity? That would be an example of a substantive
20 definition of religion.

21 But often, it can be very useful to observe how
22 religions function. For instance, religions can function
23 to set apart what's sacred from what's profane or
24 ordinary. Religions can function to grapple with kind of
25 ultimate problems of human existence or ultimate
26 explanations of the world and the position of the
27 individual within the world.

28 Most religious studies scholars are actually very

1 much in agreement that the definition of "religion" needs
2 to be broader than just looking at Judeo-Christian and
3 monotheistic religions that are focused on belief or
4 theistic beliefs. But it's also important to consider as
5 religion bodily practices or rituals that are -- that have
6 a function, like this functional definition of, say,
7 connecting individuals with suprahuman perhaps -- perhaps
8 deities, but sometimes just energies or forces or
9 transcendent realities or --

10 THE COURT: What does that mean?

11 THE WITNESS: Well, it can mean a variety of
12 things, but the sense, the word "suprahuman" is often used
13 by scholars as something more than human. So it's an
14 individual's relationship with something bigger and often
15 something very ultimate, that there's kind of a force, for
16 instance.

17 And, I mean, you mentioned Tai Chi, right? And
18 so there it would be a force or a power of universal
19 energy that's believed to have brought the universe into
20 creation and to then have to be balanced against each
21 other. So it's about, say, that individual's relationship
22 to that kind of universal energy. It's not a personal
23 god, it's not a personal deity, but it's this suprahuman
24 kind of force. So that might be one way that religions
25 function.

26 Also, religions can function to try and cultivate
27 a kind of heightened spiritual awareness or a cultivation
28 of ethical and moral virtues and character building and to

1 try and kind of make for virtuous and ethical behavior,
2 how to live the good life, how to live well in the world.

3 Often religion is expressed through symbolic
4 actions or rituals -- and I'll say a bit more about
5 rituals as we go along -- because these actions, these
6 symbolic actions, can work to establish very powerful
7 moods and motivations. They make you feel a certain way.
8 They make you want to do things. They motivate you. And
9 they support a world view or a way of looking at what's
10 really real in the world. It gives you an overall picture
11 of reality.

12 And often these kind of symbolic actions can
13 function to instill a kind of ethos or a kind of life
14 philosophy for how to live ethically and virtuous, how one
15 should live in the world.

16 THE COURT: But can it go the other way, too, in
17 some cultures?

18 THE WITNESS: How do you mean?

19 THE COURT: North Korea and Nazi Germany and --

20 THE WITNESS: Oh, that religions can be bad.
21 Yeah, absolutely. Ideology, right, is sometimes used.
22 And, I mean, sometimes, right, scientific naturalism can
23 have a very compelling vision of reality based on
24 materialism, right? So again, not a deity, but a kind of
25 compelling reality.

26 And you can see that in secular humanism. You
27 can see that in scientific naturalism. So it's not
28 restricted to beliefs in a deity. And there is often kind

1 of something more than kind of what exercise does. And, I
2 mean, I remember in your opening comments, I mean, I think
3 you made a good point that say exercise practices can --
4 there can be an overlap, right, kind of in health and
5 well-being. But often with religion, it's something more
6 than that. It's kind of a bigger picture or a broader
7 significance than just eating a healthy diet would get.
8 There's kind of a meaning that's invested in what's
9 religious.

10 And what's important here, I think, is that for
11 much of America's history, Protestant Christianity has
12 been very dominant, right, up until about the 1960s with
13 opening of immigration and kind of diversification of
14 American culture.

15 And what this means is that we've got an
16 increasingly religiously pluralistic society, but
17 definitions of religions haven't always kept pace with
18 that religious change.

19 And so today there really are two broad
20 categories of religion in America. So first there are
21 word- or belief-oriented kinds of religion. And so, for
22 instance, belief that the Bible is the word of God. It's
23 important to evangelize and share your beliefs with
24 others. It's important to have correct doctrine, to
25 preach the gospel. So words, beliefs, what you believe,
26 what you say about what you believe is very central to
27 this kind of belief/word-oriented kind of religion.

28 But then there's a second category of religion

1 which is increasingly prominent in American culture, which
2 I would talk about as more a practice or an
3 experience-oriented category of religion. And so where
4 here it's more you directly experience the divine -- and
5 I'll say more about the divine as we go kind of view --
6 but it's more individualistic. Beliefs may vary. Talking
7 about what you believe may not mean as much, but it's
8 about the individual's experience of what seems sacred,
9 what seems kind of more than mundane or divine or
10 God-like.

11 And for the goals, right, I mean the functions of
12 both these word/belief-oriented religions, these
13 practice-, these experience-oriented religions often can
14 be very parallel. Their end goals are the same. How they
15 function in people's lives are the same. But the means by
16 which they operate are very different.

17 For the first category of religion, verbal
18 expression, kind of what you believe, what you say about
19 what you believe. Whereas for the second category of
20 religion, it's the practices. It's what you do to
21 express, to symbolize, to instill religion are much more
22 central.

23 And what we find as scholars of religion is that
24 in America, there's often this kind of Protestant bias
25 where people who have kind of grown to learn the sense
26 that religion is this, right, Judeo-Christian religions,
27 Islamic religions even, they often -- whether they believe
28 those religions themselves or it's just kind of some

1 through culturally, they often won't recognize the second
2 category of religion as religious, and they're prone to
3 misunderstand embodied religious traditions in which
4 practice itself is an essential expression of religion and
5 an essential means of instilling religion in others
6 whether or not verbal proclamation is used.

7 Does that make sense or --

8 THE COURT: Well, I think so.

9 THE WITNESS: Okay. I think I'll elaborate on it
10 as we go.

11 THE COURT: Whatever it is, you can't teach it in
12 school.

13 THE WITNESS: To clarify, I think -- I think we
14 didn't ask this question, but my intention, right, is to
15 simply render an opinion as to whether the Ashtanga yoga
16 program in EUSD is religious. I'll let you decide whether
17 it belongs in schools.

18 THE COURT: I'm just trying to digest the answer
19 to the question. I mean, it's a kind of profound question
20 and a profound answer.

21 THE WITNESS: Yeah. Okay.

22 BY MR. BROYLES:

23 Q Often in our culture, there's a discussion when
24 you talk about religion of -- religion and spirituality.
25 And I think it would be helpful if you'd explain what
26 relationship, if any, there is between the term "religion"
27 or "religious" and "spiritual" or "spirituality."

28 A Sure.

1 In contemporary American culture, the term
2 "spiritual" is often used as a euphemism for religion, and
3 there are two basic reasons for this.

4 First of all, Christianity and kind of Christian
5 religion has come to have very negative connotations for
6 many people.

7 THE COURT: What was the question? I was just
8 writing something.

9 MR. BROYLES: In essence, your Honor, it's what's
10 the relationship between religion and spirituality.

11 THE WITNESS: And so my basic answer is that --
12 actually, where I'm going to go with this is that
13 spirituality is a subset of religion, but often
14 spirituality is a term as used as a euphemism when people
15 don't want to use the term "religion." There are two
16 reasons for this.

17 The first is because of these negative
18 associations that people have with Christian religion. So
19 when you hear religion -- and actually, even Christians
20 can have these same negative associations. So they won't
21 want to use the term religion either often. But people
22 think about rules and sin and judgment and dogma and
23 creeds. They think of prosthelytizing and indoctrinating.
24 And it's this very negative sense of rules and worship
25 services and attendance and all these things that you have
26 to do or you can't do or you're somehow bad for not doing
27 things. So that gives these very negative associations
28 with the word "religion," and people want to distance

1 themselves from that.

2 And then the second reason why spirituality is
3 often used as a euphemism is actually as a way of
4 assuaging the worries of Christians who -- and other
5 monotheists who would consider practicing another religion
6 idolatrous, but who are able to rationalize engaging in a
7 practice that's spiritual and not religious or universally
8 spiritual and then somehow can be accommodated with their
9 particular expression of belief. And both of those
10 tendencies --

11 THE COURT: I mean, like American Indians and the
12 Mexican culture with the Day of the Dead where spirits
13 come back.

14 THE WITNESS: I'm not so much saying that, but --

15 THE COURT: The Holy Ghost.

16 THE WITNESS: Yeah. No, what I'm talking about,
17 I'm kind of saying you're spiritual, but not religious,
18 this is language that I find everywhere. Not just in
19 yoga, but in this broader world of alternative America and
20 surveys of America where increasingly people are saying,
21 "What I believe is spiritual, it's sacred, but it's not
22 religion." Because they're thinking, "I don't want to be
23 like Christianity. My definition of religion, it's
24 Christian. I'm not that. I don't care about creeds, I
25 don't care about doctrines, but I want to have the
26 spiritual connection to kind of a greater transcendent
27 reality or I want to cultivate these ethical and moral
28 virtues, but I don't want to identify with all these

1 negative things that are associated with Christianity."

2 So that's more what I'm meaning than kind of
3 Native American spirituality. We've talked about
4 spiritualism. It actually has a very particular meaning,
5 which is about kind of communicating spirits of the dead.
6 And that's not really what I'm talking about here either.

7 I'm talking about kind of this -- maybe this will
8 help: So spirituality -- this is why I'm saying
9 spirituality is a subset of religion. So whether or not
10 you call it religion, it's still -- it still serves very
11 similar functions. So going back to that functional
12 definition of religion.

13 THE COURT: You're calling it religion.

14 THE WITNESS: I'm calling it religion. I'm
15 calling spirituality a subset of religion. So even if
16 it's untethered to specific religious traditions, even if
17 it's nondenominational, it's nonsectarian, it's accepting
18 of other beliefs -- and these are kind of -- again, I'm
19 pulling from what I hear for when people say, "I'm
20 spiritual and not religious," they'll say, "But it's
21 nondominational. It's nonsectarian."

22 You can have different beliefs that are mixed in
23 with it. It can apply across different religions. So how
24 is it religion? If the same thing can be believed by
25 Buddhists and by Hindus, then it must not be religion.

26 But my point here is that regardless of any of
27 these things, spirituality still makes metaphysical or, in
28 other words, more than physical assumptions about the

1 nature of reality.

2 Spirituality still will often distinguish that
3 which is sacred from that which is profane. Or
4 spirituality can function as a life philosophy to locate
5 individuals within the cosmos, to cultivate ethical and
6 moral character or to aspire from salvation from suffering
7 existence or to try to establish a relationship or a union
8 with the divine or with God.

9 And spirituality doesn't have to do all of these
10 things, but it will often pick one or more of these kinds
11 of goals, these metaphysical goals, which function very
12 similarly to the way that religion functions.

13 And so it's a class of religion rather than a
14 class by itself, is the way I would explain it.

15 MR. SLEETH: Your Honor, may we learn what the
16 witness is reading from.

17 THE WITNESS: I just wrote out some notes so I
18 don't miss things that I wanted to talk about. I haven't
19 shared these with anyone. These are just my own thinking
20 points.

21 THE COURT: Do you want to look at them?

22 MR. SLEETH: At the conclusion of this, I'd like
23 to look at them.

24 THE WITNESS: Sure, that's fine.

25 THE COURT: The rules are if you're referring to
26 something, he's got the right to --

27 THE WITNESS: No problem.

28 THE COURT: -- look at them.

1 THE WITNESS: I think it will all be in the court
2 record by the time we're done anyway, so there's not going
3 to be anything new to learn from this. As I said, I
4 haven't showed this to anyone.

5 THE COURT: He's got the right to look at it.

6 THE WITNESS: Yeah, no problem.

7 BY MR. BROYLES:

8 Q Okay. What is Hinduism?

9 A Hinduism is the world's oldest surviving
10 religious tradition or religion with a billion
11 practitioners making it the world's third largest
12 religion. Historically, there was considerable overlap
13 among --

14 THE COURT: It's the oldest religion?

15 THE WITNESS: It's the oldest surviving religion,
16 third largest.

17 And historically, there was considerable overlap
18 among South Asian religions that today we might call
19 Hinduism, Buddhism, or Jainism. They didn't develop
20 completely independently of each other.

21 So the term "Hindu" actually was first used by
22 Arab traders around the eighth century as a kind of
23 geographic and cultural kind of designation. So Indus
24 Valley/Hindu kind of sounds the same. And so it takes on
25 the world "Hindu."

26 And then the term gets picked up by Westerners in
27 the nineteenth century to try and make sense of religious
28 traditions that they're just coming into contact with for

1 the first time. So ancient religious traditions that's
2 new to Westerners. And so it's Westerners who actually
3 start using the language of Hinduism.

4 But then over time, practitioners of Hinduism
5 started to apply the term to themselves. So today Hindus
6 call themselves Hindus. But it was a process that
7 developed over time even though the tradition itself is
8 very old. It's just language changes over time.

9 And the oldest literature which Hindus today will
10 consider the revealed words of the divine are a body of
11 oral texts known as Vedas or kind of knowledge. And so
12 sometimes you'll talk about Vedic culture. It's
13 referring --

14 THE COURT: V-e-d-a?

15 THE WITNESS: V-e-d-i-c. It's the same thing.
16 It's the early form of Hinduism. So when you read Vedic,
17 you can think Hindu essentially.

18 Now, in the post-Vedic Brahmanical tradition --
19 and I'm going to talk about Brahman here -- the
20 all-pervading divine -- and this is a term we've talked
21 about, what is divine, right? But the all-pervading
22 divine existence or the reality behind everything in the
23 universe is Brahman, another aspect of which is Atman.

24 So you've got Brahman, overall reality in the
25 universe. You've got Atman, which is kind of universal
26 spirit. And in one of the influential schools of Hindu
27 philosophy, Advaita Vedanta, it focuses on the nonduality
28 of Brahman and Atman.

1 And so basically here the premise is that the
2 Brahman, the universal spirit, the Atman, the kind of
3 individual spirit, kind of the self and the universe, are
4 the same. They're not separate from each other.

5 Now, there are also Hindu devotional schools
6 where it is more of a dualistic belief and there is a
7 sense of trying to aspire towards relationship with the
8 divine. But in a very prominent field of Hinduism, the
9 essence is to try to make a connection or union with the
10 divine. And that's the tradition we're going to be
11 talking about here in this court, is the nondualistic idea
12 of trying to bring Atman and Brahman in connection with
13 each other.

14 And so, yeah, that -- that's kind of the -- the
15 big idea of Hinduism that I want to get there, kind of
16 Brahman and Atman.

17 BY MR. BROYLES:

18 Q Does Hinduism involve religious beliefs and
19 practices?

20 A Yes. I mean, Hinduism is a multifaceted
21 religious tradition. It's actually the most complicated
22 of the world religions. And it embraces wide varieties of
23 beliefs and actually is intentionally very embracing and
24 welcoming of differences in belief. And that's kind of
25 one of the differences between, say, Christianity and
26 Hinduism where for Christianity, it's very important to
27 have correct doctrine or your heretical, right? You don't
28 belong within the fold.

1 For Hinduism, you can believe a lot of different
2 things and still be Hindu. That's -- it's this
3 practice-oriented kind of religion, not this
4 belief-oriented religion. Nonetheless, there's -- there
5 are a lot of shared beliefs among many Hindus. So, for
6 instance, those would include belief in, say,
7 reincarnation; that there's this cycle of life and births
8 and deaths.

9 And actually a goal of Hinduism is to escape that
10 cycle of births and deaths, and that's seen as liberation,
11 is to not have to continue being reincarnated, but to
12 become enlightened and to enter into kind of this union
13 with the divine so that you don't have to keep on going in
14 this endless cycle of births and deaths.

15 There's a shared belief in this kind of Brahman,
16 this greater reality, this divine, this kind of universal
17 everything. That's also very important. And there's a
18 sense of kind of multiple manifestations of that define.

19 So this can be a point of confusion, too, where
20 Hinduism can be polytheistic, but it actually doesn't have
21 to be polytheistic. Gods and goddesses can be viewed as
22 manifestations of Brahman. So they're just different
23 representations, just different incarnations of Brahman
24 rather than being kind of, "Well, I worship this god"
25 or -- they're all kind of the same god, but they're
26 different manifestations of God.

27 THE COURT: Who's Brahman?

28 THE WITNESS: Brahman is --

1 THE COURT: Oh, Brahman or --

2 THE WITNESS: Brahman, B-r-a-h-m-a-n.

3 THE COURT: That's why cows are sacred?

4 THE WITNESS: Yeah.

5 THE COURT: Shows you I don't --

6 THE WITNESS: Yeah. I mean, because

7 everything's, right -- because everything --

8 THE COURT: Brahman is a bull.

9 THE WITNESS: Right, but Brahman in -- yes,
10 right? So this would be one kind of these schools, right?

11 Brahman is the infinite. It's the reality behind
12 everything in existence. It's the absolute. It's not
13 exactly parallel to the Christian definition of God, but
14 that's the roughest kind of parallel --

15 THE COURT: This goes back to like the eighth
16 century, you said?

17 THE WITNESS: Well, I mean, no. I mean, Hinduism
18 goes back much beyond that. This is where the oldest
19 Vedic text -- they date back to 1500 B.C.E. So very, very
20 old. And it's only the term "Hindu" that's of recent
21 origin. The Hindu religion goes much, much further back
22 than that.

23 So Brahman is this greater reality. And, I mean,
24 often the term "god" is actually used for Brahman by many
25 Hindus. But that's what Brahman is. It's that greater
26 underlying reality.

27 And then -- so -- so also shared beliefs by
28 Hindus would include the idea of pursuing a spiritual path

1 of self-development, ethical moral character kind of
2 growth for the goal of reaching this -- this union or this
3 relationship with the divine and achieving liberation from
4 this cycle of life and death or reincarnation.

5 Practices of Hinduism can also vary. It can
6 include worship. So pujas, kind of devotion to icons or
7 statues which can be seen as manifestations of God.
8 That's not necessarily -- I mean, that doesn't -- just
9 like there's variety of beliefs, there's variety of
10 practices. So that's not an essential feature of
11 Hinduism.

12 It can involve different symbols, such as the
13 lotus and the mandala are very sacred for many Hindus or
14 the cow, right, because there are symbolic meanings,
15 significances. Often there are associations with
16 particular deities.

17 THE COURT: What's a lotus?

18 THE WITNESS: I was planning to talk more about a
19 lotus as we go, but it's a very -- it's a flower, but it's
20 seen as a very sacred flower that kind of came from the
21 naval of the god and that rec- -- kind of symbolizes kind
22 of growing up from the muck and kind of growing into
23 something very beautiful. And I'll say more about the
24 religious significance of lotuses later, but it's -- for
25 now, I'll just say that it's a very sacred flower for
26 Hindus.

27 And also animals occupy a very important place in
28 Hinduism. They're seen as vehicles for gods and

1 goddesses. They're also seen as aspects of Vishnu or of
2 Shiva some of these divine manifestations.

3 Mantras are praise and prayer that through their
4 meaning, through their sound, and through the style by
5 which they are chanted focus the mind on holy thoughts or
6 express devotion to God or to deities. And so the
7 best-known mantra is om, right, which is Sanskrit. And
8 it's considered a sacred sound. In fact, so sacred that
9 om is believed to in some sense be Brahman, right? It
10 represents and it actually is, in some sense, Brahman.

11 And so saying om -- and I'll actually give you a
12 couple quotes as I go on here. Saying om brings you into
13 connection. You actually can become Brahman as you repeat
14 om over and over again meditatively. And it's because of
15 the sound of the word, the language in which it's spoken,
16 it's being chanted, it's seen as very, very sacred,
17 whereas kind of most words in English wouldn't be seen as
18 sacred in that way.

19 So those are some of the beliefs and practices
20 that can be central in Hinduism.

21 THE COURT: Om is a word?

22 THE WITNESS: Yeah. It means kind of the
23 infinite. It means Brahman. It means God. It means
24 everything. It's this -- see, this is where I have to
25 give you multiple definitions because these are seen as
26 ineffable in some ways, concepts. It's so holy, it's so
27 sacred that you can't give a single definition for it.

28 THE COURT: The picture I have is the caricature

1 of somebody meditating saying, "Om."

2 That's what you're talking about?

3 THE WITNESS: I'm talking about this, saying,
4 "Om, om, om" repeatedly, right?

5 THE COURT: Like a 1960s movie?

6 THE WITNESS: Yeah.

7 THE COURT: I got it.

8 THE WITNESS: Not just in the '60s. Still
9 actually very important practice.

10 THE COURT: That's what I thought I said.

11 THE WITNESS: Yeah, exactly.

12 BY MR. BROYLES:

13 Q I think you already answered this question, but
14 is Hinduism a religion?

15 A Yes. So, for instance, the Hinduism group of the
16 American Academy of Religion says that Hinduism is a,
17 quote, "distinctive world religious tradition."

18 THE COURT: Mr. Broyles, it's 4:25. This seems
19 like a good point to break. We're not going to finish
20 today. I think the reporter probably would complain if
21 we --

22 MR. REYNOLDS: I hate to interrupt, your Honor,
23 but the reporter deserves applause.

24 THE WITNESS: Sorry. I talk a lot.

25 THE COURT: She's a good reporter. I want to
26 make sure she shows up tomorrow.

27 MR. BROYLES: This is a good time, your Honor.

28 THE COURT: All right. Thank you. You'll be

1 back tomorrow? You're not going back to England?

2 THE WITNESS: I'm not. I'll be here one more
3 day.

4 THE COURT: All right. Then we're off the record
5 or is there something you want to put on the record?

6 MR. BROYLES: Not at this time, your Honor.

7 MR. SLEETH: I'm a little concerned about time.
8 How many more days have we got?

9 THE COURT: We said two.

10 MR. SLEETH: I do recall telling the Court that I
11 had prepaid tickets to go someplace on Thursday, early in
12 the morning.

13 THE COURT: Okay.

14 MR. SLEETH: So we can't go too far. We're
15 moving real slow.

16 MR. BROYLES: That's -- yeah. Your Honor, I
17 think we can move a lot faster tomorrow. I don't know how
18 many witnesses they have because he has -- I'm not sure.
19 I haven't been told yet. So I don't know how many
20 witnesses they're planning on calling, but we should be --

21 THE COURT: We can discuss it off the record.

22 Okay. Thank you. All right. We're off the
23 record, then, and see you tomorrow.

24 - - -

25 (The proceedings were adjourned at 4:27 p.m.)

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