

No. 22-15827

In the United States Court of Appeals for The Ninth Circuit

FELLOWSHIP OF CHRISTIAN ATHLETES, AN OKLAHOMA CORPORATION, ET AL.,
Plaintiff-Appellants,

v.

SAN JOSE UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of California
Honorable Haywood S. Gilliam, Jr.
(4:20-cv-02798-HSG)

EXCERPTS OF RECORD VOLUME 3 of 10

KIMBERLEE WOOD COLBY
CENTER FOR LAW & RELIGIOUS
FREEDOM
8001 Braddock Road, Suite 302
Springfield, VA 22151
(703) 642-1070
rsmith@clsnet.org

CHRISTOPHER J. SCHWEICKERT
SETO WOOD & SCHWEICKERT LLP
2300 Contra Costa Boulevard
Suite 310
Pleasant Hill, CA 94523
(925) 938-6100
cjs@wcjuris.com

Counsel for Plaintiffs-Appellants

DANIEL H. BLOMBERG
Counsel of Record
ERIC S. BAXTER
NICHOLAS R. REAVES
ABIGAIL E. SMITH
JAMES J. KIM
THE BECKET FUND FOR
RELIGIOUS LIBERTY
1919 Pennsylvania Ave. NW
Suite 400
Washington, DC 20006
(202) 955-0095
dblomberg@becketlaw.org



Deposition of:
Jennifer Thomas , Vol. 2

September 28, 2021

In the Matter of:
**Sinclair, Elizabeth et alv. San Jose
Unified School District Board of
Education et al**

Veritext Legal Solutions

800-734-5292 | calendar-dmv@veritext.com |

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 ELIZABETH SINCLAIR, CHARLOTTE)
4 KLARKE, and FELLOWSHIP OF)
5 CHRISTIAN ATHLETES, an)
6 Oklahoma corporation,)
7 Plaintiffs,)
8 VS.) CASE NO. 5:20-CV-02798-LHK
9 SAN JOSE UNIFIED SCHOOL)
10 DISTRICT BOARD OF EDUCATION,)
11 in its official capacity,)
12 NANCY ALBARRÁN, in her official)
13 and personal capacity, HERBERT)
14 ESPIRITU, in his official and)
15 personal capacity, and PETER)
16 GLASSER, in his official and)
17 personal capacity,)
18 Defendants.)
19)
20)
21)
22)

23 REMOTELY CONDUCTED RULE 30(b)(6) DEPOSITION OF
24 SAN JOSE UNIFIED SCHOOL DISTRICT
25 JENNIFER THOMAS
Portland, Oregon (Witness' location)
Tuesday, September 28, 2021
Volume II

Reported stenographically via videoconference by:

LYDIA ZINN
RPR, FCRR, CSR No. 9223
Job No. PA 4813458
PAGES 274 - 328

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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ELIZABETH SINCLAIR, CHARLOTTE)
KLARKE, and FELLOWSHIP OF)
CHRISTIAN ATHLETES, an)
Oklahoma corporation,)
Plaintiffs,)

VS.

) CASE NO. 5:20-CV-02798-LHK

SAN JOSE UNIFIED SCHOOL)
DISTRICT BOARD OF EDUCATION,)
in its official capacity,)
NANCY ALBARRÁN, in her official)
and personal capacity, HERBERT)
ESPIRITU, in his official and)
personal capacity, and PETER)
GLASSER, in his official and)
personal capacity,)
Defendants.)

Remotely conducted Rule 30(b)(6) deposition of
SAN JOSE UNIFIED SCHOOL DISTRICT, JENNIFER THOMAS,
Volume II, taken on behalf of Plaintiffs, at Portland,
Oregon, beginning at 2:02 p.m. and ending at 3:12 p.m., on
Tuesday, September 28, 2021, before LYDIA ZINN, Certified
Shorthand Reporter No. 9223.

1 APPEARANCES (via videoconference):

2 For Plaintiffs Fellowship of Christian Athletes,
Charlotte Klarke, Elizabeth Sinclair, Jessica Roe:

3 The Becket Fund for Religious Liberty

1919 Pennsylvania Ave., NW

4 Suite 400

Washington, DC 20006

5 (202) 955-0095

dblomberg@becketlaw.org

6 jkim@becketlaw.org

asmith@becketlaw.org

7 ktoney@becketlaw.org

BY: DANIEL H. BLOMBERG

8 JAMES KIM

NICK REAVES

9 ABIGAIL SMITH

KAYLA TONEY

10 For Plaintiffs Fellowship of Christian Athletes,
11 Charlotte Klarke, Elizabeth Sinclair, Jessica Roe:

Seto Wood & Schweickert LLP

12 1470 Maria Lane

Suite 300

13 Walnut Creek, CA 94596

(925) 938-6100

14 cjs@walnutcreekattorney.com

BY: CHRISTOPHER JAMES SCHWEICKERT

15 For Plaintiffs Fellowship of Christian Athletes,
16 Charlotte Klarke, Elizabeth Sinclair, Jessica Roe:

Christian Legal Society

17 Center for Law and Religious Freedom

8001 Braddock Road

18 Suite 302

Springfield, VA 22151

19 (703) 642-1070

kcolby@clsnet.org

20 BY: KIMBERLEE WOOD COLBY

21 For Defendants Herb Espiritu, Nancy Albarrán, Peter Glasser,
San Jose Unified School District Board:

22 Dannis Woliver Kelley

2087 Addison Street

23 2nd Floor

Berkeley, CA 94704

24 (510) 345-6000

alevine@DWKesq.com

25 BY: AMY ROSE LEVINE

1 APPEARANCES (via videoconference):

2 For Defendants Herb Espiritu, Nancy Albarrán, Peter Glasser,
3 San Jose Unified School District Board:

4 Americans United for Separation of Church and State

5 1310 L Street NW

6 Suite 200

7 Washington, DC 20005

8 (202) 466-3234

9 upton@au.org

10 BY: KENNETH DALE UPTON, JR.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

Tuesday, September 28, 2021

		PAGE	VOL.
WITNESS			
JENNIFER THOMAS			
(SWORN)		279	2
Examination (resumed) by Mr. Blomberg		279	2
Examination by Ms. Levine		325	2
EXHIBITS MARKED FOR IDENTIFICATION			
EXHIBIT 130	Defendants' Second Amended Responses to Plaintiffs' First Set of Interrogatories	281	2
EXHIBIT 134	4.22.20 to 5.5.20 emails re: Presentation of Claims and Harassment/Discrimination complaint SJUSD 012508 to -012509	283	2
EXHIBIT 135	5.11.20 to 5.12.20 email re: Following up: Christian Legal Services for FCA, with attached letter from SJUSD to Center for Law & Religious Freedom re: Notice of Insufficiency of Claim SJUSD 012514 to -012519	304	2
EXHIBIT 136	5.4.2020 letter from SJUSD Department of Student Services to Education Equity UCP Office Legal Audits Branch Re: Case Matter No. 2020-0091, Appellants - Fellowship of Christian Athletes, Jane Doe and Jessica Roe SJUSD 008347	306	2
EXHIBIT 137	5.11.2020 to 5.13.2020 emails re: Case No. 2020-0091, with attached 5.13.2020 letters from California Department of Education to SJUSD SJUSD 012527 to SJUSD 012532	308	2
EXHIBIT 138	5.11.2020 to 5.13.2020 emails, Subject: Case No. 2020-0091 SJUSD 012536 to SJUSD 0122538	318	2

Portland, Oregon

Tuesday, September 28, 2021, 2:02 p.m.

JENNIFER THOMAS,

called as a witness for the Plaintiffs, having been duly sworn, testified as follows:

MR. BLOMBERG: Thank you.

MS. LEVINE: And, just as before, we're here pursuant to the Order regarding the July 12th, 2021 discovery dispute issued by the Court on July 26, 2021. So the scope of this deposition is limited to that set forth in that Order.

And we're going forward without waiver of any objections that we previously made, and without any waiver of any time limits existing pursuant to the Federal Rules of Civil Procedure. So...

EXAMINATION (Resumed)

BY MR. BLOMBERG:

Q. Jen, can you please state your name for the record?

A. Sure. Jennifer Thomas.

Q. And do you understand that you're under the same oath today that you would be if you were testifying in a courtroom?

A. I do.

Q. All right. And is there anything that would prevent you from thinking clearly or testifying truthfully today?

A. No.

Q. I'm going to assume that when I ask you a question, it

1 makes sense to you and you understand me unless you tell me
2 otherwise. Is that okay?

3 A. Yes.

4 Q. All right. Great. When you and I last spoke, your
5 counsel instructed you not to answer some of my questions
6 regarding investigations by the District into teachers'
7 behavior toward Pioneer FCA and its student leaders in the
8 context of this case. And, as Amy was just mentioning, we went
9 and talked to the Magistrate. The Magistrate said we can ask
10 those questions. And so that's why we're back here to talk
11 with you today.

12 And the first thing I'd like to do is show you a copy of a
13 document that your attorneys gave us on August 12th. So it
14 should pop up in your Marked Exhibits folder once you're ready.

15 A. Let's see if I can remember how to do that. So I have
16 Exhibit Share open.

17 Q. Okay. Great.

18 A. Oh, look. There's my name. Okay. Great.

19 Q. Mm-hm. And you want the one that's for today's date.
20 There will be two for you. And the one that's for today's
21 date.

22 A. I see. Right. Today's date. 9/28/20 [sic]. So
23 Exhibit 130?

24 Q. Exactly right.

25 A. All right. It's loaded.

1 (Deposition Exhibit 130 marked for identification.)

2 BY MR. BLOMBERG:

3 Q. All right. Great. And you see how the front of that
4 document is marked Exhibit 130?

5 A. I do.

6 Q. And it says "Defendants' Second Amended Responses to
7 Plaintiffs' First Set of Interrogatories," and the caption's
8 there on the right?

9 A. I see that.

10 Q. Okay. And then if you scroll down, you'll see near the
11 bottom of the document -- it's on the second-to-last page --
12 it's got -- it gives a date of August 12th, 2021, and it's
13 signed by Amy?

14 A. I do.

15 Q. Okay. Great. So these are amended responses to a couple
16 of interrogatories that we provided to the defendants in this
17 case. And they -- we asked some questions about those
18 investigations. After the Magistrate said that we could get
19 information on that we received the amended responses.

20 So if you could please look at page -- page 4, do you see
21 there's a caption there that says "Amended Response to
22 Interrogatory Number 9"?

23 A. Page 4. Yes.

24 Q. Okay. Great. And then on the next page, page 5, there's
25 a similar caption. It says "Amended Response to Interrogatory

1 Number 10."

2 A. Yes.

3 Q. Do you see that?

4 A. Yes.

5 Q. If you could, please read those amended responses. And if
6 you'd like to read the context of the questions, of course,
7 feel free. But we're just going to specifically be focusing on
8 the amended response on page 4 and page 5. And just let me
9 know when you're done reading them.

10 A. Okay.

11 Q. Thank you.

12 A. Okay. I've read them -- reread them.

13 Q. Okay. Great. Thank you.

14 And do you see how at the bottom of number 9 -- Amended
15 Response Number 9 and the bottom of Amended Response Number 10,
16 there's a -- there's kind of a concluding sentence. And it
17 basically says the defendants aren't aware of any further
18 investigations or -- you know, other than what's listed in the
19 amended responses to number 9 and number 10. Do you see those
20 sentences?

21 A. I do.

22 Q. All right. As you sit here today, are you aware of any
23 investigation into Mr. Glasser's conduct toward Pioneer FCA and
24 its student leaders, including Charlotte Klarke and
25 Elizabeth Sinclair, other than what is listed in the amended

1 responses to number 9 and number 10?

2 MS. LEVINE: Vague.

3 You can answer.

4 THE WITNESS: I -- I don't think I would actually
5 characterize what Mr. Espiritu did as an investigation, per se;
6 but assuming just for the sake of your question, that's all I
7 know about in terms of any inquiries that were made into
8 Mr. Glasser's acts as regards the FCA in that kind of broader
9 sense.

10 BY MR. BLOMBERG:

11 Q. Okay. So just to make sure we're on the same page,
12 everything you're aware of -- an inquiry, an investigation that
13 occurred into Mr. Glasser's conduct as it related to Pioneer
14 FCA -- is encapsulated in the responses to number 9 and number
15 10?

16 A. That's correct.

17 Q. Okay. Are you aware of an investigation that was
18 conducted by Mr. Bejarano?

19 A. I am not.

20 MS. LEVINE: It's vague and overbroad.
21 (Deposition Exhibit 134 marked for identification.)

22 BY MR. BLOMBERG:

23 Q. Okay. If we could go back to the Marked Exhibits folder,
24 you should be able to see something that's marked as
25 Exhibit 134. Just let me know once you have that up.

1 A. I will. It's thinking about it.

2 Q. Okay. Yeah.

3 A. Okay. I see it. Let me open it. Okay.

4 Q. Okay. Great. And you see at the very top of that is an
5 email from you to Mr. Dane Caldwell-Holden.

6 And then underneath that email is an email from the
7 UniformComplaint@sjusd.org address to Reed Smith that copies
8 Jodi Lax, Mr. Bejarano, and you. Is that right?

9 A. That's correct.

10 Q. Okay. And if you look at the -- the middle of that --
11 that email that we were just talking about, it says that
12 Mr. Bejarano is cc'd on this email, and he has opened the
13 investigation into your complaint. Do you see that language?

14 A. I see that. Yes.

15 Q. And then you see at the start of the next paragraph it
16 says "...we will make every effort to conclude our
17 investigation and response quickly..." Do you see that?

18 A. I do.

19 Q. All right. What -- what do you know about this
20 investigation by Mr. Bejarano?

21 MS. LEVINE: Objection. Vague. Overbroad.

22 THE WITNESS: I --

23 MS. LEVINE: Calls for a narrative.

24 BY MR. BLOMBERG:

25 Q. Go ahead, Jen.

1 A. My understanding is that it went no further.

2 Q. So other than this email, this was the extent of the
3 investigation?

4 A. That's correct. That's what I know.

5 Q. And when it says in the email that the complaints alleging
6 discrimination by adult employees of SJUSD are investigated by
7 Mr. Bejarano, why was it assigned to Mr. Bejarano, was there
8 something about the complaint that concerned adult employees
9 of the District?

10 A. So my recollection of the complaint to the CDE was that it
11 involved two components, one in which the students on campus
12 were concerned about behavior of other students. And that was
13 supposed to be reviewed under the Uniform Complaint Procedure
14 by Student Services. And, second, anything that might
15 potentially be related to the behavior of school or -- school
16 personnel or other staff should be investigated by Human
17 Resources.

18 Q. Okay. And was Mr. Bejarano a part of the HR department?

19 A. Yes, he was, and I believe he still is.

20 Q. Okay. So when it went to the HR Department, it was --
21 went to Mr. Bejarano?

22 A. That's correct.

23 Q. Okay. And so would it have gone to Mr. Bejarano because
24 there was allegations of adult employee misconduct in the
25 complaint?

1 A. That's how -- that's what I understand the practice to be
2 when a complaint is filed under the UCP. And it went to
3 Dane Caldwell-Holden, as the coordinator.

4 Q. Okay. And would that complaint have included Mr. Glasser
5 in this instance?

6 A. I'm sorry. Would the Uniform Complaint that was filed
7 with the CDE?

8 Q. Mm-hm. Yeah. What Mr. Caldwell-Holden is referring to in
9 this email -- would that have included an investigation into
10 Mr. Glasser?

11 A. Yes. I -- that's my understanding, was that the complaint
12 by the students were -- was directed towards Mr. Glasser's
13 alleged behavior.

14 Q. Okay. Did it concern any other District employees?

15 A. I don't recall the specifics of the -- of the actual
16 complaint itself. I don't believe so, no.

17 Q. All right. But as regards the investigation, the
18 investigation -- did it go any further than Mr. Glasser?

19 A. I think that assumes that an investigation took place. I
20 don't actually think that an investigation was conducted.

21 Q. So there was -- there was no investigation conducted,
22 other than this email?

23 A. As far as I know, if there -- if Mr. Bejarano conducted an
24 investigation, he didn't ever disclose that information to me,
25 nor did he share copies of his report to me. And I think in

1 conversation subsequent to that, he indicated that he did not.

2 Q. All right. And do you understand that you're here as a
3 30(b)(6) witness for the District in this case?

4 A. I -- I do.

5 Q. And do you understand that the topics for which you were
6 designated included investigations into employee misconduct?

7 A. I do.

8 Q. And that that's the specific reason why we're back here
9 today?

10 A. I do.

11 Q. All right. And so anything that Mr. Bejarano would have
12 done regarding the investigation would have been something for
13 which you should have prepared for today's deposition.

14 Correct?

15 A. Absolutely. Let me clarify.

16 Q. Okay. Yes, please.

17 A. When I say if he did it I don't have it, I mean, maybe he
18 took some notes. Perhaps he forgot. I just don't want to
19 assume that he didn't ever write down a single thing. But he
20 and I definitely discussed it when -- regarding the UCP. He
21 told me he didn't conduct an investigation, or he didn't have
22 any documentation. So my understanding is, from conversations
23 about this issue, that it went no further than the assignment
24 of the complaint to Mr. Bejarano, and that no investigation was
25 conducted.

1 Q. Okay. And when did he -- when was he assigned to start
2 the investigation?

3 A. This was in -- I think in April, when
4 Mr. Caldwell-Holden -- when Dane responded to the complaint.
5 It was a very complex complaint, so it took us some time to
6 understand how we needed to respond in terms of divvying up
7 responsibilities for that. So whenever the date of Dane's
8 email was identifying Mr. Bejarano as the person responsible
9 for that.

10 Q. So this email would have been the start of the
11 investigation: The May 5th email?

12 A. Yes.

13 Q. Okay. And then the conclusion of the investigation would
14 also have been basically at this point?

15 A. Yes.

16 Q. And why did Mr. Bejarano close the investigation the same
17 day it was opened?

18 A. I'm not going to --

19 MS. LEVINE: Calls for speculation.

20 You can answer if you know.

21 THE WITNESS: I think it was more of a -- of not
22 actually beginning the investigation. So to state that
23 Mr. Bejarano closed it requires, like, an affirmative decision
24 on his behalf. I think there was some miscommunication perhaps
25 within the supervisor's office about how this was going to go.

1 And I think that the investigation was never actually begun.

2 BY MR. BLOMBERG:

3 Q. Okay. And so there was -- he didn't rely on anyone else
4 to help with the investigation?

5 A. Mr. Bejarano didn't conduct an investigation, so I know
6 that he didn't reach out to anybody for support in conducting
7 interviews or preparing for an investigation into the
8 complaint.

9 Q. Okay. And he didn't conduct any sort of interview with
10 anyone?

11 A. That's correct.

12 Q. And did he say why he didn't do any sort of investigation
13 when you spoke to him?

14 A. My conversations with Mr. Bejarano about it were about
15 some confusion about who was actually supposed to be
16 responsible for the investigation, given that now -- I think
17 around the same time -- we had the Uniform Complaint filed with
18 the CDE, the complaint filed with the School Board, and I think
19 we were on the precipice of a lawsuit as well. So it appeared
20 to be that there was some confusion about whether or not he was
21 to actually conduct a personnel investigation.

22 Q. Okay. So Mr. Bejarano never conducted any investigation.
23 And this email to Mr. Smith from May 5th was -- was just
24 mistaken in saying that he had -- he was commencing an
25 investigation?

1 A. In that it says, "He has opened the investigation into
2 your complaint," I think perhaps that that was what was
3 supposed to happen, but it didn't happen. So -- if that makes
4 sense.

5 Q. Okay. Did anyone else ever investigate Mr. Glasser's
6 conduct?

7 MS. LEVINE: Vague.

8 THE WITNESS: I -- not that I'm aware of.

9 BY MR. BLOMBERG:

10 Q. All right. So Mr. Dane Caldwell-Holden didn't do any
11 investigations?

12 A. That's correct.

13 Q. All right. And the District didn't identify anyone else
14 to take Mr. Bejarano's place to do the investigation?

15 A. That's correct.

16 Q. And has this ever happened before, where Mr. Bejarano is
17 identified and held out to the public as doing an investigation
18 when, in fact, he's not doing one?

19 MS. LEVINE: I'm not -- I would object to that as
20 beyond the scope of this deposition, which is limited to
21 inquiry into Mr. Glasser's alleged misconduct. It's not about
22 District practice here. You had the opportunity to ask those
23 kind of questions before.

24 MR. BLOMBERG: No. You're -- both -- both the Order
25 from the Judge says the District's own contemporaneous

1 investigation into the events at issue is likely to be highly
2 relevant to the plaintiffs' claims of discrimination. That's
3 page 4 of the Order.

4 And then also in the deposition itself you specifically
5 instructed your witness not to answer any of my questions
6 regarding any teachers in this instance. And that we held the
7 deposition open at the end of the deposition because of that
8 instruction. And we didn't limit immaterial to that specific
9 issue.

10 So there's -- we're definitely fully within the both the
11 Order, and where we were in the deposition at the close.

12 And it's completely probative to know if the -- you know,
13 what -- if it's common for the District to misinform members
14 of the public about investigations that it's performing.

15 MS. LEVINE: I don't recall anything in the Court's
16 Order about other investigations into other people's conduct.
17 Definitely not what that Order was about.

18 MR. BLOMBERG: I disagree with that. And you can
19 look. Page 4 of the Order. And we can also go back and talk
20 to the Judge again on this exact same issue, and bring in that
21 the investigation apparently never occurred.

22 And so the question is here -- the very probative question
23 is whether or not the District allows these kinds of
24 complaints to go uninvestigated. So that's all we're asking.

25 And if you instruct her not to answer, then we'll have to

1 go back to the Judge.

2 MS. LEVINE: Well, tell me what specific part on
3 page 4. I'm looking at it right now.

4 MR. BLOMBERG: I'm quoting the language. "The
5 District's own contemporaneous investigation of the events at
6 issue is likely to be highly relevant to plaintiffs' claims of
7 discrimination."

8 MS. LEVINE: Okay. So ask her about the
9 contemporaneous investigation of the events at issue.

10 MR. BLOMBERG: And that's what I'm doing.

11 MS. LEVINE: I'm not disagreeing with that.

12 MR. BLOMBERG: I'm asking --

13 MS. LEVINE: I don't think that your question is
14 about the contemporaneous investigation of the events at issue.
15 It's about other investigations.

16 MR. BLOMBERG: That's -- that's not true.

17 Q. Is it un- -- Ms. Thomas, Jen, is it uncommon to engage in
18 an investigation that starts and stops on the exact same day?

19 A. I -- I think that would presuppose that I have knowledge
20 about all of the investigations that go on in the Assistant
21 Superintendent's office, and I can't say honestly that I do, so
22 it's hard for me to answer.

23 Q. Are you aware of any other investigations of this nature
24 that started and stopped on the same day?

25 A. I'm not actually -- just to be perfectly honest, I'm not

1 actually privy to when the investigation -- when there are
2 investigations in the Superintendent's office, so I can
3 certainly say no.

4 My experience with the Uniform Complaint investigations --
5 the few Uniform Complaint Procedures that have started
6 investigations that I've seen mostly as a result of responding
7 to discovery requests generally deal with issues -- complaints
8 about student behaviors. So I don't believe that I saw any
9 that dealt with adult behaviors. So this seemed highly
10 unusual. So that's why it's hard for me to kind of draw a
11 conclusion about the -- the commonness of that event.

12 Q. Well, and that goes back to what we were talking about
13 earlier, which is that you are the District's 30(b)(6)
14 witness. And you're test- -- you were designated to testify
15 about investigations into these kinds of behavior. And this is
16 specifically an investigation into an adult employee. So all
17 I'm trying to understand is: Is it common for your office to
18 tell the public that an investigation has been performed and is
19 being closed on the same day?

20 MS. LEVINE: It lacks foundation, because she -- her
21 office doesn't do that. She already testified to that.

22 And it's outside the scope of the Order.

23 And I'm -- and I'm not sure if it's within the scope of
24 the 30(b)(6) notice, which I'm trying to look at right now,
25 because --

1 MR. BLOMBERG: It is within the --

2 MS. LEVINE: -- the 30(b)(6) notice is about
3 investigations in this case, I believe; not all investigations.

4 I mean, if it is about that, I'm sure we objected to that
5 scope about all investigations within the District, because
6 she can't get --

7 MR. BLOMBERG: It's within the scope of Topics 13 and
8 18 --

9 It's within the scope of topics 13 and 18 in the 30(b)(6)
10 designation.

11 MS. LEVINE: Right. And I assume it's something that
12 we objected to, because how could she prepare for a topic as
13 broad as all investigations conducted by the District? I mean,
14 that wasn't something that --

15 MR. BLOMBERG: This is a major -- it's going to be a
16 major feature of this case, is selective enforcement. And the
17 question I'm trying to understand here is -- we have an email
18 in front of us from the Uniform Complaint division at the
19 District telling us -- telling our client -- that -- or telling
20 lawyers for our client that the investigation had been
21 opened --

22 And was being closed on the same day.

23 MS. LEVINE: Right. We've already heard --

24 MR. BLOMBERG: And I'm trying to understand.

25 MS. LEVINE: -- about that.

1 MR. BLOMBERG: I'm trying to understand: Is that
2 common practice in the District to tell folks that the
3 investigation is being opened when actually it's not going
4 forward at all.

5 MS. LEVINE: Right. And I think she said she didn't
6 know and she didn't have basis for knowing. So...

7 MR. BLOMBERG: And I'm asking Jen that question.

8 MS. LEVINE: Okay. Well, I think she's -- go ahead.

9 THE WITNESS: Okay. I -- I think I would
10 characterize what happened here a little differently.

11 There was no intent to tell the public one thing while in
12 practice the District did something else. So I think the
13 intention was for the investigation to be assigned to
14 Mr. Bejarano, because it included an element of a personnel
15 complaint, and that his failure to conduct that investigation
16 was in no way an intentional message to anyone in the public
17 or -- or otherwise.

18 My experience with investigations conducted by HR on the
19 periphery is that they're thoughtful, thorough, fair, and in
20 alignment with expected procedures and practices.

21 BY MR. BLOMBERG:

22 Q. When did the District become aware that Mr. Bejarano was
23 not performing the investigation that was represented as being
24 performed here?

25 MS. LEVINE: Vague.

1 THE WITNESS: I think I asked for information
2 pursuant to the discovery requests to produce to DWK, and
3 discovered that there didn't appear to be any.

4 So, gosh, I think -- I mean, we've produced sets of
5 documents for -- it's been a while, so around the time of the
6 discovery request. Obviously, I didn't know anything regarding
7 the investigation -- an investigation would have been relevant.
8 So I'm sorry I don't remember if it was -- which set of
9 requests it was, but somewhere in that time.

10 BY MR. BLOMBERG:

11 Q. Okay. So before production of the discovery requests
12 that -- you at the District were not aware that Mr. Bejarano
13 owe had not performed the investigation?

14 A. Correct. I wasn't -- I wasn't in, necessarily, a position
15 to ensure that; that the conformity with the UCP requirements
16 was being met. That was with Mr. Caldwell-Holden's office. So
17 I was not aware that -- whether or not -- whether or not there
18 was an ongoing investigation, or it hadn't been completed.

19 Q. All right. And did -- did Mr. Bejarano tell anyone before
20 he told you that he had never performed an investigation?

21 A. Not that I'm aware of. I don't believe he had discussed
22 it.

23 Q. So Mr. Dane Caldwell-Holden did not know that no
24 investigation had ever been performed?

25 MS. LEVINE: Calls for speculation.

1 THE WITNESS: It's entire possible, because Dane's
2 office would have dealt with -- with responding to the
3 complaint and closing the loop by submitting the final
4 information to the complainant.

5 And I think that any other personnel piece of it would
6 have been handled by Dominic's office. So I don't know that
7 Dane Caldwell-Holden's office would have been kind of
8 responsible to ensure that that information was -- or that
9 investigation was completed.

10 I think he just would have relied on Mr. Bejarano to
11 complete it and to follow up.

12 Q. And did Mr. Caldwell-Holden ever submit a final report on
13 the complaint?

14 A. No, he didn't.

15 Q. Did anyone?

16 A. No, they didn't.

17 Q. All right. Did any investigation ever get performed by
18 any District employees into Mr. Glasser's behavior toward
19 Pioneer FCA?

20 A. No.

21 Q. Did anyone -- I'm sorry. Go ahead.

22 A. Oh, that wasn't me. I think that was somebody's alert.

23 MS. LEVINE: Yeah. I think that was a pop-up on my
24 computer. Sorry.

25

1 MR. BLOMBERG: All right. No problem.

2 Q. And did anyone from the District ever tell Mr. Glasser
3 that his conduct toward Pioneer FCA, Charlotte Klarke,
4 Elizabeth Sinclair, or any of the students associated with
5 Pioneer FCA was improper?

6 A. I wouldn't put it that way, no.

7 Q. How would you put it?

8 A. Well -- well, "conduct" is really broad. Right? So if
9 you're referring to posting of the document he had a concern
10 about on his whiteboard, or the caption that he wrote with it,
11 I know that Herb Espiritu had a conversation with him about it
12 in which he, you know, coached him on how to consider the way
13 students might respond. So I would not say that there was a
14 formal conversation that said Mr. Glasser's conduct, as a -- as
15 a -- as a whole, was improper. I'm using that word. No.

16 But I don't know that anyone reached that conclusion.

17 Q. Did -- other than that conversation you just mentioned
18 with Principal Espiritu, did any District employees ever have a
19 conversation with Mr. Glasser regarding the propriety of his
20 conduct toward Pioneer FCA or any of its student leadership?

21 A. As far as I know, no.

22 I say that cautiously, because I don't know if, you know,
23 any -- I don't have any information that any of the colleagues
24 didn't say anything in passing to him that is --

25 Sorry. Amy, did you say something?

1 MS. LEVINE: No. Go ahead. I'm sorry.

2 THE WITNESS: In a formal capacity, in terms of
3 investigation or documented concerns, no, nobody did.

4 BY MR. BLOMBERG:

5 Q. Okay. And so Mr. Glasser was never told that he should do
6 anything different in the future regarding how he responded to
7 Pioneer FCA and its student leadership?

8 A. Mr. Espiritu did have that conversation with him, again, I
9 think, trying to really get him to understand how students may
10 interpret the comments coming from him.

11 So I would say that Herb -- it's appropriate, as the
12 principal at Pioneer, and Peter's supervisor -- gave him that
13 feedback.

14 Otherwise, I don't think there were any other
15 conversations from anyone in Human Resources or anybody in a
16 supervisory capacity, no.

17 Q. Okay. And so concerning that particular conversation,
18 were you privy to the conversation? Were you at all involved
19 in it?

20 A. No, I was not.

21 Q. All right. Do you know of anybody else who was involved
22 with it, other than Principal Espiritu and Mr. Glasser?

23 A. I think Mr. Espiritu got some -- some advice from
24 Mr. Bejarano on how to approach the conversation, given that
25 it's a sensitive topic. I think he wanted some suggestions

1 from him on how to handle it. And I think they had that
2 conversation.

3 Q. And the -- but as far as the content of the conversation
4 itself, was that conversation only between Principal Espiritu
5 and Mr. Glasser?

6 A. Yes.

7 Q. All right. And would their recollection of the events be
8 accurate, to the best of your knowledge?

9 A. Absolutely.

10 Q. And then other than this particular conversation we've
11 been talking about, the one that Principal Espiritu talked to
12 Bejarano about, and the conversation that Principal Espiritu
13 had with Mr. Glasser, you're not aware of any other feedback or
14 guidance that any District official gave to Mr. Glasser to
15 indicate that he should have handled the situation with Pioneer
16 FCA differently?

17 A. I'm not.

18 Q. And did the District ever show Mr. Glasser any sort of
19 document and ask him to sign it or review it regarding the
20 situation that occurred with Pioneer FCA?

21 A. Well, I mean, my first thought is, I mean, do we have him
22 sign any interrogatories? I -- I --

23 Q. No. That's a fair question. That's fair. I mean, like,
24 a counseling document. So not one that would be responsive
25 necessarily to the litigation as such, but rather a document

1 that the District had given him, counseling him regarding his
2 behavior toward Pioneer FCA and its student leadership.

3 A. No. That's not a standard procedure for teachers when
4 talking about, you know, progressive discipline, for example,
5 or coaching conversations.

6 Q. And, as the District's risk management officer, did you
7 think it would be appropriate to do an investigation into
8 Mr. Glasser's conduct?

9 MS. LEVINE: Vague as to time.

10 THE WITNESS: I thought it would be appropriate,
11 given that that was the plan to respond to the Uniform
12 Complaint.

13 BY MR. BLOMBERG:

14 Q. Other than the -- being a part of the plan to respond to
15 the Uniform Complaint, did you think it would have been
16 appropriate to investigate Mr. Glasser's conduct toward Pioneer
17 FCA and its student leadership?

18 A. If a student raises a concern, then I think -- and -- and
19 a conversation is warranted, I believe that if -- particularly
20 as the matter kind of grew, I think, in order to ensure that we
21 were a hundred percent certain or as certain as possible that
22 Mr. Glasser's behavior was in conformance with District
23 expectations, we would have been probably well served by
24 perhaps more formal conversation which would have involved
25 union representation and better clarity about our position on

1 the issue.

2 Q. And -- but that investigation never took place?

3 A. It did not.

4 Q. And does the District plan on initiating that
5 investigation at this point?

6 A. Not as far as I know. The current --

7 Q. Okay.

8 A. -- practice is also to let the principal decide whether or
9 not -- or actually the supervisors decide whether or not their
10 subordinate employees behavior kind of rises to that level.

11 So, while I was in a position to advise based on my own
12 risk analysis, generally speaking, it's the supervisors who
13 make that final call.

14 Q. And who would be Mr. Glasser's supervisor in this
15 instance?

16 A. Mr. Espiritu. The principal is the ultimate supervisor at
17 the site.

18 Q. And had -- I'm sorry. Go ahead.

19 A. At the site.

20 Q. And has Principal Espiritu said that he is going to
21 initiate any sort of review or investigation?

22 A. I believe Mr. Espiritu considers the matter closed.

23 Q. And has an assessment been made by the District
24 regarding whether Mr. Glasser's conduct is consistent with
25 District policy?

1 A. No. The District won't make an assessment separate from
2 the assessment from the principal, unless there's an
3 investigation so that all facts in the case can be reviewed,
4 and information gotten from all parties.

5 Q. And so at this point, though, there was an investigation
6 that -- it was said that it was initiated, but it didn't
7 happen. Right? That's what we were talking about regarding
8 Mr. Bejarano.

9 And does the District have any intention of picking back
10 up the -- that issue, and resolving it?

11 A. I left the District in July, but I didn't -- up until
12 that point, I didn't have any information that that
13 investigation was going to be conducted.

14 Q. And, as the District's 30(b)(6) witness today, you're not
15 aware of any intention by the District to resume the
16 investigation?

17 A. That's correct. Of course, since I am not -- I mean, I am
18 a 30(b)(6) witness for what I know. But if any -- again, if a
19 personnel decision was made in the interim, I just -- in an
20 abundance of caution, I just want to be clear that if that
21 decision has changed, nobody has notified me for the purpose of
22 this deposition; but it's extremely unlikely that decision
23 would have changed.

24 Q. Right. So as the District's 30(b)(6) witness today, you
25 are unaware of any intention by the District to resume the

1 investigation?

2 A. That's correct.

3 Q. Just out of curiosity, where are you now, now that you're
4 not with the District?

5 A. I'm in Portland, Oregon.

6 Q. Oh. Hm. Okay.

7 A. Can you hear the rain?

8 Q. I cannot. I did notice that it was a little more -- I
9 wouldn't say gloomy, but cloudy -- cloudy in your background
10 today.

11 MS. LEVINE: Humid. It looks humid.

12 MR. BLOMBERG: All right. Let me see. So can we
13 go -- we'll go to the folder, and to exhibit -- what's going to
14 be marked as exhibit -- or C. And it will be identified as C,
15 although actually I'm not sure exactly what the number will be.
16 We'll see in just a second.

17 THE WITNESS: Okay.

18 (Deposition Exhibit 135 marked for identification.)

19 BY MR. BLOMBERG:

20 Q. It should be up in just a moment. Okay. I see it. Just
21 let me know when you do.

22 A. Okay. Okay. I see it.

23 Q. Okay. And can you just let me know once you have it open?

24 A. Mm-hm. I have it open.

25 Q. Is this an email from you to -- I think what the

1 Principal Espiritu has referred to as Supe's Council -- but to
2 Superintendent Albarrán and several other folks in the
3 superintendent's office. Is that right?

4 A. That's correct.

5 Q. And the date on it is May 11, 2020? Is that right?

6 A. That's correct.

7 Q. So it would be about six days after that last email we
8 were looking at?

9 A. Yes.

10 Q. And if you look at the second bullet point on here, it
11 says the UCP is transitioned from Dane to Dominic per that
12 procedure, and the investigation is now with HR. Can you
13 explain to me what you're -- what that was communicating?

14 A. Sure. That Dane had received the Uniform Complaint, and
15 had parsed out the two pieces that we discussed a few moments
16 ago, and that the -- that piece went to Dominic.

17 That -- so the Uniform Complaint, which -- I'm sorry.
18 There were so many elements to the Uniform Complaint and to
19 the Board complaint, I want to make sure I don't conflate
20 them. So perhaps the Uniform Complaint really perhaps only
21 worked for to Mr. Glasser, in which case the whole thing would
22 have gone from Mr. Caldwell-Holden to Mr. Bejarano.

23 Q. Okay. And so you're reporting to the superintendent and
24 others in the Superintendent's Council regarding the -- who is
25 investigating the -- the UCP at this point?

1 A. Correct. Given that the initial email from Mr. Smith went
2 to everybody, and the State Board -- everyone wanted to be
3 updated when we understood what the request was, and we had a
4 plan for proceeding. This isn't generally how we might handle
5 UCP notification, per my understanding.

6 Q. Okay. And then when it says the investigation is now with
7 HR, that's a reference to what you and I were talking about
8 earlier, that Mr. Bejarano is within HR. And so basically it
9 meant that he was responsible for the investigation at that
10 point?

11 A. That was what I intended, yes.

12 MR. BLOMBERG: Okay. Okay. All right. Let's go to
13 another document. This one will be marked E, and it should pop
14 up in just a moment.

15 (Deposition Exhibit 136 marked for identification.)

16 BY MR. BLOMBERG:

17 Q. Okay. It popped up for me. Just let me know once you
18 have it up.

19 A. Okay.

20 Q. And can you tell us who Diana Gutierrez is? She's the
21 lady referenced at the top of this document.

22 A. Yes. I only am familiar with her based on this experience
23 that she's identified as the Education Equity UCP Officer for
24 the State Department of Education.

25 Q. Okay. And so is this a letter from Mr. Caldwell-Holden to

1 the State Department of Education?

2 A. It is.

3 Q. Okay. And then if you look at the -- the date on it, it
4 says May 4th, 2020.

5 And then go down to kind of the last full paragraph that's
6 more than just a sentence. It says "The April 22nd email has
7 triggered our investigation process under the Uniform Complaint
8 Procedure and we will continue that process pending the result
9 of the appeal that was submitted to you."

10 And it says "We'd appreciate the full opportunity to
11 investigate this and issue a decision at the local level."

12 Do you see that language?

13 A. I do.

14 Q. And so is this the same investigation that we were talking
15 about a moment ago regarding Mr. Bejarano?

16 I'm sorry. Let me ask that again. That was confusing.

17 Is this the same investigation that Mr. Bejarano was
18 assigned regarding Mr. Glasser?

19 A. Yes.

20 Q. Okay. And so the letter to the Department of Education
21 requests the full opportunity to investigate Mr. Glasser in
22 that situation?

23 A. All of the allegations outlined in the UCP, yes.

24 Q. Okay. And did a follow-up letter go to the Department of
25 Education, letting them know that know investigation had been

1 performed under the UCP?

2 A. No.

3 Q. All right. To date, does the Department of Education know
4 that no investigation was performed?

5 A. No. Well, do I answer -- is the answer to that question
6 "No"?

7 The Department of Education, to date, has not been
8 apprised that no investigation was performed in this issue --
9 on this issue.

10 Q. All right. And no follow-up communication of this nature,
11 like a letter, was sent from the District to the Department
12 of Education, letting them know that no investigation had been
13 performed?

14 A. No. We have not communicated with the CDE, nor did we
15 ever hear again from the appellants on this issue. We also
16 never heard from the CDE, asking what happened.

17 MR. BLOMBERG: And then if we could go -- we'll go
18 back into the Marked Exhibits folder, and we'll see a document
19 that will be marked F -- F, for Frank --

20 THE WITNESS: Okay.

21 MR. BLOMBERG: -- in just a minute. So...

22 (Deposition Exhibit 137 marked for identification.)

23 BY MR. BLOMBERG:

24 Q. Why was the State Department of Education involved at this
25 juncture? Why was the District communicating with them?

1 A. The State -- excuse me -- Department of Education received
2 notice from Mr. Smith and the Christian Legal Services Society
3 from CLS that -- that we had failed to respond to its Uniform
4 Complaint, and asked that the Department take actions that the
5 Department takes when an entity has failed to respond under
6 that requirement of the Uniform Complaint Procedure.

7 So that is what Mr. Caldwell-Holden is responding to.
8 (Reporter requests clarification.)

9 THE WITNESS: -- is responding to: Communication
10 from the CDE, indicating that there had been an escalation of
11 the complaint filed by CLS.

12 BY MR. BLOMBERG:

13 Q. All right. And if you could -- that F document should be
14 up now. If you can just pull it up when you get a second. And
15 it should be marked as Exhibit 137.

16 A. Okay. I finally got it. Just open it. Okay.

17 Q. Okay. And then you see that at the top there's an email
18 from you dated May 13th, 2020. And then if you scroll to the
19 second page of this document, do you see how that's an email
20 from Mr. Caldwell-Holden on May 11th at 7:55 a.m.?

21 A. I do.

22 Q. And do you see how it's addressed to Ms. Gutierrez, who we
23 were just talking about a moment ago?

24 A. I do.

25 Q. And you see in the email that Mr. Caldwell-Holden sends to

1 Ms. Gutierrez the second sentence of that. It says "I am the
2 Uniform Complaints Officer for SJUSD and am investigating this
3 complaint..." Do you see that language?

4 A. I do see that.

5 Q. So was that accurate at that point, since this is
6 May 11th, and the email that you and I just looked at a moment
7 ago said that the -- the investigation had been transferred to
8 Mr. Bejarano?

9 A. I mean, it's accurate to the extent that the Uniform
10 Complaint had elements that would be required to be
11 investigated by Student Services. So I'm trying to -- I'm
12 trying to also remember the time line at which point we said
13 Mr. Bejarano has full responsibility for the complaint,
14 versus --

15 There are two elements, potentially, you know: The
16 student-to-student element, which would be handled by Student
17 Services, versus the personnel element.

18 Q. All right. And, as of the date on this email on May 11th,
19 was Mr. Caldwell-Holden conducting an investigation?

20 A. He says he was. Yes.

21 Q. All right. But from our -- did he conduct a separate
22 investigation from the one that Mr. Bejarano conducted, or is
23 that the same one we've been talking about?

24 A. Well, the investigation itself would have been into any
25 allegations in the complaint. So those -- he would have

1 handled anything regarding the students. This is exponentially
2 confounded by the fact we were in a full shutdown because of
3 the pandemic. So it's, I think, made things more difficult.

4 Q. COVID definitely made life harder. That's -- there's no
5 question about that.

6 So was there a separate investigation that
7 Mr. Caldwell-Holden was performing, different from the one that
8 Mr. Bejarano was performing?

9 A. It -- it should have been. So Mr. Caldwell-Holden would
10 have had responsibility for any of the allegations about
11 behaviors of students in terms of harassment or bullying, for
12 example, under the Uniform Complaint Procedure.

13 Q. And was there any investigation that was performed by
14 Mr. Caldwell-Holden?

15 A. No.

16 MS. LEVINE: Outside the scope of looking into
17 misconduct by Peter Glasser.

18 BY MR. BLOMBERG:

19 Q. All right. So the only investigation that you're aware of
20 that the District performed is the one that was identified as
21 being assigned to Mr. Bejarano. Is that correct?

22 A. No. Because you stated that -- the only investigation I'm
23 aware of that was performed was assigned to Mr. Bejarano. I
24 don't think -- Mr. Bejarano never conducted an investigation.

25 Q. Yeah. And I get that. Setting -- you know, I get that

1 you know he was assigned the investigation, but didn't actually
2 perform it. But setting aside that -- that question of him not
3 performing the investigation he was assigned, are you aware of
4 anyone else who performed an investigation regarding the
5 District's actions towards Pioneer FCA and its student
6 leadership?

7 MS. LEVINE: And this is -- this is outside the
8 scope. Right? This -- are you saying specifically with
9 respect to Mr. Glasser?

10 MR. BLOMBERG: No. I'm asking the question that I
11 just asked. If you want to instruct her not to answer, you can
12 do that. It would be improper, and we can talk to the Judge,
13 but the --

14 You instructed her not to answer my questions last time
15 about any -- any investigation into any teacher conduct, not
16 just Mr. Glasser. And that's what -- what we're back here to
17 talk about today.

18 And the District Court's -- the Magistrate Judge's
19 ruling specifically said that the contemporaneous
20 investigations are highly relevant to the resolution of this
21 case. So we can go back and do this again, if you want.

22 MS. LEVINE: It does not say "investigations." It
23 says "investigation," singular. So you've changed the question
24 in your colloquy with me. So I'm not sure what your question
25 is at this point.

1 MR. BLOMBERG: All right. So the language from the
2 Judge -- you're right. It's singular. It says the
3 District's own contemporaneous investigation of the events at
4 issue is likely to be highly relevant for plaintiffs' claims of
5 discrimination. I'm just trying to find out what the
6 investigation was of the events at issue.

7 MS. LEVINE: Right. And you've asked that question.

8 So I, again, am not sure what your current question is;
9 but if it's about investigations regarding what students may
10 have done or not done, that does not seem to be related in any
11 way to the question of Mr. Glasser's misconduct, because the
12 witness has already said those were two separate strands, one
13 related to student conduct, and one related to employee
14 conduct.

15 MR. BLOMBERG: So are you -- are you saying --

16 MS. LEVINE: I think we're only here to talk about
17 employee conduct; specifically, Mr. Glasser's.

18 MR. BLOMBERG: You're the teachers within the
19 District who would be responsible for the students' conduct
20 acting within their purview. So are you saying that the
21 teachers -- the District was completely agnostic toward how
22 the teachers were handling how students were being treated by
23 other students? That's what I'm asking about. Did any sort of
24 investigation get performed by the District regarding the
25 actions that were taken against Pioneer FCA?

1 And what I've heard so far was that Mr. Bejarano was
2 assigned one, but he did not perform it. And then what I am --
3 I'm trying to understand here is whether Mr. Caldwell-Holden
4 performed a separate investigation.

5 MS. LEVINE: Right. And --

6 MR. BLOMBERG: My understanding is that's not the
7 case; that he did not perform one; that the investigation was
8 transferred to Mr. Bejarano. And that was consistent with what
9 Jen's email was on May 11th.

10 Q. But, Jen, is it your testimony that there was a separate
11 investigation, other than the one that went to Mr. Bejarano?

12 MS. LEVINE: And again, I think if it's -- you need
13 to limit it to into defendant Peter Glasser's alleged
14 misconduct, and then she can answer it.

15 Beyond that, I think you're going -- you're retreading
16 ground that you already either did tread in the earlier
17 deposition or that you had the opportunity to explore in the
18 earlier deposition.

19 MR. BLOMBERG: No. You're incorrect. So the
20 language that we had from the last conversation was you
21 instructed the witness specifically not to answer any
22 investigation that had been performed into the way teachers
23 acted -- teachers, plural, acted -- toward FCA in this matter.

24 And I asked you --

25 And my understanding, Amy, is that you instructed Jen not

1 to answer that question. Is that still your instruction?

2 And your response was yes.

3 So what I'm trying to understand is whether any
4 investigation was performed by the District into how they
5 handled the situation with Pioneer FCA.

6 Q. And, Jen, is your testimony that the only -- only
7 investigation that was assigned was the one that ultimately
8 went to Mr. Bejarano, and was not performed? Is that correct?

9 MS. LEVINE: Misstates the testimony.

10 MR. BLOMBERG: Please -- please correct me if I'm
11 misunderstanding.

12 MS. LEVINE: Do you understand?

13 BY MR. BLOMBERG:

14 Q. That's what I'm asking, you, Jen. Is there any other
15 investigation, other than the one that was assigned to
16 Mr. Bejarano?

17 A. Yes.

18 Q. What investigation was that?

19 A. So in -- in theory, when the Uniform Complaint came in,
20 there were two elements apparently because of the decision
21 Mr. Caldwell-Holden made: One that involved allegations of
22 student to student conduct that might have violated Board
23 Policy, and one that alleged a violation or made a complaint
24 about an employee conduct.

25 So Mr. Caldwell-Holden assigned the elements of the

1 complaint that have to do with student behavior to himself as
2 director of Student Services, and assigned anything having to
3 do with an employee to the Human Resources Assistant
4 Superintendent.

5 Q. Okay. And what are -- have you seen the results of
6 Mr. Caldwell-Holden's investigation?

7 A. That was not completed.

8 Q. All right. So Mr. Caldwell-Holden also did not complete
9 an investigation?

10 A. That's correct. My understanding is, with everybody
11 sheltering in place, it's not that it was moot, but I believe
12 that the students graduated, and I think that the other issues
13 took precedence, not that that's an excuse.

14 Mr. Caldwell-Holden did not complete his investigation.

15 Q. And who did Mr. Caldwell-Holden investigate -- or
16 interview as part of his investigation?

17 A. No one.

18 Q. Okay. What documents did he review as part of his
19 investigation?

20 A. None.

21 Q. When did he start his investigation?

22 A. He did not, as far as I know.

23 Q. All right. And so, like with Mr. Bejarano, the assignment
24 was made but no investigation was actually performed?

25 A. That's correct.

1 Just to be clear, I think all of this overlapping with the
2 complaint filed with the Board, which then led to the
3 lawsuit, I think, muddied the water for a lot of people. I
4 don't want to imply that Mr. Caldwell-Holden or Mr. Bejarano
5 were intentionally derelict in their duties.

6 Q. Can you please scroll down? We're in the same document,
7 same Exhibit 137. And scroll down to the second page.

8 Now, for -- the heading of that page says "California
9 Department of Education." Do you see that?

10 A. I do.

11 Q. And you see how that's dated May 13th, 2020?

12 A. I do.

13 Q. And you see on the last paragraph of that page it says
14 "Additionally" -- the last sentence. Sorry. The last sentence
15 of the last paragraph on that page it says, "Additionally 5 CCR
16 Section 4631 places responsibility on the local educational
17 agency to investigate and attempt resolution within 60 days of
18 the receipt of a complaint. Please send your decision to the
19 complainants and a courtesy copy to the CDE," and then -- and
20 how to do that. Do you see that language?

21 A. I do.

22 Q. All right. Did the -- who was the local education agency
23 in this instance?

24 A. That's San Jose Unified School District.

25 Q. All right. And did the Unified School District conduct

1 the required investigation here?

2 A. No.

3 Q. And did it send any decision to the complainants or a
4 courtesy copy to the Department of Education?

5 A. No. Since there was no investigation, no report was
6 generated.

7 MR. BLOMBERG: Okay. All right. If we could go to
8 the next exhibit, it will be marked G, and it will come up in
9 just a minute.

10 (Deposition Exhibit 138 marked for identification.)

11 THE WITNESS: Okay.

12 MS. LEVINE: Daniel, how much more time do you have?
13 Because we're getting close to an hour here.

14 MR. BLOMBERG: We're going to wrap up here pretty
15 soon. I think just, like, five, ten more minutes.

16 Q. Are you doing okay, Jen?

17 A. Yeah, I'm fine, thanks.

18 Q. All right. Great. Okay. I see "G" on my side. Just let
19 me know once you get it up.

20 A. I have it.

21 Q. Okay. Great. And just let me know once you have it open.

22 A. I have it open.

23 Q. Okay. And do you recognize what this is?

24 A. I do.

25 Q. All right. Can you tell me what it is?

1 A. Sure. It is a series of emails that starts with the
2 California Department of Education responding to our notice to
3 them that we had not properly received a complaint from
4 Christian Legal Society, and then accepting that we had
5 explained that appropriately, and granting us the opportunity
6 to conduct the investigation and respond in a timely manner.

7 Q. Okay. And then the bottom email on this chain is that one
8 that we were just looking at from Mr. Caldwell-Holden to
9 Ms. Gutierrez?

10 A. Yes. It's correct.

11 Q. Okay. And so this is a part of a kind of a series of
12 related communications?

13 A. Yes.

14 Q. All right. And what does Ms. Lax mean when she's happy to
15 count this as a win?

16 MS. LEVINE: Calls for speculation.

17 THE WITNESS: We had been perplexed by the request to
18 the California Department of Education and the allegation that
19 we had not responded to a Uniform Complaint that we had not
20 believed that we received. CLS relied on an email to the
21 superintendent outlining several concerns and identified that
22 as the complaint filed under that procedure, but didn't -- none
23 of us were aware that they were asserting that that was a
24 complaint filed under the procedure. So, given that it seemed
25 to be not clear and logical, we were surprised by the complaint

1 filed directly with the CDE.

2 And were -- I think Ms. Lax is stating that she was glad
3 that our logic won over in that regard. We were happy to
4 review it. We just needed to know that it had arrived.

5 Q. And but then after this, no review actually occurred?

6 A. That's correct.

7 Q. All right. Has the District ever conducted any training
8 to ensure that conduct similar to what Mr. Glasser did is not
9 taken by any other District teachers against student
10 organizations?

11 A. There's just a lot of things happening in that question.

12 MS. LEVINE: Vague and overbroad. Compound.

13 THE WITNESS: It may be simplest to say the
14 District hasn't implemented any additional training since the
15 complaint was filed either with the CDE, with the School Board,
16 or with the courts.

17 BY MR. BLOMBERG:

18 Q. Okay. So nothing specific to the situation with
19 Mr. Glasser and Pioneer FCA. Is that right?

20 A. I would say nothing specific nor particularly inspired in
21 terms of training, no.

22 Q. Okay. And has the District taken any actions to protect
23 Pioneer FCA and its student leaders from retaliation or
24 intimidation by District teachers?

25 MS. LEVINE: What has that got to do with the scope

1 of this Order allowing discovery into investigations into
2 Mr. Glasser's conduct?

3 MR. BLOMBERG: It's specifically related to whether
4 the District investigated it, and whether it repudiated it or
5 embraced it and found it appropriate. And that's a part of
6 what the Court said would be highly relevant, so that's what
7 I'm trying to ask.

8 Q. Did the District take steps to ensure that Pioneer FCA
9 and its student leaders would be protected from retaliation and
10 intimidation in the future?

11 MS. LEVINE: I don't think that that has anything to
12 do with that, unless it's framed in some other way. I just
13 don't -- I don't even know how you would go about answering
14 that question. It's vague. It's overbroad. And it's outside
15 the scope.

16 MR. BLOMBERG: All right. That's your objection.
17 Are you instructing her not to answer my question?

18 MS. LEVINE: I don't even know what your question
19 means.

20 BY MR. BLOMBERG:

21 Q. Jen, has the District taken any actions to protect
22 Pioneer FCA and its student leaders from retaliation and
23 intimidation by District teachers?

24 A. I -- I guess it's just -- the concept that District
25 teachers would retaliate or attempt to intimidate any student

1 is so anathema to the way San Jose Unified expects employees to
2 behave, it's hard to envision what that would look like.

3 It's just not -- it's just not acceptable. If a student
4 came forward and said they thought they were being intimidated
5 by a teacher or harassed by a teacher, it's just not acceptable
6 behavior. So taking steps -- I guess I, too, am struggling
7 with what that would look like.

8 Q. Yeah. I'm just trying to understand whether anything has
9 been done to ensure that what happened to Pioneer FCA and its
10 student leaders won't happen to future leaders of Pioneer FCA.

11 MS. LEVINE: Okay. And I'm going to then instruct
12 her not to answer, as beyond the scope of the Order. I don't
13 think that this has got anything to do with why we're here
14 today.

15 And you're also over an hour at this point, and I think
16 well over the seven-hour limit, so if you could just wrap it
17 up.

18 MR. BLOMBERG: So if you instruct her not to answer
19 my question and I don't get an answer to it, then we're going
20 to go back to the Judge and we're going to have this
21 conversation again. And you're going to see the language in
22 her Order that specifically says that we are entitled to know
23 whether the District has repudiated or embraced or permitted
24 this kind of conduct going forward. And I don't think the
25 Judge is going to be happy that we're going to have to resolve

1 this exact same issue all over again, and we're certainly not
2 going to be. And the cost is going to have to go to the
3 District for causing these continued, bit-by-bit depositions.
4 So language is in there.

5 Q. And the question is: As a result of the -- the
6 District's awareness of what happened to Pioneer FCA and its
7 student leaders, has it taken any steps to protect Pioneer FCA
8 and its student leaders from retaliation or intimidation?

9 MS. LEVINE: And I think you know, again, if you want
10 to ask it about Peter Glasser's misconduct, then go ahead.
11 Maybe she can answer it to that limited extent.

12 BY MR. BLOMBERG:

13 Q. Jen, in response to Peter Glasser's conduct, has the
14 District taken any actions to protect Pioneer FCA and its
15 student leaders from future retaliation and intimidation?

16 A. Let me think. That question implies that Mr. Glasser's
17 conduct was such that students needed to be protected from
18 intimidation and retaliation. What's hard is I know that, you
19 know, the students went to Mr. Espiritu. And he said, you
20 know, this is important. You should talk about this with
21 Mr. Glasser.

22 And when they did, he did take down the statement that he
23 made.

24 I feel like the system worked in the way that it's
25 supposed to work to a certain extent; at least, as it occurred

1 on the Pioneer campus. Students were concerned. They went to
2 their principal. They talked to their teacher. Their teacher
3 accommodated their concern out of, you know, his concern for
4 them.

5 When protests happened, the principal consulted with the
6 police -- our local police officers -- and his supervisor, and
7 the Director of Student Services, to ensure that students'
8 rights were recognized and supported, but that student safety
9 was at the foremost of everybody's mind.

10 So I don't think anything in addition to those procedures
11 were implemented in order to protect students. And I just
12 don't -- I can't accept the premise that students needed to be
13 protected or need to be protected from Mr. Glasser.

14 Q. All right. So your testimony is that the only thing that
15 was done were the things that you just mentioned?

16 MS. LEVINE: Misstates the testimony.

17 THE WITNESS: My testimony is that the principal and
18 the -- you know, the support staff with him followed our
19 procedures to ensure that students were able to express a
20 concern, and that the adults responded to that concern. And
21 that will continue to be the District's approach to these
22 issues.

23 BY MR. BLOMBERG:

24 Q. And has the District conducted any sort of specific
25 training based on what it's learned from Mr. Glasser's conduct,

1 to ensure that similar things do not happen in the future to
2 student clubs?

3 MS. LEVINE: Asked and answered.

4 THE WITNESS: No.

5 MR. BLOMBERG: We'll take a short break, and then
6 come right back. I think we're probably all wrapped up.

7 THE WITNESS: Okay.

8 MR. BLOMBERG: Come back in five minutes. Does that
9 work for you all?

10 THE WITNESS: Fine.

11 MS. LEVINE: Sure.

12 (Recess taken from 3:05 p.m. until 3:11 p.m.)

13 MR. BLOMBERG: Barring cross-examination and the need
14 to discuss that further, I don't have any other questions, and
15 we can close the deposition.

16 MS. LEVINE: Okay. Great.

17 I think I have one question.

18 EXAMINATION

19 BY MS. LEVINE:

20 Q. Jen, you testified about your thought as a risk manager
21 whether it would have been better to have some kind of a more
22 formal structure regarding what happened with Mr. Glasser. Can
23 you explain what you meant by that?

24 A. When we were talking about whether or not I thought we
25 should have had an investigation?

1 Q. Yeah.

2 A. I think -- sure. I mean I am, by nature and by training,
3 exceptionally cautious. So I think once -- you know, once
4 Mr. Espiritu ascertained from his own professional observations
5 that Mr. Glasser's behavior did not warrant disciplinary action
6 or anything beyond coaching, based on the context of what
7 happened and his understanding of what was going on at Pioneer,
8 I think once the -- once the issue didn't subside, once it was
9 clear that there was ongoing concern about it on the students'
10 side, and certainly after the UCP was filed, I think we should
11 have had a fuller conversation, I guess. I think
12 "investigation" -- whether that means sitting down with
13 Mr. Glasser, with union representation, asking more structured
14 questions, and -- and following up with an assessment of what
15 happened, for sure.

16 Q. So by "conversation," you meant "investigation"?

17 A. I mean "investigation" is such a fraught word. I work --
18 you know, I work in a state where, if you're a principal and
19 you're investigated by HR, you have to put that on your résumé
20 forever. So I guess -- I guess that conversation is an
21 investigation, because there can be an outcome that could lead
22 to discipline or to, you know, a nonpreferred event. But yes,
23 sure, I would say investigation.

24 MS. LEVINE: Okay. Thanks.

25 I don't think I have anything further.

1 MR. BLOMBERG: Nothing further from us.

2 MS. LEVINE: And so, just like we did in the prior
3 deposition in terms of designating confidential portions, I
4 would designate here testimony regarding investigation into
5 employee misconduct, feedback from Mr. Espiritu to
6 Peter Glasser, and Jen Thomas' opinion regarding appropriate
7 steps or conduct or treatment of Mr. Glasser. And we can try
8 to get more specific after we look at the transcript to do
9 page- and line-number designations, and meet and confer about
10 the scope of those confidentiality designations. Does that
11 work for you, Daniel?

12 MR. BLOMBERG: Yeah, that will work just fine.

13 MS. LEVINE: Okay. Thank you.

14 (Time noted: 3:14 p.m.)
15
16
17
18
19
20
21
22
23
24
25

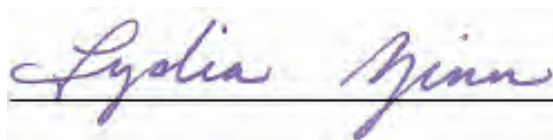
1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby certify:

3 That the foregoing proceedings were taken before me at
4 the time and place herein set forth; that any witnesses in the
5 foregoing proceedings, prior to testifying, were placed under
6 oath; that a verbatim record of the proceedings was made by me
7 using machine shorthand which was thereafter transcribed under
8 my direction; further, that the foregoing is an accurate
9 transcription thereof.

10 I further certify that I am neither financially
11 interested in the action nor a relative or employee of any
12 attorney or any of the parties.

13 IN WITNESS WHEREOF, I have this date subscribed my name.

14
15 Dated: 10/3/2021

16
17
18 
19

20 LYDIA ZINN, RPR, FCRR

21 CSR No. 9223
22
23
24
25

DANNIS WOLIVER KELLEY
2087 ADDISON STREET, 2ND FLOOR
BERKELEY, CA 94704

AMY R. LEVINE, State Bar No. 160743
alevine@DWKesq.com
WILLIAM B. TUNICK, State Bar No. 245481
wtunick@DWKesq.com
KASMIRA M. BROUGH, State Bar No. 308791
kbrough@DWKesq.com
Dannis Woliver Kelley
2087 Addison Street, 2nd Floor
Berkeley, CA 94704
Telephone: 510.345.6000
Facsimile: 510.345.6100

KENNETH UPTON, Appearance Pro Hac Vice
upton@au.org
RICHARD KATSKEE, Appearance Pro Hac Vice
katskee@au.org
Americans United for Separation of Church and State
1310 L Street NW, Suite 200
Washington, DC 20005
Tel: (202) 466-3234

Attorneys for Defendants

NANCY ALBARRAN, HERB ESMIRITU, PETER GLASSER
and STEPHEN MCMAHON

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ELIZABETH SINCLAIR, CHARLOTTE
KLARKE, FELLOWSHIP OF CHRISTIAN
ATHLETES, an Oklahoma corporation, and
FELLOWSHIP OF CHRISTIAN
ATHLETES OF PIONEER HIGH SCHOOL,
an unincorporated association,

Plaintiffs,

v.

NANCY ALBARRAN, in her official and
personal capacity, HERB ESMIRITU, in his
official and personal capacity, PETER
GLASSER, in his official and personal
capacity, and STEPHEN MCMAHON, in his
official and personal capacity,

Defendants.

Case No. 5:20-cv-2798-LHK

**DEFENDANTS' SECOND AMENDED
RESPONSES TO PLAINTIFFS' FIRST SET
OF INTERROGATORIES**

PROPOUNDING PARTY: PLAINTIFFS CHARLOTTE KLARKE, ELIZABETH SINCLAIR,
and FELLOWSHIP OF CHRISTIAN ATHLETES

1 **RESPONDING PARTY:** DEFENDANTS NANCY ALBARRAN, HERB ESPIRITU, and
2 PETER GLASSER

3 **SET NUMBER:** ONE

4 Pursuant to Magistrate DeMarchi's July 26, 2021 order (Dkt. 97) requiring Defendants to
5 produce "all [responsive] findings and conclusions from any District investigations into Peter
6 Glasser's misconduct concerning the matters at issue in this case and any documents and
7 information used to develop such findings" as requested in Plaintiffs' discovery requests,
8 Defendants NANCY ALBARRAN, HERB ESPIRITU, and PETER GLASSER (collectively,
9 "Defendants") serve the following amended answers and objections to Plaintiffs' First Set of
10 Interrogatories to Defendants.

11 **PRELIMINARY STATEMENT AND GENERAL OBJECTIONS**

12 These responses are made solely for purpose of this action. Each answer is subject to all
13 objections as to relevance, materiality, and admissibility, and all other objections that would require
14 the exclusion of any statement contained herein if made by a witness present and testifying in court,
15 all of which objections and grounds are reserved and may be interposed at the time of trial.

16 Defendants object to the instructions and definitions provided by Plaintiffs to the extent they
17 conflict with or impose burdens beyond those contained in the Federal Rules of Civil Procedure.
18 They also object to the instructions and definitions on the grounds that they make the interrogatories
19 compound, vague, ambiguous and unintelligible, burdensome and oppressive, and to the extent they
20 expand the interrogatories into multiple subparts.

21 Defendants object to the format of these interrogatories in that they are directed to all the
22 Defendants, collectively. Discovery, investigation, research, and analysis in this action are
23 continuing. It is anticipated that further discovery, investigation, research, and analysis may result
24 in the development of new facts and legal theories, which may alter the responses contained herein.
25 Defendants retain the right to revise, correct, supplement and/or clarify any of the responses herein.
26 The responses herein are given without prejudice to Defendants' right to produce evidence of any
27 subsequently discovered fact or facts which Defendants may later discover or recall.

28 Subject to the foregoing objections, the requests are responded to as follows:

DANNIS WOLIVER KELLEY
2087 ADDISON STREET, 2ND FLOOR
BERKELEY, CA 94704

INTERROGATORY NO. 9:

Identify all policies and practices of the District and of any secondary school within the District regarding teacher speech in the classroom, including both oral speech and written speech, and all persons responsible for the supervision and enforcement of such policies and practices and their role in such supervision or enforcement. For each policy or practice, identify all instances during the 2015-16 academic year and each subsequent academic year relating to any potential, alleged, or actual violation of any policy identified and describe the circumstances of the potential violation, any measures taken by the District or any secondary school within the District to investigate such potential violation, the results of such investigation, any corrective action taken by the District or school in connection with the potential or actual violation, and any person involved in investigating a potential violation and deciding whether to take corrective action, including their specific role

RESPONSE TO INTERROGATORY NO. 9:

Defendants object to this interrogatory as vague and ambiguous as to the phrase “teacher speech.” Defendants further object to this interrogatory as compound, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Defendants also object that this interrogatory contains numerous subparts that are separate and distinct from one another. Defendants consider this interrogatory to be multiple interrogatories.

Defendants also object to this interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege, work product doctrine, official information privilege, and/or deliberative process privilege. Defendants further objects to this interrogatory to the extent it violates the right to confidentiality of its employees and third parties, the privacy of its students and/or their parents under the California Constitution and common law, and also violates the obligation to keep student records and information confidential under state and federal law. (See, Cal. Const. art. I, § 1; 20 U.S.C. §§ 1232g *et seq.*; Ed. Code, §§ 49073 *et seq.*)

Subject to and without waiving their objections, Defendants respond as follows: The District has written board policies and administrative regulations regarding teacher speech on controversial subjects in the classroom, on religious instruction, and on sensitivity to students of

various cultural or other backgrounds. These include but are not limited to Board Policies (“BPs”) and Administrative Regulations (“ARs”) 4119.25, 5137, 6141.2, 6141.6, 6141.61, and 6144. In addition, the rights of teachers are addressed in the collective bargaining agreement between the District and the San Jose Teachers Association.

AMENDED RESPONSE TO INTERROGATORY NO. 9:

Defendants fully incorporate the objections and response above and further state: Plaintiffs have alleged that Peter Glasser violated the Equal Access Act, the First Amendment, and the Fourteenth Amendment by posting the FCA Statement of Faith / Sexual Purity Statement on his whiteboard on or about April 23, 2019. In or around April 2019 Mr. Espiritu confirmed with Mr. Glasser that Mr. Glasser had posted the FCA Statement of Faith / Sexual Purity Statement on the whiteboard in his classroom. Mr. Espiritu also spoke with Plaintiff Klarke about the posting and suggested to Plaintiffs that they communicate their concerns to Mr. Glasser directly. Mr. Espiritu believed the matter to be resolved.

Defendants are not aware of any further investigation of potential policy violation by Mr. Glasser responsive to Judge DeMarchi’s order.

INTERROGATORY NO. 10:

Regarding Defendant Peter Glasser’s whiteboard statement as identified in Paragraph 5 of the Amended Complaint, please identify all persons responsible for or involved in the District’s or Pioneer’s response to such statement or to any complaints regarding the statement and their role in such response and any complaints or expressions of dissatisfaction to the statement. For each person identified as responsible for or involved in the District’s response, describe the circumstances under which the person became aware of the statement or any complaints or expressions of dissatisfaction with such statement. Further identify any actions that the District, Pioneer, or any employee or officer of the District or Pioneer took with response to such statement or complaints, and any discussion that the District, Pioneer, or any employee or officer of the District or Pioneer had regarding whether or not to allow Defendant Glasser to leave the statement or any similar statement up in his classroom and whether or not to discipline or censure Defendant Glasser.

RESPONSE TO INTERROGATORY NO. 10:

DANNIS WOLIVER KELLEY
2087 ADDISON STREET, 2ND FLOOR
BERKELEY, CA 94704

Defendants object to this interrogatory as vague and ambiguous. Defendants further object to this interrogatory as compound, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Defendants also object that this interrogatory contains numerous subparts that are separate and distinct from one another. Defendants consider this interrogatory to be multiple interrogatories.

Defendants also object to this interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege, work product doctrine, official information privilege, and/or deliberative process privilege. Defendants further objects to this interrogatory to the extent it violates the right to confidentiality of its employees, the privacy of its students and/or their parents under the California Constitution and common law, and also violates the obligation to keep student records and information confidential under state and federal law. (See, Cal. Const. art. I, § 1; 20 U.S.C. §§ 1232g *et seq.*; Ed. Code, §§ 49073 *et seq.*)

AMENDED RESPONSE TO INTERROGATORY NO. 10:

Defendants fully incorporate the objections and response above and further state: Plaintiffs have alleged that Peter Glasser violated the Equal Access Act, the First Amendment, and the Fourteenth Amendment by posting the FCA Statement of Faith / Sexual Purity Statement on his whiteboard on or about April 23, 2019. In or around April 2019 Mr. Espiritu confirmed with Mr. Glasser that Mr. Glasser had posted the FCA Statement of Faith / Sexual Purity Statement on the whiteboard in his classroom. Mr. Espiritu also spoke with Plaintiff Klarke about the posting and suggested to Plaintiffs that they communicate their concerns to Mr. Glasser directly. Mr. Espiritu believed the matter to be resolved. On or about April 23, 2019, Plaintiff Klarke spoke with Mr. Glasser regarding his whiteboard statement, in response to which Mr. Glasser updated his posting. On or about April 24, 2019, Plaintiffs Klarke and Sinclair spoke with Mr. Glasser regarding the whiteboard statement, in response to which Mr. Glasser offered to, and did, remove the whiteboard statement.

On or about April 25, 2019, Rigo Lopez emailed Mr. Espiritu regarding “the conversation happening on Pioneer’s campus right now regarding FCA’s Sexual Purity Policy.” On or about April 29, 2019, Mr. Espiritu forwarded the FCA Statement of Faith / Sexual Purity Statement to

1 Dane Caldwell-Holden and Stephen McMahon. On or about May 15, 2019, parents for Plaintiffs
 2 Klarke and Sinclair emailed Mr. Espiritu, stating “[t]here has been... indirect bullying from a
 3 member of your staff.” Their email did not specify the nature or dates of such bullying, nor did it
 4 identify the staff member. On or about May 16, 2019, Mr. Espiritu emailed Plaintiffs Klarke and
 5 Sinclair, inviting them to his office to check-in.

6 Defendants are not aware of any further investigation of complaints regarding Mr. Glasser’s
 7 conduct or misconduct responsive to Judge DeMarchi’s order.

8
 9 DATED: August 12, 2021

DANNIS WOLIVER KELLEY

10 By: /s/Amy R. Levine

11 AMY R. LEVINE

12 Attorneys for Defendants NANCY ALBARRAN,
 13 HERB ESPIRITU, and PETER GLASSER
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

DANNIS WOLIVER KELLEY
 2087 ADDISON STREET, 2ND FLOOR
 BERKELEY, CA 94704

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF ALAMEDA) ss.

I am employed in the County of Alameda, State of California. I am over the age of 18 and not a party to the within action; my business address is 2087 Addison Street, 2nd Floor, Berkeley, CA 94704.

On the date set forth below I served the foregoing document described as **DEFENDANTS' SECOND AMENDED RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES** on interested parties in this action as follows:

Kimberlee Wood Colby
CENTER FOR LAW & RELIGIOUS
FREEDOM
8001 Bradock Road, Suite 302
Springfield, VA 22151
kcolby@clsnet.org

Stephen C. Seto
Steven N.H. Wood
Christopher J. Schweickert
SETO WOOD & SCHWEICKERT LLP
1470 Maria Lane, Suite 300
Walnut Creek, CA 94596
cjs@wcjuris.com

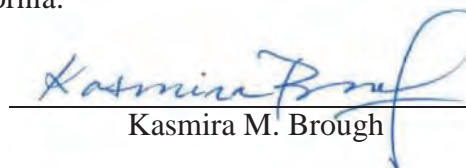
THE BECKET FUND FOR RELIGIOUS
LIBERTY

Eric S. Baxter
Daniel H. Blomberg
Nicholas Robert Reaves
Kayla Ann Toney
Abigail E. Smith
1919 Pennsylvania Avenue, Suite 400
Washington, DC 20006
ebaxter@becketlaw.org
dblomberg@becketlaw.org
nreaves@becketlaw.org
ktoney@becketlaw.org

☒ (VIA ELECTRONIC SERVICE) [Code Civ. Proc. Sec. 1010.6; CRC 2.251] by electronic mailing a true and correct copy through 's electronic mail system from kbrough@DWKesq.com to the email address(es) set forth above, or as stated on the attached service list per agreement in accordance with Code of Civil Procedure section 1010.6 and CRC Rule 2.251. The transmission was reported as complete and without error.

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

Executed on **August 12, 2021**, at Oakland, California.


Kasmira M. Brough

RE: Presentation of Claims and Harassment/Discrimination Complaint

From: Thomas, Jennifer <jthomas@sjusd.org>
To: Caldwell-Holden, Dane <dcaldwellholden@sjusd.org>

Tue, May 5, 2020 at 1:04 PM PDT (GMT-07:00)

Awesome. Probably that hardest-worked email we've sent in a while.



From: Uniform Complaint <UniformComplaint@sjusd.org>
Sent: Tuesday, May 5, 2020 12:58 PM
To: Reed Smith <rsmith@clsnet.org>
Cc: Lax, Jodi <jlax@sjusd.org>; Bejarano, J.Dominic <jbejarano@sjusd.org>; Thomas, Jennifer <jthomas@sjusd.org>
Subject: Re: Presentation of Claims and Harassment/Discrimination Complaint

Dear Mr. Smith,

I received your email dated April 22nd regarding incidents that occurred on the Pioneer High School campus on and after May 2019. Complaints alleging discrimination by adult employees of SJUSD are investigated by the Assistant Superintendent of Administrative Services, Dominic Bejarano, who is cc'd to this email. He has opened the investigation into your complaint. If you would like to provide any more evidence or documentation about these incidents, please email them to me.

While we will make every effort to conclude our investigation and respond quickly, the COVID-19 statewide shelter-in-place order may require an extended timeline as permitted by SB 117, which states that: "...The timelines established in subdivisions (n) and (o) of Section 56043 and Section 56504 of the Education Code, and subdivision (a) of Section 3024 of Title 5 of the California Code of Regulations shall be waived if a school is closed due to COVID-19, up until the time school reopens and the regular school session reconvenes."

Please let me know should you have any questions.

Sincerely,

Dane

From: Reed Smith <rsmith@clsnet.org>
Date: Wednesday, April 22, 2020 at 8:27 PM
To: "Castellanos, Teresa" <tcastellanos@sjusd.org>, Superintendent's Office <superintendent@sjusd.org>, "Caldwell-Holden, Dane" <dcaldwellholden@sjusd.org>, "Bejarano, J.Dominic" <jbejarano@sjusd.org>, Uniform Complaint <UniformComplaint@sjusd.org>
Cc: Kim Colby <kcolby@clsnet.org>, "Chris Schweickert (cjs@wcjuris.com)" <cjs@wcjuris.com>, "Stephen C. Seto" <sseto@wcjuris.com>, Steve Wood <wood@wcjuris.com>
Subject: Presentation of Claims and Harassment/Discrimination Complaint

Dear President Castellanos,

Please find attached renewed correspondence regarding the District's continued discrimination against its students who wish to participate in student clubs associated with the Fellowship of Christian Athletes. A hard copy of this correspondence is being sent concurrently by certified mail to:

San Jose Unified School District Board of Education
c/o Teresa Castellanos, Board President

SJUSD012508
3-ER-0297

855 Lenzen Avenue
San Jose, CA 95126

as well as the Director of Student Services at the same address.

Respectfully,

Reed



Reed Smith | **CHRISTIAN LEGAL SOCIETY** | Director of Litigation
8001 Braddock Rd, Ste 302 | Springfield, VA 22151 | 703-894-1081

Following up: Christian Legal Services for FCA

From: Thomas, Jennifer <jthomas@sjusd.org>

Mon, May 11, 2020 at 2:46 PM PDT (GMT-07:00)

To: Albarran, Nancy <nalbarran@sjusd.org>; Lax, Jodi <jlax@sjusd.org>; Bejarano, J.Dominic <jbejarano@sjusd.org>; McMahon, Stephen <smcmahon@sjusd.org>

Cc: Chang, Katie <kchang@sjusd.org>

Good afternoon:

1. CDE response for the UCP appeal completed and sent.
2. UCP transitioned from Dane to Dominic, per that procedure. Investigation now with HR, timelines extremely extended by state law.
3. "Complaint" responded to via DWK with the notice of insufficiency. Ball is in CLS's court and I will notify if/when they amend for consideration by the Board.

All deadlines met and we are moving right along.

If we still want to send the "clubs should re-apply" email as a suggested remedy, now would be a great time to do that.

Jen

Jennifer Thomas
Risk Management
San Jose Unified School District
408-535-6510

I'll explain

From: Thomas, Jennifer <jthomas@sjusd.org>
To: Martinez, Liliana <lmartinez@sjusd.org>

Tue, May 12, 2020 at 11:46 AM PDT (GMT-07:00)

Jennifer Thomas
Risk Management
San Jose Unified School District
408-535-6510

Attachments

- FCA Notice of Insuf 5.12.2020.docx



San José
Unified
School District

Risk Management

855 Lenzen Avenue
San José, CA 95126
408.535.6510

sjusd.org

May 11, 2020

BY U.S. MAIL AND EMAIL

Reed N. Smith
Center for Law & Religious Freedom
8001 Baddock Road, Suite 302
Springfield, VA 22151
rsmith@clsnet.org

Stephen C. Seto
Seto Wood & Schweickert LLP
1470 Maria Lane, Suite 300
Walnut Creek, CA 94596

Re: Notice of Insufficiency of Claim

Dear Mr. Smith and Mr. Seto:

Pursuant to Government Code section 910.8, you are hereby notified notice that the "Presentation of Claims" dated April 22, 2020, which you sent on behalf of the Fellowship of Christian Athletes (FCA), and two students in the District identified only as Jane Doe and Jessica Roe, is insufficient and fails to substantially comply with the requirements of Government Code section 910. Under Government Code section 910.8, you have **fifteen (15) days** in which to correct the defects and omissions stated in this notice.

Government Code section 910 provides in relevant part:

A claim shall be presented by the claimant or by a person acting on his or her behalf and shall show all of the following:

- (a) The **name and post office address of the claimant.** ...
- (c) The **date, place and other circumstances** of the occurrence or transaction which gave rise to the claim asserted.

(d) A general description of **the indebtedness, obligation, injury, damage or loss incurred** so far as it may be known at the time of presentation of the claim.

(e) **The name or names of the public employee or employees** causing the injury, damage, or loss, if known.

(Emphasis added.)

The Presentation of Claims you sent on April 22, 2020 fails to provide sufficient information to allow the District to investigate its allegations, or to make any determination as to the timeliness of the Claim. Specifically, it fails to provide:

- The name and post office address of the Claimants;
- The date, place and other circumstances of the occurrence or transaction which gave rise to the Claim;
- A general description of the indebtedness, obligation, injury, damage or loss incurred; and
- The name or names of the public employee or employees causing the injury, damage, or loss, if known.

The Claim is insufficient because it does not include the names and addresses of all Claimants. The Claim presented does include the name of the Fellowship of Christian Athletes but includes no address for that Claimant. It also fails to include either the names or the addresses of the individuals identified as Jane Doe and Jessica Roe. This information must be included to state a sufficient claim. There is no privacy interest at stake in making a claim, at least as to the public entity itself, which entitles the claimant to withhold this information. (See, *Poway Unif. Sch. Dist. v. Superior Ct. (Copley Press)* (1998) 62 Cal.App.4th 1496, 1505 (“While [Government Code] section 910 does require a claimant to provide some potentially private information, generally, one who submits a tort claim has no reasonable expectation of privacy”).)

The Claim is also insufficient because it contains only vague allegations of the date, place and other circumstances of the occurrence or transaction giving rise to the Claim, and lacks information about the identity of the employee or employees causing the injury, damage or loss. To substantially comply with the statutory requirements, “the face of the filed claim [must] disclose sufficient information to enable the public entity to make an adequate investigation of the claim's merits and settle it without the expense of litigation.” (*Connelly v. Cty. of Fresno* (2006) 146 Cal.App.4th 29, 38.)

The Claim does provide information about the circumstances and events that are stated to have occurred at Pioneer High School since January 14, 2020, and as to the employees responsible for events since that date. However, as to the rest of the Claim, it seeks to incorporate by reference three prior letters,

dated July 2, 2019, January 14, 2020, and January 31, 2020, which themselves contain multiple exhibits, including other correspondence, newspaper articles, federal regulatory material, photographs, and other matter. These prior letters, and their exhibits and attachments, are not information that is on the “face of the filed claim” and thus do not constitute the Claim. But, even if they were considered to be part of the Claim, none of the documents incorporated by reference identify who Jane Doe or Jessica Roe are, or explain how they were “targeted due to their leadership positions in the Pioneer Student FCA Chapter” or how they have “suffered severe mental anguish as a result of the District’s negligent and intentional actions and failures to act.” In addition, the particular employees who have engaged in “negligent and intentional actions and failures to act” as to those Claimants is not identified.

The documents incorporated by reference into the April 22, 2020 Claim discuss events happening from sometime in the spring of 2019 through December 4, 2019 (per a December 12, 2019 article in “The Pony Express”, included as Exhibit 7 to your Exhibit A to your April 22, 2020 letter). However, the District is entitled “to know from the face of the claim that it is timely.” (*Martinez v. Cty. of Los Angeles* (1978) 78 Cal.App.3d 242, 246.) There are insufficient facts and circumstances alleged in the Claim itself, or even in the exhibits it seeks to incorporate by reference, to enable the District to ascertain when any cause of action may have accrued as to any of the Claimants.

The Claim references three District high schools, Pioneer, Leland, and Willow Glen, but only events at Pioneer are discussed in the April 22, 2020 letter, and we do not find any relevant information relating to Leland High School in the 105 pages of exhibits included with your Claim, except for a passing reference in one of the documents that indicates that during the 2018-19 school year, an officially recognized FCA group met at that school. (January 14, 2019 Letter, at p. 2, Exhibit A to your April 22, 2020 letter). As to Willow Glen High School, we see only a letter dated June 6, 2019 from counsel for the Fellowship of Christian Athletes to Principal Tina Vanlaarhoven regarding a decision made on an unspecified date to “revoke certain meeting related privileges for the FCA-affiliated student group at Willow Glen High School.”

Various circumstances and events at Pioneer High School are discussed in the documents that you seek to incorporate by reference into the Claim. However, some of the alleged incidents referenced in the attachments do not identify the employee or employees involved, including the allegation that on December 4, 2019 “at least one teacher took part in this protest and encouraged a number of students to attempt to intrude into the FCA students’ meeting with the purpose of disrupting the meeting.” (January 14, 2020 Letter, at p. 4, Exhibit A to your April 22, 2020 letter).

For all the reasons stated above, the District finds the Claim insufficient. Please be advised that pursuant to Government Code section 910.8, the

governing board of the San Jose Unified School District will not take any action on the Claim for a period of 15 days after the date of this notice.

Sincerely,

Jennifer Thomas
Risk Manager
jthomas@sjusd.org



San José
Unified
School District

Department of Student Services
Director, Dane Caldwell-Holden
408-535-6195

Dianna Gutierrez
Education Equity UCP Office [SEP] Legal and Audits Branch
1430 N Street
Sacramento, CA.
95814-5901

May 4, 2020

RE: Case Matter N0. 2020-0091

Appellants- Fellowship of Christian Athletes, Jane Doe and Jessica Roe

Dear Ms. Gutierrez,

On behalf of Superintendent Nancy Albarran and the San Jose Unified School District, I am writing because we are in receipt of your notice dated April 29, 2020 in the appeal as noted above. I am the Board of Education's designated compliance officer for the Uniform Complaint Procedure.

Until April 22, 2020, my office had not received a request for an investigation under the Uniform Complaint Procedure. On that date, the Christian Legal Society submitted a complaint to the San Jose Unified Board of Education. This email was copied to me as well as our uniformcomplaint@sjusd.org email address. I am aware that previous correspondence and discussion had occurred on some of the issues raised in this complaint, but District staff did not infer that these previous conversations were a request for an investigation under the UCP, nor was one explicitly requested during many conversations with District staff until now.

The April 22nd email has triggered our investigation process under the Uniform Complaint Procedure and we will continue that process pending the result of the appeal that was submitted to you. We'd appreciate the full opportunity to investigate this and issue a decision at the local level, within the timelines as extended by SB 117.

If I can provide any additional information, please let me know.

Sincerely,

Dane Caldwell-Holden
Director, Student Services

Cc: Superintendent Albarran

Fw: [Caution] RE: Case No. 2020-0091

From: Thomas, Jennifer <jthomas@sjusd.org>

Wed, May 13, 2020 at 6:15 PM PDT (GMT-07:00)

To: Albarran, Nancy <nalbarran@sjusd.org>; Lax, Jodi <jlax@sjusd.org>; McMahon, Stephen <smcmahon@sjusd.org>; Bejarano, J.Dominic <jbejarano@sjusd.org>

Cc: Chang, Katie <kchang@sjusd.org>; Caldwell-Holden, Dane <dcaldwellholden@sjusd.org>

Happy to report that the CDE found our argument compelling regarding Christian Legal Society's appeal to regarding the UCP complaint they didn't actually make with us.

Please see attached (if you haven't already).

Jen

Jennifer Thomas
Risk Management
408-535-6000 x19723

From: EEUCPO <EEUCPO@cde.ca.gov>

Sent: Wednesday, May 13, 2020 4:48 PM

To: Caldwell-Holden, Dane; EEUCPO

Cc: Albarran, Nancy; Thomas, Jennifer

Subject: [Caution] RE: Case No. 2020-0091

This email is from an external sender. Thank you for being fully certain of both the sender and the contents of the message before you reply or click on any link. If you are not certain, delete the email and call the sender for more information.

To whom it may concern,

Please find the attached correspondence in regards to an appeal filed with the California Department of Education, Education Equity UCP Office.

Thank you,

The Education Equity UCP Office

Legal and Audits Branch
California Department of Education
1430 N Street, Suite 5319
Sacramento, CA 95814
(916) 319-8239
eeucpo@cde.ca.gov

This email message and any attachments are confidential, for the sole use of the intended recipient(s) and may contain privileged information or work product. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail, destroy all hard copies of the original message, and delete it from your system.

SJUSD012527

3-ER-0306

From: Caldwell-Holden, Dane <dcaldwellholden@sjusd.org>
Sent: Monday, May 11, 2020 7:55 AM
To: EEUCPO <EEUCPO@cde.ca.gov>
Cc: Albarran, Nancy <nalbarran@sjusd.org>; Thomas, Jennifer <jthomas@sjusd.org>
Subject: [EXTERNAL] Case No. 2020-0091

Dianna Gutierrez,
Education Administrator I
Education Equity UCP Office
Legal and Audits Branch

Dear Ms. Gutierrez,

Attached, please find San Jose Unified School District's response concerning a request made to your office for direct intervention into Case No. 2020-0091(Appellants–Fellowship of Christian Athletes, Jane Doe and Jessica Roe). I am the Uniform Complaints Officer for SJUSD and am investigating this complaint, which was only recently made available to me by the complainants. The attached letter will document the time that we received said complaint and the action I have taken regarding it.

Please contact me with any questions or concerns.

Sincerely,
Dane Caldwell-Holden

Director, Student Services
SJUSD
855 Lenzen Avenue,
San Jose, CA 95126

Office: 408-535-6195 x13227

Attachments

- 508 DIST-10 Days to Respond Outcome-60 Day Ref DIR Student Svcs.pdf
- 508 DIST-10 Days to Respond Outcome-60 Day Ref SUPT.pdf



**CALIFORNIA DEPARTMENT
OF EDUCATION**

TONY THURMOND
STATE SUPERINTENDENT OF
PUBLIC INSTRUCTION

1430 N STREET, SACRAMENTO, CA 95814-5901 • 916-319-0800 • WWW.CDE.CA.GOV

May 13, 2020

Dane Caldwell-Holden, Director, Student Services
San Jose Unified School District
855 Lenzen Ave.
San Jose, CA 95126
nalbarran@sjusd.org

RE: Case Matter No. 2020-0091 (Appellants – Fellowship of Christian Athletes, Jane Doe, and Jessica Roe)

Dear Mr. Caldwell-Holden:

On April 22, 2020, the California Department of Education (CDE) received a request from the Center for Law and Religious Freedom on behalf of the Fellowship of Christian Athletes, Jane Doe, and Jessica Roe, seeking assistance in obtaining a response from the SJUSD on a complaint filed locally. The CDE sent an inquiry to the SJUSD requesting that the SJUSD inform the CDE, in writing, within 10 business days as to whether the SJUSD received the Appellant's complaint, and if so, whether the SJUSD completed its investigation and provided the complainants with a copy of its investigative report.

On May 11, 2020, the CDE received correspondence from the SJUSD indicating in part that until April 22, 2020, the SJUSD had not received a request for an investigation under the Uniform Complaint Procedure. Additionally, the SJUSD acknowledged that although previous correspondence and discussion had occurred on some of the issues raised in the Appellant's complaint, that SJUSD staff did not infer that these previous conversations were a request for an investigation under the UCP, nor was one explicitly requested during the many conversations. As a result, the SJUSD informed the CDE that the Appellant's April 22nd complaint to the CDE has now triggered the SJUSD's investigation process under the Uniform Complaint Procedure.

Based on the outcome of our inquiry, the CDE has determined that the SJUSD had not received a request for an investigation under the Uniform Complaint Procedures on the allegations in the Appellant's complaint, in conformity with *California Code of Regulations*, Title 5 (5 CCR), Section 4630, and for this reason, the CDE will not consider this matter on appeal, but rather is referring the complaint to the SJUSD for local investigation pursuant to 5 CCR, section 4640. Additionally, 5 CCR, Section 4631, places responsibility on the local educational agency to investigate and attempt

SJUSD012529

3-ER-0308

Case Matter No. 2020-0091

May 13, 2020

Page 2

resolution within 60 days of receipt of a complaint. Please send your Decision to the complainants and a courtesy copy to the CDE either by fax at 916-319-0966 or by e-mail to eeucpo@cde.ca.gov.

Our referral of this complaint to the SJUSD for processing should not be construed as a determination of the merit of this complaint. While not implying that there has been or will be retaliation or intimidation, it is our policy to inform local agencies that any form of retaliation or intimidation as a result of the filing of a complaint is prohibited by 5 CCR, Section 4621.

In addition, it is our policy to inform you that the SJUSD is required to adopt policies that ensure complainants are protected from any form of retaliation or intimidation at all times as a result of the filing of a complaint, as specified in 5 CCR, Section 4621(a). Further, any retaliation may be the basis for a new complaint under the Uniform Complaint Procedures and may subject the SJUSD to corrective action by the CDE if retaliation is found (regardless of the merits of the underlying complaint); and the identity of the complainant shall be kept confidential at all times.

Additionally, as specified in 5 CCR, Section 4621(b), the SJUSD is required to have a district officer responsible for receiving complaints, investigating complaints, and ensuring the SJUSD's compliance with nondiscrimination laws, and whose contact information is available from the district.

We encourage you to continue to work to resolve the issues at the local level. If you have any questions, you may contact the Education Equity UCP Office by e-mail at eeucpo@cde.ca.gov.

Sincerely,

Dianna Gutierrez

Dianna Gutierrez, Education Administrator I
Education Equity UCP Office
Legal and Audits Branch

DG:mb



**CALIFORNIA DEPARTMENT
OF EDUCATION**

TONY THURMOND
STATE SUPERINTENDENT OF
PUBLIC INSTRUCTION

1430 N STREET, SACRAMENTO, CA 95814-5901 • 916-319-0800 • WWW.CDE.CA.GOV

May 13, 2020

Nancy Albarrán, Superintendent
San Jose Unified School District
855 Lenzen Ave.
San Jose, CA 95126
nalbarran@sjusd.org

RE: Case Matter No. 2020-0091 (Appellants – Fellowship of Christian Athletes, Jane Doe, and Jessica Roe)

Dear Superintendent Albarrán:

On April 22, 2020, the California Department of Education (CDE) received a request from the Center for Law and Religious Freedom on behalf of the Fellowship of Christian Athletes, Jane Doe, and Jessica Roe, seeking assistance in obtaining a response from the SJUSD on a complaint filed locally. The CDE sent an inquiry to the SJUSD requesting that the SJUSD inform the CDE, in writing, within 10 business days as to whether the SJUSD received the Appellant's complaint, and if so, whether the SJUSD completed its investigation and provided the complainants with a copy of its investigative report.

On May 11, 2020, the CDE received correspondence from the SJUSD indicating in part that until April 22, 2020, the SJUSD had not received a request for an investigation under the Uniform Complaint Procedure. Additionally, the SJUSD acknowledged that although previous correspondence and discussion had occurred on some of the issues raised in the Appellant's complaint, that SJUSD staff did not infer that these previous conversations were a request for an investigation under the UCP, nor was one explicitly requested during the many conversations. As a result, the SJUSD informed the CDE that the Appellant's April 22nd complaint to the CDE has now triggered the SJUSD's investigation process under the Uniform Complaint Procedure.

Based on the outcome of our inquiry, the CDE has determined that the SJUSD had not received a request for an investigation under the Uniform Complaint Procedures on the allegations in the Appellant's complaint, in conformity with *California Code of Regulations*, Title 5 (5 CCR), Section 4630, and for this reason, the CDE will not consider this matter on appeal, but rather is referring the complaint to the SJUSD for local investigation pursuant to 5 CCR, section 4640. Additionally, 5 CCR, Section 4631, places responsibility on the local educational agency to investigate and attempt

SJUSD012531

3-ER-0310

Case Matter No. 2020-0091

May 13, 2020

Page 2

resolution within 60 days of receipt of a complaint. Please send your Decision to the complainants and a courtesy copy to the CDE either by fax at 916-319-0966 or by e-mail to eeucpo@cde.ca.gov.

Our referral of this complaint to the SJUSD for processing should not be construed as a determination of the merit of this complaint. While not implying that there has been or will be retaliation or intimidation, it is our policy to inform local agencies that any form of retaliation or intimidation as a result of the filing of a complaint is prohibited by 5 CCR, Section 4621.

In addition, it is our policy to inform you that the SJUSD is required to adopt policies that ensure complainants are protected from any form of retaliation or intimidation at all times as a result of the filing of a complaint, as specified in 5 CCR, Section 4621(a). Further, any retaliation may be the basis for a new complaint under the Uniform Complaint Procedures and may subject the SJUSD to corrective action by the CDE if retaliation is found (regardless of the merits of the underlying complaint); and the identity of the complainant shall be kept confidential at all times.

Additionally, as specified in 5 CCR, Section 4621(b), the SJUSD is required to have a district officer responsible for receiving complaints, investigating complaints, and ensuring the SJUSD's compliance with nondiscrimination laws, and whose contact information is available from the district.

We encourage you to continue to work to resolve the issues at the local level. If you have any questions, you may contact the Education Equity UCP Office by e-mail at eeucpo@cde.ca.gov.

Sincerely,



Dianna Gutierrez, Education Administrator I
Education Equity UCP Office
Legal and Audits Branch

DG:mb

Re: [Caution] RE: Case No. 2020-0091

From: Thomas, Jennifer <jthomas@sjusd.org>
To: Lax, Jodi <jlax@sjusd.org>

Wed, May 13, 2020 at 8:54 PM PDT (GMT-07:00)

It is- for logic and sanity. It's just so...reasonable.

Get [Outlook for iOS](#)

From: Lax, Jodi <jlax@sjusd.org>
Sent: Wednesday, May 13, 2020 6:21 PM
To: Thomas, Jennifer
Subject: Re: [Caution] RE: Case No. 2020-0091

I'm happy to count that as a win 😊

Jodi Lax
Associate Superintendent, Division of Instruction
San José Unified School District
JLax@sjusd.org
408-535-6000

From: "Thomas, Jennifer" <jthomas@sjusd.org>
Date: Wednesday, May 13, 2020 at 6:15 PM
To: "Albarran, Nancy" <nalbarran@sjusd.org>, jodi lax <jlax@sjusd.org>, "McMahon, Stephen" <smcmahon@sjusd.org>, "Bejarano, J.Dominic" <jbejarano@sjusd.org>
Cc: "Chang, Katie" <kchang@sjusd.org>, "Caldwell-Holden, Dane" <dcaldwellholden@sjusd.org>
Subject: Fw: [Caution] RE: Case No. 2020-0091

Happy to report that the CDE found our argument compelling regarding Christian Legal Society's appeal to regarding the UCP complaint they didn't actually make with us.

Please see attached (if you haven't already).

Jen

Jennifer Thomas
Risk Management
408-535-6000 x19723

From: EEUCPO <EEUCPO@cde.ca.gov>
Sent: Wednesday, May 13, 2020 4:48 PM
To: Caldwell-Holden, Dane; EEUCPO
Cc: Albarran, Nancy; Thomas, Jennifer
Subject: [Caution] RE: Case No. 2020-0091

This email is from an external sender. Thank you for being fully certain of both the sender and the contents of the message before you reply or click on any link. If you are not certain, delete the email and call the sender for more information.

To whom it may concern,

Please find the attached correspondence in regards to an appeal filed with the California Department of Education, Education Equity UCP Office.

Thank you,

The Education Equity UCP Office

Legal and Audits Branch
California Department of Education
1430 N Street, Suite 5319
Sacramento, CA 95814
(916) 319-8239
eeucpo@cde.ca.gov

This email message and any attachments are confidential, for the sole use of the intended recipient(s) and may contain privileged information or work product. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail, destroy all hard copies of the original message, and delete it from your system.

From: Caldwell-Holden, Dane <dcaldwellholden@sjusd.org>
Sent: Monday, May 11, 2020 7:55 AM
To: EEUCPO <EEUCPO@cde.ca.gov>
Cc: Albarran, Nancy <nalbarran@sjusd.org>; Thomas, Jennifer <jthomas@sjusd.org>
Subject: [EXTERNAL] Case No. 2020-0091

Dianna Gutierrez,
Education Administrator I
Education Equity UCP Office
Legal and Audits Branch

Dear Ms. Gutierrez,

Attached, please find San Jose Unified School District's response concerning a request made to your office for direct intervention into Case No. 2020-0091(Appellants—Fellowship of Christian Athletes, Jane Doe and Jessica Roe). I am the Uniform Complaints Officer for SJUSD and am investigating this complaint, which was only recently made available to me by the

SJUSD012537

3-ER-0313

complainants. The attached letter will document the time that we received said complaint and the action I have taken regarding it.

Please contact me with any questions or concerns.

Sincerely,
Dane Caldwell-Holden

Director, Student Services
SJUSD
855 Lenzen Avenue,
San Jose, CA 95126

Office: 408-535-6195 x13227

4813458-3

Page 1

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 ELIZABETH SINCLAIR, CHARLOTTE)
4 KLARKE, and FELLOWSHIP OF)
5 CHRISTIAN ATHLETES, an)
6 Oklahoma corporation,)
7 Plaintiffs,)
8 VS.) CASE NO. 5:20-CV-02798-LHK
9 SAN JOSE UNIFIED SCHOOL)
10 DISTRICT BOARD OF EDUCATION,)
11 in its official capacity,)
12 NANCY ALBARRÁN, in her official)
13 and personal capacity, HERBERT)
14 ESPIRITU, in his official and)
15 personal capacity, and PETER)
16 GLASSER, in his official and)
17 personal capacity,)
18 Defendants.)
19)
20)
21)
22)
23)
24)
25)

REMOTELY CONDUCTED DEPOSITION OF PETER GLASSER

San Jose, California (Witness' location)

Tuesday, September 28, 2021

Reported stenographically via videoconference by:

LYDIA ZINN

RPR, FCRR, CSR No. 9223

Job No. PA 4813458

PAGES 1 - 33

4813458-3

Page 2

1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF CALIFORNIA

3 ELIZABETH SINCLAIR, CHARLOTTE)
 4 KLARKE, and FELLOWSHIP OF)
 5 CHRISTIAN ATHLETES, an)
 Oklahoma corporation,)
 Plaintiffs,)

6 VS.) CASE NO. 5:20-CV-02798-LHK

7 SAN JOSE UNIFIED SCHOOL)
 8 DISTRICT BOARD OF EDUCATION,)
 in its official capacity,)
 9 NANCY ALBARRÁN, in her official)
 and personal capacity, HERBERT)
 10 ESPIRITU, in his official and)
 personal capacity, and PETER)
 11 GLASSER, in his official and)
 personal capacity,)
 12 Defendants.)

13

14

15

16 Remotely conducted deposition of PETER GLASSER,
 17 taken on behalf of Plaintiffs, at Portland, Oregon,
 18 beginning at 12:00 p.m. and ending at 12:48 p.m., on
 19 Tuesday, September 28, 2021, before LYDIA ZINN, Certified
 20 Shorthand Reporter No. 9223.

21

22

23

24

25

4813458-3

Page 3

1 APPEARANCES (via videoconference):

2 For Plaintiffs Fellowship of Christian Athletes,
Charlotte Klarke, Elizabeth Sinclair, Jessica Roe:

3 The Becket Fund for Religious Liberty
4 1919 Pennsylvania Ave., NW
Suite 400

Washington, DC 20006
5 (202) 955-0095
dbloomberg@becketlaw.org

6 jkim@becketlaw.org
asmith@becketlaw.org
7 ktoney@becketlaw.org

BY: DANIEL H. BLOMBERG
8 JAMES KIM
NICK REAVES
9 ABIGAIL SMITH
KAYLA TONEY

10 For Plaintiffs Fellowship of Christian Athletes,
11 Charlotte Klarke, Elizabeth Sinclair, Jessica Roe:

12 Seto Wood & Schweickert LLP
1470 Maria Lane
Suite 300

13 Walnut Creek, CA 94596
(925) 938-6100
cjs@walnutcreekattorney.com

BY: CHRISTOPHER JAMES SCHWEICKERT

15 For Plaintiffs Fellowship of Christian Athletes,
16 Charlotte Klarke, Elizabeth Sinclair, Jessica Roe:

Christian Legal Society
17 Center for Law and Religious Freedom
8001 Braddock Road

18 Suite 302
Springfield, VA 22151
19 (703) 642-1070

kcolby@clsnet.org
20 BY: KIMBERLEE WOOD COLBY

21 For Defendants Herb Espiritu, Nancy Albarrán, Peter Glasser,
San Jose Unified School District Board:

22 Dannis Woliver Kelley
2087 Addison Street
23 2nd Floor

Berkeley, CA 94704
24 (510) 345-6000
alevine@DWKesq.com

25 BY: AMY ROSE LEVINE

4813458-3

Page 4

1 APPEARANCES (via videoconference):

2 For Defendants Herb Espiritu, Nancy Albarrán, Peter Glasser,
3 San Jose Unified School District Board:

4 Americans United for Separation of Church and State
5 1310 L Street NW
6 Suite 200
7 Washington, DC 20005
8 (202) 466-3234
9 upton@au.org

10 BY: KENNETH DALE UPTON, JR.

11 Also Present: Elizabeth Sinclair

12

13

14

15

16

17

18

19

20

21

22

23

24

25

4813458-3

Page 5

1 I N D E X

2 Tuesday, September 28, 2021

3 WITNESS PAGE

4 PETER GLASSER

5 (SWORN) 6

6 Examination by Ms. Toney 7

7 EXHIBITS MARKED FOR IDENTIFICATION PAGE

8 EXHIBIT 127 7.31.19 to 8.6.19 emails among
 9 Peter Glasser, Herbert Espiritu,
 10 Patrick Bernhardt,
 11 Dane Caldwell-Holden, Subject:
 12 Re: Sexual Harassment Training
 13 and FCA

14 SJUSD 008048 to -008049 20

15 EXHIBIT 130 Defendants' Second Amended Responses
 16 to Plaintiffs' First Set of
 17 Interrogatories 8

18 EXHIBIT 133 8.16.19 email from Peter Glasser to
 19 Herbert Espiritu and Tim Gavello,
 20 Subject: Climate Committee
 21 FCA005382 23

22

23

24

25

26

27

28

29

30

31

32

33

4813458-3

Page 6

1 San Jose, California

2 Tuesday, September 28, 2021, 2:02 p.m.

3 PETER GLASSER,

4 called as a witness for the Plaintiffs, having been duly
5 sworn, testified as follows:

6 MS. LEVINE: Sorry, Kayla. I just wanted to state
7 before we get started that we're here pursuant to the
8 July 12th, 2021 discovery -- the Order -- sorry -- the Order
9 regarding the July 12th, 2021 discovery dispute issued by the
10 Court on July 26th, 2021. And that's the scope of this
11 deposition as I understand it. And we're going forward without
12 waiving any objections that we previously raised or any
13 objections with respect to time limits. So I just wanted to
14 make that preface. And please proceed.

15 MS. TONEY: Hello. Thank you. My name is
16 Kayla Toney, appearing on behalf of FCA. I'm joined by
17 Kim Colby, Daniel Blomberg, Nick Reaves, Abigail Smith, and
18 James Kim from Becket. And our client, Elizabeth Sinclair, has
19 also joined.

20 And I'd like to get on the record, Amy, that we have
21 agreed by stipulation that this deposition would be done by
22 Zoom, and that it would be admissible for trial purposes. Is
23 that correct?

24 MS. LEVINE: Yeah. So we're not objecting to going
25 forward by Zoom.

4813458-3

Page 7

1 MS. TONEY: Great. Thank you.

2 MS. LEVINE: Yeah.

3 EXAMINATION

4 BY MS. TONEY:

5 Q. Mr. Glasser, can you please state your name for the
6 record?

7 A. Yes. My name is Peter Glasser.

8 Q. Do you understand that you are under the same oath today
9 as if you were testifying in a courtroom?

10 A. Yes, ma'am, I do.

11 Q. Is there anything that would prevent you from thinking
12 clearly and testifying truthfully today?

13 A. No.

14 Q. I'm going to assume that you understand my questions
15 unless you tell me otherwise. Is that fair?

16 A. Yes.

17 Q. In our last deposition your counsel instructed you not to
18 answer some questions about investigations into your actions
19 toward Pioneer FCA student leaders in the context of this case.
20 And the Magistrate Judge ruled that we were entitled to get
21 truthful answers to those questions, so that's why we're here
22 today, to ask you about those issues and the related matters
23 that came up. Do you understand that?

24 A. Yes.

25 Q. On August 12 your attorneys give us discovery responses

4813458-3

Page 8

1 purporting to describe any investigations into your conduct
2 toward Pioneer FCA and its student leaders. We're going to
3 look at copy of those responses now, so if you could, go into
4 Exhibit Share. And you'll see "Deposition of Peter Glasser."
5 You'll want to choose the September 28 folder. And you can go
6 ahead and go into the Marked Exhibits folder. And you should
7 see one exhibit there. So just let me know when you're there.

8 A. I see Exhibit 130.

9 (Deposition Exhibit 130 marked for identification.)

10 BY MS. TONEY:

11 Q. Great. Yes. Please go ahead and open that.

12 A. Okay. I'm there.

13 Q. Great. Thank you.

14 If you can scroll to page 3, there are a couple paragraphs
15 under the heading "Amended Response to Interrogatory Number 9."
16 Do you see that?

17 A. I see a paragraph entitled "Interrogatory Number 9." And
18 I see a section entitled "Response to Interrogatory Number 9."

19 Q. Yes. Great. So if you can read starting with
20 Interrogatory Number 9, and go ahead and read that page and
21 then also the next page to yourself. And just let me know when
22 you're done.

23 A. You want me to read all of pages 3 and 4?

24 Q. Yes, just quietly to yourself.

25 A. Okay. Do you want me to read Interrogatory Number 10 as

4813458-3

Page 9

1 well?

2 Q. Yes. If you can actually go to page 5, you'll see where
3 it says "Amended Response to Interrogatory Number 10."

4 A. That's what you'd like me to read?

5 Q. Yes.

6 A. Okay.

7 Q. Besides what is listed here in this document, Mr. Glasser,
8 are you aware of any other investigations that were done by the
9 District regarding your whiteboard display?

10 MS. LEVINE: Vague as to "investigation."

11 THE WITNESS: Could you please specify what you mean
12 by "investigation"?

13 BY MS. TONEY:

14 Q. Were there any reviews or -- yeah, reviews or questions or
15 conversations conducted by District officials regarding your
16 conduct toward FCA student leaders?

17 MS. LEVINE: Calls for speculation.

18 You can answer.

19 THE WITNESS: I -- I wouldn't know. I wouldn't have
20 direct knowledge of that.

21 BY MS. TONEY:

22 Q. Were there any investigations of your conduct toward FCA
23 student leaders?

24 A. I -- I wouldn't have any direct knowledge of that. I
25 don't know.

4813458-3

Page 10

1 Q. If your conduct was being investigated, you would know.
2 Right?

3 A. Perhaps, but not necessarily.

4 Q. Did you hear of any District investigations regarding your
5 conduct toward FCA or Pioneer FCA or Charlotte Klarke or
6 Elizabeth Sinclair?

7 A. I was informed in May of 2020 that there may be an -- that
8 part of the process of a lawsuit coming about is a District
9 investigation.

10 Q. Was the District investigation regarding your conduct?

11 A. I don't know.

12 MS. LEVINE: Calls for speculation.

13 BY MS. TONEY:

14 Q. Who was conducting the the District investigation?

15 A. I was told that Dominic Bejarano would conduct an
16 investigation.

17 Q. And does he typically conduct investigations relating to
18 employee conduct?

19 MS. LEVINE: Calls for speculation.

20 THE WITNESS: I -- I don't know. I suspect perhaps,
21 but I don't know.

22 BY MS. TONEY:

23 Q. Did he, in fact, conduct an investigation relating to your
24 conduct toward FCA or Pioneer FCA?

25 MS. LEVINE: Calls for speculation.

4813458-3

Page 11

1 **THE WITNESS:** I don't know.

2 BY MS. TONEY:

3 **Q. Who informed you that he might be conducting an**
4 **investigation in May 2020?**

5 A. Jennifer Thomas.

6 **Q. Did she give you any other information about this**
7 **investigation?**

8 A. She told me that it was a separate legal process from the
9 case itself, and I should think of it as a separate process.

10 She informed me that -- upon my asking, that I would be
11 entitled to union representation.

12 **Q. And did you, in fact, have a union representative during**
13 **the process?**

14 A. I don't know. I'm unaware of the process.

15 **Q. Did the process ever take place?**

16 A. I don't know.

17 **Q. What was the result of the investigation?**

18 A. I don't know.

19 **Q. Did Dominic Bejarano contact you in any way regarding the**
20 **investigation?**

21 A. No.

22 **Q. Did the investigation reach a conclusion?**

23 A. I don't know.

24 **Q. Did you ever talk to a union representative about the**
25 **investigation?**

4813458-3

Page 12

1 A. No.

2 Q. Did you talk to Patrick Bernhardt about the investigation?

3 A. No.

4 Q. Patrick Bernhardt is the President of the San Jose
5 Teachers' Association. Correct?

6 A. Correct.

7 Q. Did Patrick Bernhardt conduct any investigation as part of
8 this process?

9 A. I don't know.

10 MS. LEVINE: Calls for speculation.

11 BY MS. TONEY:

12 Q. Did Dane Caldwell-Holden conduct an investigation relating
13 to your conduct toward Pioneer FCA or its student leaders?

14 MS. LEVINE: Calls for speculation.

15 THE WITNESS: I don't know.

16 BY MS. TONEY:

17 Q. Did Dominic Bejarano ask you to explain your reasons for
18 posting the whiteboard display on April 23rd, 2019?

19 A. No.

20 Q. So was the investigation that Dominic Bejarano conducted
21 relating to your post of the whiteboard display on April 23rd,
22 2019?

23 MS. LEVINE: Calls for speculation.

24 THE WITNESS: I don't know.

25

4813458-3

Page 13

1 BY MS. TONEY:

2 Q. Was it relating to the derecognition of FCA?

3 MS. LEVINE: Calls for speculation.

4 THE WITNESS: I'm sorry. I'm sorry. Counsel, your
5 audio cut out. Could you please repeat the question?

6 BY MS. TONEY:

7 Q. Yes. Was the investigation that the District conducted
8 related to the derecognition of Pioneer FCA?

9 MS. LEVINE: Calls for speculation.

10 THE WITNESS: I don't know.

11 BY MS. TONEY:

12 Q. Do you have any idea what the investigation was about?

13 A. Only in the vaguest possible terms, that it was related --

14 Q. Those terms --

15 A. It was related to the fact that a lawsuit had been filed.

16 Q. And the lawsuit was filed by Charlotte Klarke and
17 Elizabeth Sinclair?

18 A. Correct. It's this proceeding.

19 Q. Was the investigation relating to employee conduct toward
20 those students?

21 A. I don't know.

22 Q. You mentioned May 2020 as the time frame when Bejarano was
23 conducting this investigation. Did you receive any emails from
24 Bejarano in May 2020?

25 A. No.

4813458-3

Page 14

1 Q. Did you receive any phone calls from him?

2 A. No.

3 Q. Did you receive any emails from Dane Caldwell-Holden
4 relating to this investigation?

5 A. No.

6 Q. And did you receive any phone calls from him?

7 A. No.

8 Q. Did you have any additional conversations with Jen Thomas
9 besides the initial one that you mentioned about this
10 investigation?

11 A. No.

12 Q. Did you review any documents, other than preparations with
13 counsel, relating to this investigation?

14 A. No.

15 Q. Did anyone from the District's Human Resources
16 department reach out to you about the investigation?

17 A. No.

18 Q. When did staff return back to campus in person?

19 A. After spring break, April 2021.

20 Q. Is that when students returned as well?

21 A. A small cohort of students returned by choice. I would
22 estimate perhaps a quarter of our student body, give or take.

23 Q. At that time did any District employee contact you about
24 reopening and investigation relating to your conduct toward
25 Pioneer FCA?

4813458-3

Page 15

1 A. No.

2 Q. Did anyone from the District ever ask you for documents
3 either in May 2020 or more recently relating to this
4 investigation?

5 A. No.

6 Q. Did Principal Espiritu talk with you about the
7 investigation into your conduct?

8 MS. LEVINE: Vague.

9 THE WITNESS: Are you referring specifically to the
10 investigation that Jen Thomas informed me about in May of 2020?

11 BY MS. TONEY:

12 Q. Yes.

13 A. The answer's no.

14 Q. Did Principal Espiritu ever talk with you about a
15 potential contract violation of your teaching contract?

16 A. No.

17 Q. Is there another investigation that Principal Espiritu
18 talked with you about?

19 A. Not to my knowledge. I'm a little unclear what you mean
20 by "investigation," but...

21 Q. Well, we've been focused -- we've been focusing more on
22 May 2020, but let's go back to April 2019 when you first posted
23 FCA's Statement of Faith on your whiteboard. Did you ever
24 receive feedback from Mr. Espiritu about that decision to post
25 on your whiteboard?

4813458-3

Page 16

1 A. Herb neither praised nor criticized any of my specific
2 actions.

3 Q. Did Herb talk with you about your actions?

4 A. Yes, briefly.

5 Q. What did he say?

6 A. He told me that he trusted my judgment.

7 Q. And when did he tell you that?

8 A. Within a few days to a week after my posting the -- the --
9 the posting on the whiteboard. That's just an estimate of
10 time, however. That's my best estimate.

11 Q. Was that a private conversation you had with Espiritu?

12 A. Yes.

13 Q. What else did he tell you?

14 A. Pertaining to?

15 Q. Your decision to post the whiteboard display.

16 A. I don't recall anything else specific to that decision.

17 Q. So Espiritu told you that he trusted your judgment, and he
18 didn't give you any other sort of feedback that you can recall?

19 A. Not that I can recall.

20 Q. Did he give you feedback about anything else regarding
21 your actions toward FCA or its student leaders?

22 A. Not that I recall.

23 Q. Did Espiritu tell you that you should not have posted the
24 whiteboard display?

25 A. No.

4813458-3

Page 17

1 Q. At any point were you concerned that your actions in
2 posting the whiteboard display could reflect negatively on your
3 performance as a teacher?

4 A. Yes.

5 Q. Why?

6 A. As a history teacher, it's, of course, of utmost
7 importance for -- to be trusted by all members of the different
8 political spectrums. And I -- I wouldn't want anything to
9 interfere with a trust that I've worked many, many years to
10 cultivate.

11 Q. Did Espiritu tell you that your actions had done anything
12 to undermine that trust?

13 A. No.

14 Q. Did anyone from the District give you that sort of
15 feedback?

16 A. No.

17 Q. Did you have similar concerns about any of your conduct
18 toward Pioneer FCA and its student leaders; specifically
19 Charlotte and Elizabeth?

20 A. Similar to what?

21 Q. The concern about maintaining trust that you mentioned
22 regarding your whiteboard display.

23 A. Regarding being trusted by different political groups and
24 beliefs, certain --

25 Q. And could you elaborate on that?

4813458-3

Page 18

1 A. Well, I -- I would include Charlotte and Elizabeth that in
2 that general concern.

3 Q. Did any of your supervisors express to you that you should
4 have treated Charlotte and Elizabeth in a different way?

5 A. Not specifically, no.

6 Q. Did they generally express that sort of concern?

7 A. No, not to my recollection.

8 Q. Did Espiritu ever take any sort of corrective action
9 toward you for your conduct toward Charlotte and Elizabeth?

10 A. No.

11 Q. Did he tell you that you should be mindful of
12 conversations that you had in your class, because students
13 might be sensitive to certain topics?

14 A. Mindful in what way?

15 Q. Respectful of your students' feelings and opinions. Did
16 Espiritu give you that sort of guidance?

17 A. It's not my impression that Herb has doubted my commitment
18 to respecting my students.

19 Q. And did Espiritu ever tell you that your actions could be
20 in violation of District policy?

21 A. No.

22 Q. Did Espiritu or anyone else send you an email telling you
23 that you were wrong to think you were professionally bound to
24 do everything you had done to Pioneer FCA?

25 A. No.

4813458-3

Page 19

1 Q. Did Espiritu send you a text message to that -- to that
2 effect?

3 A. No.

4 Q. Did Espiritu or anyone else from the District provide
5 you any sort of written guidance or counseling, telling you
6 that you were wrong to think you were professionally bound to
7 ensure that Pioneer FCA was derecognized?

8 A. No.

9 Q. And did Espiritu or any other District supervisor ever
10 instruct you that you should not do the same all over again?

11 A. No.

12 Q. And if given the opportunity, would you, in fact, do the
13 same all over again regarding your treatment of Pioneer FCA?

14 A. I would need a lot more context to answer that question.

15 Q. What kind of context?

16 A. I would need to know a lot more about Charlotte's and
17 Elizabeth's experiences, and I would need to know a lot more
18 about the extent to which my actions do or do not relate to
19 those experiences.

20 Q. If the exact same set of circumstances occurred again and
21 nothing was different, would you change any of your actions?

22 MS. LEVINE: I'm going to object that --

23 THE WITNESS: I don't know.

24 MS. LEVINE: I'm going to object that this is outside
25 the scope of the Court's Order allowing the reopening of this

4813458-3

Page 20

1 deposition for a limited purpose.

2 This is not really going into the District's
3 investigations of Peter Glasser's misconduct, or findings and
4 conclusions from those investigations. So I don't think asking
5 him whether -- how he feels or what he would do in the future
6 is really within that scope.

7 BY MS. TONEY:

8 Q. Did you receive any guidance from Espiritu or any other
9 District supervisors saying that you should not take similar
10 actions in the future?

11 A. No.

12 (Deposition Exhibit 127 previously marked for
identification.)

13 BY MS. TONEY:

14 Q. Let's look at an exhibit. This will be Exhibit 127. And
15 you might recognize it as something we already looked at in the
16 last deposition. All right. Let me know when you see it pop
17 up there: Exhibit 127.

18 A. Okay. I'm opening it now, Counselor.

19 Q. Great. Thanks.

20 Can you please identify this email for the record?

21 A. It hasn't opened, but I will.

22 MS. LEVINE: It hasn't opened for me yet, either.

23 BY MS. TONEY:

24 Q. Okay. Just let me know when it opens.

25 A. I see it.

4813458-3

Page 21

1 Q. Great. So can you confirm that this is an email thread,
2 beginning with your email at the bottom on July 31st to
3 Herb Espiritu and Patrick Bernhardt?

4 A. Yes. That's the only email in the thread that I have seen
5 before.

6 Q. Okay. Were you asked about this email in the course of an
7 investigation by District officials?

8 A. No.

9 Q. Did you ever receive any guidance or correction from
10 Mr. Espiritu, Mr. Bejarano, or any other District officials
11 that it was inappropriate to accuse Pioneer FCA of sexual
12 harassment?

13 MS. LEVINE: Misstates the evidence.

14 THE WITNESS: Yeah. I object to your question,
15 Counselor. That's not at all what I did.

16 BY MS. TONEY:

17 Q. Did you receive any guidance or correction saying that it
18 would be inappropriate to accuse Pioneer FCA of sexual
19 harassment?

20 A. Hypothetically?

21 Q. I'm asking -- yes or no -- whether you received that
22 guidance.

23 A. I'm asking you, ma'am, if your question is a hypothetical,
24 because my email had nothing to do with making a direct
25 accusation of sexual harassment.

4813458-3

Page 22

1 Q. Well, the document speaks for itself. My question is
2 whether you received any guidance that Pioneer FCA should not
3 be accused of sexual harassment?

4 MS. LEVINE: Misstates the evidence. Calls for
5 speculation.

6 THE WITNESS: In general terms unrelated to this
7 email, no, I never received any of that feedback.

8 BY MS. TONEY:

9 Q. Did you receive any of that feedback relating to this
10 email?

11 A. Well, since the email is not at all what you're saying it
12 is, no, I did not receive that feedback.

13 Q. Did you ever receive any guidance or correction in
14 response to the email stating at that it was inappropriate --
15 stating that it was inappropriate to seek to ban FCA completely
16 from campus?

17 MS. LEVINE: Misstates the evidence.

18 THE WITNESS: Since that's not at all what I did,
19 then, no, I didn't receive that feedback.

20 BY MS. TONEY:

21 Q. Did you receive any feedback saying that it would not be
22 an appropriate interim action to ban FCA completely from
23 campus?

24 A. No, I didn't receive that feedback.

25 MS. TONEY: Okay. Let's look at one more exhibit.

4813458-3

Page 23

1 This will be Exhibit 133.

2 (Deposition Exhibit 133 marked for identification.)

3 BY MS. TONEY:

4 Q. And just let me know when that pops up for you.

5 A. I see it.

6 Q. Great. Can you identify --

7 MS. LEVINE: It's not opening for me yet. Okay.

8 Hang on. Sorry. Go ahead.

9 BY MS. TONEY:

10 Q. Can you identify this email for the record, Mr. Glasser?

11 A. It's an email I wrote on Friday, August 16th, 2019.

12 Q. Were you asked about this email in the course of an
13 investigation by District officials?

14 A. No.

15 Q. Did you ever receive any guidance or correction in
16 response to this email?

17 A. No.

18 Q. Has the District or Pioneer provided any training to you
19 or other teachers, instructing you not to engage in the kind of
20 conduct you engaged in toward Pioneer FCA, Charlotte Klarke, or
21 Elizabeth Sinclair?

22 MS. LEVINE: Vague.

23 THE WITNESS: I don't know what you mean when you say
24 "the kind of conduct."
25

4813458-3

Page 24

1 BY MS. TONEY:

2 Q. Has the District conducted any training, saying that
3 teachers should not post students' religious beliefs publicly,
4 with disparaging comments?

5 A. And it's clear to you that that's not what I did.

6 Q. We can disagree about that, but I'm asking whether the
7 District gave any sort of training about respecting students'
8 religious beliefs in the classroom.

9 A. I don't know what trainings the District gives. I have
10 not participated in a training like that.

11 Q. You received teacher evaluations. Correct?

12 A. Yes.

13 Q. Are those also considered performance reviews?

14 A. Yes.

15 Q. And how often do you receive those?

16 (Reporter requests clarification.)

17 MS. LEVINE: I said "Asked and answered."

18 You can answer it.

19 THE WITNESS: Teachers with permanent status are
20 evaluated every third school year.

21 BY MS. TONEY:

22 Q. So when was your most recent teacher evaluation?

23 A. The 2019/2020 school year.

24 Q. Okay. And in that evaluation did you receive any negative
25 feedback relating to your conduct toward Pioneer FCA,

4813458-3

Page 25

1 Charlotte Klarke, or Elizabeth Sinclair?

2 A. No.

3 Q. Was your conduct toward Pioneer FCA at all mentioned in
4 those reviews?

5 A. I don't recall, but I don't believe so.

6 Q. Does Espiritu conduct those reviews?

7 A. It's typical for all the administrators on campus to
8 divide up the evaluations.

9 Q. Do you remember -- do you remember who conducted yours?

10 A. It was Tim Gavello.

11 Q. Okay. And did he give you any sort of feedback regarding
12 your actions of posting the whiteboard display, or any other
13 actions toward Pioneer FCA?

14 A. Well, that wasn't --

15 My actions for the whiteboard display occurred during the
16 previous year -- the previous school year.

17 Q. Right, but your actions came -- the derecognition and
18 ongoing targeting of FCA occurred in the later part of 2019.
19 So did Tim Gavello address any of those actions in your teacher
20 evaluation?

21 MS. LEVINE: Argumentative. And misstates the
22 evidence.

23 BY MS. TONEY:

24 Q. The reactions toward Charlotte Klarke and
25 Elizabeth Sinclair, to be specific.

4813458-3

Page 26

1 A. Well, Counsel, I'm going to say that since none of those
2 things actually happened, then it would follow logically that
3 he didn't give me feedback about them in my evaluation.

4 Q. Are you denying that FCA was derecognized from Pioneer's
5 campus?

6 A. No.

7 Q. Are you denying that you made sure that they were not
8 listed publicly on the school's website or on the club list
9 because they were no longer recognized?

10 A. I think you're vastly overestimating my role, but I
11 received no feedback about those things in my evaluation during
12 the following school year.

13 Q. And did you receive any corrective action or guidance
14 besides what we've already discussed in your attorneys'
15 interrogatory responses regarding your conduct toward FCA,
16 Pioneer FCA, Charlotte Klarke, or Elizabeth Sinclair?

17 A. Not that I recall, no.

18 Q. Did you contact your Teachers' Union for assistance
19 regarding any actions, including investigations that Espiritu
20 or Bejarano might be conducting of your conduct?

21 A. No.

22 Q. Did you have any communications with union officials or
23 representatives regarding your involvement in the FCA matter?

24 A. I -- before I was represented by Amy, I took advantage of
25 my contractual right to meet with an SJTA attorney regarding

4813458-3

Page 27

1 the certified public records request, and how I was to comply
2 with it.

3 Q. Which attorney was that?

4 A. Christopher Schumb.

5 Q. When did you meet with him?

6 A. October of 2019.

7 Q. And how often did you meet?

8 A. Once.

9 Q. Did he assist you with any matters relating to a District
10 investigation?

11 MS. LEVINE: Calls for attorney-client-privileged
12 communication. I'm going to instruct him not to answer.

13 BY MS. TONEY:

14 Q. Outside of attorney-client-privileged communications, you
15 mentioned that the subject matter of what he helped you with
16 was this public records request. Were there any other broad,
17 general categories of subject matter that he helped you with,
18 outside of getting into privileged conversations?

19 A. I don't know how to answer that, because I'm assuming that
20 anything I talked with my attorney about is privileged.

21 MS. LEVINE: Yeah. I'm not sure that it wouldn't be
22 privileged if it was -- the purpose for the communication was
23 to get confidential advice on whatever the topic may be, I
24 would think that that would be -- whatever the topic is would
25 be part of the privilege.

4813458-3

Page 28

1 **MS. TONEY:** Well, Mr. Glasser volunteered that the
2 attorney helped him with the public-records request, so I was
3 just curious to if he was going to mention any other
4 categories.

5 **MS. LEVINE:** I mean, I guess you could ask him -- yes
6 or no -- whether there were any other topics.

7 BY MS. TONEY:

8 **Q.** Did the attorney represent you regarding District
9 investigations?

10 A. No.

11 **Q.** Are you aware of any communications between your union or
12 representatives and the District regarding your involvement
13 in the FCA matter?

14 A. No.

15 **Q.** Patrick Bernhardt is the President of the San Jose
16 Teachers' Association. Correct?

17 A. Yes.

18 **Q.** Did you ever talk with him about FCA, Pioneer FCA, its
19 Statement of Faith, or its student leaders?

20 A. The only time I communicated with Patrick was regarding
21 the email that I sent to him and Herb that we produced to you
22 regarding the question I had after taking the District's
23 sexual-harassment training, as to whether or not the FCA
24 perhaps might be in violation of those standards.

25 **Q.** And how did Patrick Bernhardt respond?

4813458-3

Page 29

1 A. He e-mailed back and said that he had gotten as many
2 answers to the question as he had asked people.

3 Q. So multiple District officials were discussing whether FCA
4 might be violating the District's sexual-harassment policy?

5 MS. LEVINE: Misstates the testimony.

6 THE WITNESS: I don't believe that he specified who
7 he spoke with.

8 BY MS. TONEY:

9 Q. But it was more than one person?

10 A. Yes. Well, that seemed -- that's my inference from his
11 response.

12 Q. Okay. And did he say anything else that you remember?

13 A. He mentioned in his email that -- well, these are my
14 words, but -- but my best to capture his idea that he thought
15 that the resolution that had been reached was untenable;
16 namely, that the FCA would be allowed on campus, but
17 decertified as a club. My impression of his opinion was that
18 it needed to be all one way or all the other; that it was not a
19 tenable situation to -- to split the middle.

20 Q. And did you agree with his opinion?

21 MS. LEVINE: Hold on a second.

22 What has this got to do with investigation into his
23 misconduct?

24 MS. TONEY: I'm just wrapping up, Amy. This is
25 regarding -- because Patrick Bernhardt is a union

4813458-3

Page 30

1 representative. And Mr. Glasser said that he was in touch with
2 them about records requests. And then this is one of the --
3 this is the only communication that he mentioned to me about
4 his conduct toward Pioneer FCA. And so I'm trying to discern
5 whether the union was at all involved in investigating around
6 Mr. Glasser's conduct regarding FCA.

7 **MS. LEVINE:** That's fine.

8 I just don't want him to get back into the topic of his
9 personal beliefs regarding FCA status on campus, because I
10 think that was thoroughly covered and isn't within the scope of
11 this Order. So if you want to talk about the union's role in
12 any investigation, that's fine.

13 **MS. TONEY:** Understood.

14 **Q.** So, Mr. Glasser, could you just answer this last question?
15 And then we'll take a break. Regarding this email that you
16 sent to Patrick Bernhardt, you mentioned his response to you.
17 He was discussing this particular issue with other District
18 officials. And at that time, did he mention to you any sort of
19 investigation regarding FCA and your conduct in this matter?

20 **A.** Well, I just want to make it clear I don't know if it was
21 District officials whom Patrick spoke with. I don't recall if
22 that was made specific or not in his email response to me, so
23 please don't misstate my testimony.

24 Could you please repeat the last part of the question of
25 yours, the question you're asking me?

4813458-3

Page 31

1 Q. In Patrick Bernhardt's response did he tell you about any
2 sort of investigation that the Teachers' Union was conducting
3 regarding your conduct toward FCA?

4 A. No. The email had nothing to...

5 MS. TONEY: Okay. Let's take a quick break, and
6 we'll probably be done. I'm just going to check in with my
7 team real quick.

8 MS. LEVINE: Okay.

9 MS. TONEY: We can go off the record.
10 (Recess taken from 12:43 p.m. until 12:46 p.m.)

11 MS. TONEY: Mr. Glasser, I have no further questions.
12 So unless your counsel has some, we can consider this
13 deposition closed.

14 MS. LEVINE: I don't have any questions.
15 I just want to make sure that before we go off the record,
16 I designate what is confidential in this deposition pursuant to
17 the stipulated Protective Order for standard litigation
18 modified by the Court, dated September 9th, 2021.

19 And I think what maybe we'll to do is what we did last
20 time, and perhaps provide me with a rough copy of the
21 transcript so I can do, you know, page- and line-number
22 designation.

23 But I would just, you know, generally state that the
24 topics that would be designated as confidential would include
25 Mr. Glasser's conversation with Herb Espiritu, any

4813458-3

Page 32

1 investigation by Dane Caldwell-Holden or Dominic Bejarano, any
2 potential discipline of Mr. Glasser, any potential violations
3 of policy, and his personnel evaluations. And then we can kind
4 of -- we can go through it and meet and confer about that once
5 the transcript is available. Does that work?

6 **MS. TONEY:** Yes, that does. Thank you.

7 And just to clarify for the court reporter, we won't need
8 a rough transcript. So, Amy, if you would like to get one,
9 you're more than welcome. And then, if not, we'll just send
10 you the final transcript when it comes around.

11 **MS. LEVINE:** Okay. We can do it based on the final
12 transcript.

13 **MS. TONEY:** Okay.

14 **MS. LEVINE:** But we may have to then amend it in some
15 way in order to designate certain pages as confidential. So --
16 so I'm not sure how you want to handle that.

17 **MS. TONEY:** That's fine.

18 **MS. LEVINE:** Okay. Thank you.

19 (Time noted: 12:48 p.m.)

20

21

22

23

24

25

4813458-3

Page 33

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby certify:

3 That the foregoing proceedings were taken before me at
4 the time and place herein set forth; that any witnesses in the
5 foregoing proceedings, prior to testifying, were placed under
6 oath; that a verbatim record of the proceedings was made by me
7 using machine shorthand which was thereafter transcribed under
8 my direction; further, that the foregoing is an accurate
9 transcription thereof.

10 I further certify that I am neither financially
11 interested in the action nor a relative or employee of any
12 attorney or any of the parties.

13 IN WITNESS WHEREOF, I have this date subscribed my name.

14

15 Dated: 10/3/2021

16

17

18

19 <%signature%>

20 LYDIA ZINN, RPR, FCRR

21 CSR No. 9223

22

23

24

25

Re: Sexual Harrassment Training and FCA

From: Espiritu, Herbert <hespiritu@sjusd.org>
To: Caldwell-Holden, Dane <dcaldwellholden@sjusd.org>

Tue, Aug 6, 2019 at 3:03 PM PDT (GMT-07:00)

No worries, thank you for the quick response.

Herb Espiritu
Principal
Pioneer High School
(408) 535 – 6310

From: Caldwell-Holden, Dane
Sent: Tuesday, August 06, 2019 3:01 PM
To: Espiritu, Herbert
Subject: Re: Sexual Harrassment Training and FCA

I am going to have to read his slowly and do some research. Give me a couple of days.

Dane

Get [Outlook for iOS](#)

On Tue, Aug 6, 2019 at 2:59 PM -0700, "Espiritu, Herbert" <hespiritu@sjusd.org> wrote:

Dane,

Please read the email below from one of our teachers regarding FCA's presence on campus.

Thank you in advance.

Herb Espiritu
Principal
Pioneer High School
(408) 535 – 6310

From: Glasser, Peter
Sent: Wednesday, July 31, 2019 8:33 AM
To: Peter Glasser; Espiritu, Herbert; Bernhardt, Patrick
Subject: Sexual Harrassment Training and FCA

Hi Herb and Patrick,

I wanted to ask a complex question of you both, and feel free to take time to think on it. I've been thinking a lot this summer about the Fellowship of Christian Athletes' presence on campus. I've reached no conclusions other than 1. that I 100% support and appreciate Herb's and SJUSD's actions thus far, and 2. how important it is to keep up our defense of Pioneer's community values.

I am aware that FCA's equal access to campus is protected by law even if they can't be an official club because they violate SJUSD's anti-discrimination policies.

SJUSD008048

3-ER-0348

Would the same equal access be guaranteed, though, if the FCA violates SJUSD's sexual harassment policy? Could the FCA's published policies on homosexuality and gender identity be seen to violate our district's sexual harassment policies?

Even before I got to Slide 15 in the sexual harassment training, which seems most applicable to the FCA, the slides got me thinking...I think it's fair to argue that a reasonable person would see the FCA's creating a hostile work environment for students and faculty (Slides 3 and 5); perhaps the FCA could fairly be considered an "outside vendor" (Slide 6). In my (reasonable person's) view, the FCA fits both criteria of harassment from Slide 9, especially given that the harasser's intent is irrelevant (Slide 8). Given that the behavior doesn't have to violate law to be in violation of sexual harassment policy (Slide 28), is it an appropriate "interim action" to ban FCA completely from campus (Slide 29)? Also, could students fairly be deemed

"volunteers, unpaid employees and/or independent contractors" and therefore be protected by DFEH (Slide 31)?

Thanks in advance for thinking things over!

Peter

DANNIS WOLIVER KELLEY
2087 ADDISON STREET, 2ND FLOOR
BERKELEY, CA 94704

1 AMY R. LEVINE, State Bar No. 160743
alevine@DWKesq.com
2 WILLIAM B. TUNICK, State Bar No. 245481
wtunick@DWKesq.com
3 KASMIRA M. BROUGH, State Bar No. 308791
kbrough@DWKesq.com
4 Dannis Woliver Kelley
2087 Addison Street, 2nd Floor
5 Berkeley, CA 94704
Telephone: 510.345.6000
6 Facsimile: 510.345.6100

7 KENNETH UPTON, Appearance Pro Hac Vice
upton@au.org
8 RICHARD KATSKEE, Appearance Pro Hac Vice
katskee@au.org
9 Americans United for Separation of Church and State
1310 L Street NW, Suite 200
10 Washington, DC 20005
Tel: (202) 466-3234

11 Attorneys for Defendants

12 NANCY ALBARRAN, HERB ESPIRITU, PETER GLASSER
and STEPHEN MCMAHON

13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 ELIZABETH SINCLAIR, CHARLOTTE
16 KLARKE, FELLOWSHIP OF CHRISTIAN
ATHLETES, an Oklahoma corporation, and
17 FELLOWSHIP OF CHRISTIAN
ATHLETES OF PIONEER HIGH SCHOOL,
18 an unincorporated association,

19 Plaintiffs,

20 v.

21 NANCY ALBARRAN, in her official and
personal capacity, HERB ESPIRITU, in his
22 official and personal capacity, PETER
GLASSER, in his official and personal
23 capacity, and STEPHEN MCMAHON, in his
official and personal capacity,

24 Defendants.

Case No. 5:20-cv-2798-LHK

**DEFENDANTS' SECOND AMENDED
RESPONSES TO PLAINTIFFS' FIRST SET
OF INTERROGATORIES**

27 **PROPOUNDING PARTY:** PLAINTIFFS CHARLOTTE KLARKE, ELIZABETH SINCLAIR,
and FELLOWSHIP OF CHRISTIAN ATHLETES

1 **RESPONDING PARTY:** DEFENDANTS NANCY ALBARRAN, HERB ESPIRITU, and
2 PETER GLASSER

3 **SET NUMBER:** ONE

4 Pursuant to Magistrate DeMarchi's July 26, 2021 order (Dkt. 97) requiring Defendants to
5 produce "all [responsive] findings and conclusions from any District investigations into Peter
6 Glasser's misconduct concerning the matters at issue in this case and any documents and
7 information used to develop such findings" as requested in Plaintiffs' discovery requests,
8 Defendants NANCY ALBARRAN, HERB ESPIRITU, and PETER GLASSER (collectively,
9 "Defendants") serve the following amended answers and objections to Plaintiffs' First Set of
10 Interrogatories to Defendants.

11 **PRELIMINARY STATEMENT AND GENERAL OBJECTIONS**

12 These responses are made solely for purpose of this action. Each answer is subject to all
13 objections as to relevance, materiality, and admissibility, and all other objections that would require
14 the exclusion of any statement contained herein if made by a witness present and testifying in court,
15 all of which objections and grounds are reserved and may be interposed at the time of trial.

16 Defendants object to the instructions and definitions provided by Plaintiffs to the extent they
17 conflict with or impose burdens beyond those contained in the Federal Rules of Civil Procedure.
18 They also object to the instructions and definitions on the grounds that they make the interrogatories
19 compound, vague, ambiguous and unintelligible, burdensome and oppressive, and to the extent they
20 expand the interrogatories into multiple subparts.

21 Defendants object to the format of these interrogatories in that they are directed to all the
22 Defendants, collectively. Discovery, investigation, research, and analysis in this action are
23 continuing. It is anticipated that further discovery, investigation, research, and analysis may result
24 in the development of new facts and legal theories, which may alter the responses contained herein.
25 Defendants retain the right to revise, correct, supplement and/or clarify any of the responses herein.
26 The responses herein are given without prejudice to Defendants' right to produce evidence of any
27 subsequently discovered fact or facts which Defendants may later discover or recall.

28 Subject to the foregoing objections, the requests are responded to as follows:

DANNIS WOLIVER KELLEY
2087 ADDISON STREET, 2ND FLOOR
BERKELEY, CA 94704

INTERROGATORY NO. 9:

Identify all policies and practices of the District and of any secondary school within the District regarding teacher speech in the classroom, including both oral speech and written speech, and all persons responsible for the supervision and enforcement of such policies and practices and their role in such supervision or enforcement. For each policy or practice, identify all instances during the 2015-16 academic year and each subsequent academic year relating to any potential, alleged, or actual violation of any policy identified and describe the circumstances of the potential violation, any measures taken by the District or any secondary school within the District to investigate such potential violation, the results of such investigation, any corrective action taken by the District or school in connection with the potential or actual violation, and any person involved in investigating a potential violation and deciding whether to take corrective action, including their specific role

RESPONSE TO INTERROGATORY NO. 9:

Defendants object to this interrogatory as vague and ambiguous as to the phrase “teacher speech.” Defendants further object to this interrogatory as compound, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Defendants also object that this interrogatory contains numerous subparts that are separate and distinct from one another. Defendants consider this interrogatory to be multiple interrogatories.

Defendants also object to this interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege, work product doctrine, official information privilege, and/or deliberative process privilege. Defendants further objects to this interrogatory to the extent it violates the right to confidentiality of its employees and third parties, the privacy of its students and/or their parents under the California Constitution and common law, and also violates the obligation to keep student records and information confidential under state and federal law. (See, Cal. Const. art. I, § 1; 20 U.S.C. §§ 1232g *et seq.*; Ed. Code, §§ 49073 *et seq.*)

Subject to and without waiving their objections, Defendants respond as follows: The District has written board policies and administrative regulations regarding teacher speech on controversial subjects in the classroom, on religious instruction, and on sensitivity to students of

various cultural or other backgrounds. These include but are not limited to Board Policies (“BPs”) and Administrative Regulations (“ARs”) 4119.25, 5137, 6141.2, 6141.6, 6141.61, and 6144. In addition, the rights of teachers are addressed in the collective bargaining agreement between the District and the San Jose Teachers Association.

AMENDED RESPONSE TO INTERROGATORY NO. 9:

Defendants fully incorporate the objections and response above and further state: Plaintiffs have alleged that Peter Glasser violated the Equal Access Act, the First Amendment, and the Fourteenth Amendment by posting the FCA Statement of Faith / Sexual Purity Statement on his whiteboard on or about April 23, 2019. In or around April 2019 Mr. Espiritu confirmed with Mr. Glasser that Mr. Glasser had posted the FCA Statement of Faith / Sexual Purity Statement on the whiteboard in his classroom. Mr. Espiritu also spoke with Plaintiff Klarke about the posting and suggested to Plaintiffs that they communicate their concerns to Mr. Glasser directly. Mr. Espiritu believed the matter to be resolved.

Defendants are not aware of any further investigation of potential policy violation by Mr. Glasser responsive to Judge DeMarchi’s order.

INTERROGATORY NO. 10:

Regarding Defendant Peter Glasser’s whiteboard statement as identified in Paragraph 5 of the Amended Complaint, please identify all persons responsible for or involved in the District’s or Pioneer’s response to such statement or to any complaints regarding the statement and their role in such response and any complaints or expressions of dissatisfaction to the statement. For each person identified as responsible for or involved in the District’s response, describe the circumstances under which the person became aware of the statement or any complaints or expressions of dissatisfaction with such statement. Further identify any actions that the District, Pioneer, or any employee or officer of the District or Pioneer took with response to such statement or complaints, and any discussion that the District, Pioneer, or any employee or officer of the District or Pioneer had regarding whether or not to allow Defendant Glasser to leave the statement or any similar statement up in his classroom and whether or not to discipline or censure Defendant Glasser.

RESPONSE TO INTERROGATORY NO. 10:

DANNIS WOLIVER KELLEY
2087 ADDISON STREET, 2ND FLOOR
BERKELEY, CA 94704

Defendants object to this interrogatory as vague and ambiguous. Defendants further object to this interrogatory as compound, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Defendants also object that this interrogatory contains numerous subparts that are separate and distinct from one another. Defendants consider this interrogatory to be multiple interrogatories.

Defendants also object to this interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege, work product doctrine, official information privilege, and/or deliberative process privilege. Defendants further objects to this interrogatory to the extent it violates the right to confidentiality of its employees, the privacy of its students and/or their parents under the California Constitution and common law, and also violates the obligation to keep student records and information confidential under state and federal law. (See, Cal. Const. art. I, § 1; 20 U.S.C. §§ 1232g *et seq.*; Ed. Code, §§ 49073 *et seq.*)

AMENDED RESPONSE TO INTERROGATORY NO. 10:

Defendants fully incorporate the objections and response above and further state: Plaintiffs have alleged that Peter Glasser violated the Equal Access Act, the First Amendment, and the Fourteenth Amendment by posting the FCA Statement of Faith / Sexual Purity Statement on his whiteboard on or about April 23, 2019. In or around April 2019 Mr. Espiritu confirmed with Mr. Glasser that Mr. Glasser had posted the FCA Statement of Faith / Sexual Purity Statement on the whiteboard in his classroom. Mr. Espiritu also spoke with Plaintiff Klarke about the posting and suggested to Plaintiffs that they communicate their concerns to Mr. Glasser directly. Mr. Espiritu believed the matter to be resolved. On or about April 23, 2019, Plaintiff Klarke spoke with Mr. Glasser regarding his whiteboard statement, in response to which Mr. Glasser updated his posting. On or about April 24, 2019, Plaintiffs Klarke and Sinclair spoke with Mr. Glasser regarding the whiteboard statement, in response to which Mr. Glasser offered to, and did, remove the whiteboard statement.

On or about April 25, 2019, Rigo Lopez emailed Mr. Espiritu regarding “the conversation happening on Pioneer’s campus right now regarding FCA’s Sexual Purity Policy.” On or about April 29, 2019, Mr. Espiritu forwarded the FCA Statement of Faith / Sexual Purity Statement to

1 Dane Caldwell-Holden and Stephen McMahon. On or about May 15, 2019, parents for Plaintiffs
 2 Klarke and Sinclair emailed Mr. Espiritu, stating “[t]here has been... indirect bullying from a
 3 member of your staff.” Their email did not specify the nature or dates of such bullying, nor did it
 4 identify the staff member. On or about May 16, 2019, Mr. Espiritu emailed Plaintiffs Klarke and
 5 Sinclair, inviting them to his office to check-in.

6 Defendants are not aware of any further investigation of complaints regarding Mr. Glasser’s
 7 conduct or misconduct responsive to Judge DeMarchi’s order.

8
 9 DATED: August 12, 2021

DANNIS WOLIVER KELLEY

10 By: /s/Amy R. Levine

11 AMY R. LEVINE

12 Attorneys for Defendants NANCY ALBARRAN,
 13 HERB ESPIRITU, and PETER GLASSER
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

DANNIS WOLIVER KELLEY
 2087 ADDISON STREET, 2ND FLOOR
 BERKELEY, CA 94704

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF ALAMEDA) ss.

I am employed in the County of Alameda, State of California. I am over the age of 18 and not a party to the within action; my business address is 2087 Addison Street, 2nd Floor, Berkeley, CA 94704.

On the date set forth below I served the foregoing document described as **DEFENDANTS' SECOND AMENDED RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES** on interested parties in this action as follows:

Kimberlee Wood Colby
CENTER FOR LAW & RELIGIOUS
FREEDOM
8001 Bradock Road, Suite 302
Springfield, VA 22151
kcolby@clsnet.org

Stephen C. Seto
Steven N.H. Wood
Christopher J. Schweickert
SETO WOOD & SCHWEICKERT LLP
1470 Maria Lane, Suite 300
Walnut Creek, CA 94596
cjs@wcjuris.com

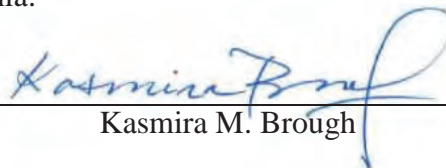
THE BECKET FUND FOR RELIGIOUS
LIBERTY

Eric S. Baxter
Daniel H. Blomberg
Nicholas Robert Reaves
Kayla Ann Toney
Abigail E. Smith
1919 Pennsylvania Avenue, Suite 400
Washington, DC 20006
ebaxter@becketlaw.org
dblomberg@becketlaw.org
nreaves@becketlaw.org
ktoney@becketlaw.org

☒ (VIA ELECTRONIC SERVICE) [Code Civ. Proc. Sec. 1010.6; CRC 2.251] by electronic mailing a true and correct copy through 's electronic mail system from kbrough@DWKesq.com to the email address(es) set forth above, or as stated on the attached service list per agreement in accordance with Code of Civil Procedure section 1010.6 and CRC Rule 2.251. The transmission was reported as complete and without error.

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

Executed on **August 12, 2021**, at Oakland, California.


Kasmira M. Brough

Subject: Climate Committee

Date: Friday, August 16, 2019 at 5:07:12 AM Pacific Daylight Time

From: Glasser, Peter

To: Espiritu, Herbert, Gavello, Tim

CC: Bernhardt, Patrick

Hi Herb and Tim,

I'm looking forward to our first Climate Committee meeting on Monday, 8/26! Unfortunately, because of Back To School Nights that week in SJUSD, we had to schedule our TQP meeting for 4:30 at SJTA, so I'll need to leave by about 4:15.

I'm eager to get a status update on what's going on with the FCA and for the committee to talk about next steps. If we have a longer agenda and the meeting will run past 4:15, do you think we could move this FCA discussion up on the agenda so I can be there for the conversation?

I'm hoping also that by then we can determine if SJUSD's sexual harassment policy could be used in this situation...thanks Herb and Patrick for asking around to see if this is an avenue we could pursue!

Thanks!
Peter

Mr. Peter Glasser,
Teacher, Pioneer High School
(preferred pronouns: he, him, his)

Espiritu

Page 1

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3
4 ELIZABETH SINCLAIR, CHARLOTTE)
KLARKE, and FELLOWSHIP OF)
5 CHRISTIAN ATHLETES, an)
Oklahoma corporation,) Case No. 5:20-cv-2798
6)
Plaintiffs,)
7)
vs.)
8)
SAN JOSE UNIFIED SCHOOL)
9 DISTRICT BOARD OF EDUCATION,)
in its official capacity,)
10 NANCY ALBARRÁN, in her)
official and personal)
11 capacity, HERBERT ESPIRITU,)
in his official and personal)
12 capacity, and PETER GLASSER,)
in his official and personal)
13 capacity,)
14 Defendant.)
_____)
15
16
17 REMOTE DEPOSITION OF HERBERT ESPIRITU
18
September 9, 2021
19
20
21
22
23
24
25 Reported By: Amy E. Simmons, CSR, RPR, CRR, CRC

Espiritu

Page 2

1 REMOTE DEPOSITION OF HERBERT ESPIRITU

2

3 BE IT REMEMBERED that the remote deposition of
4 HERBERT ESPIRITU was taken via videoconference by the
5 Plaintiffs before Veritext Legal Solutions, Amy E.
6 Simmons, Court Reporter and Notary Public in and for
7 the County of Ada, State of Idaho, on Thursday, the
8 9th day of September, 2021, commencing at the hour of
9 11:30 a.m. Pacific Daylight Time in the above-entitled
10 matter.

11

12

APPEARANCES (Remotely):

13

14 For the Plaintiffs: BECKET FUND FOR RELIGIOUS LIBERTY
15 By: Daniel Blomberg, Esq.
Nick Reaves, Esq.
1919 Pennsylvania Ave NW, Suite 400
16 Washington, District Columbia 20006
Telephone: (202) 955-0095
17 Facsimile: (202) 955-0090
dblomberg@becketlaw.org
18 nreaves@becketlaw.org

19

CENTER FOR LAW & RELIGIOUS FREEDOM
20 By: Kim Colby, Esq.
8001 Braddock Road, Suite 302
21 Springfield, Virginia 22151
kcolby@clsnet.org

22

23 SETO WOOD & SCHWEICKERT, LLP
By: Christopher J. Schweickert, Esq.
24 1470 Maria Lane, Suite 300
Walnut Creek, California 94596
25 cjs@wcjuris.com

Espiritu

Page 3

1 APPEARANCES (Contd.)

2

For the Defendants: DANNIS WOLIVER KELLEY
By: Amy R. Levine, Esq.
2087 Addison Street, 2nd Floor
Berkeley, California 94704
Telephone: (415) 543-4111
Facsimile: (415) 543-4384
alevine@dwkesq.com

6

7 AMERICANS UNITED FOR SEPARATION
8 OF CHURCH AND STATE
By: Richard B. Katskee, Esq.
1310 L Street NW, Suite 200
9 Washington, District Columbia 20005
americansunited@au.org

10

11 Also Present: Rigo Lopez
Elizabeth Sinclair

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Espiritu

Page 4

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

I N D E X

E X A M I N A T I O N

HERBERT ESPIRITU

PAGE

By: Mr. Blomberg.....6

E X H I B I T S

NO.

PAGE

60. Email Chain, Top One Dated 4/23/19.....10
to Herbert Espiritu from
Peter Glasser (1 page)126. Email Chain, Top One Dated 4/20/19.....25
to ahernandez@sjusd.org from
Peter Glasser (4 pages)127. Email Chain, Top One Dated 8/6/19.....36
to Dane Caldwell-Holden from
Herbert Espiritu (2 pages)130. Defendants' Second Amended.....8
Responses to Plaintiffs' First
Set of Interrogatories (7 pages)

131. Picture of Whiteboard (1 page).....7

132. "Letter to the Editor" Dated 5/10/19.....31
(31 pages)

Espiritu

Page 5

1 P R O C E E D I N G S

2

3 HERBERT ESPIRITU,

4 a witness having been first duly sworn remotely to tell
5 the truth, the whole truth and nothing but the truth,
6 was examined and testified as follows:

7

8 MS. LEVINE: Daniel, before we start, I
9 just wanted to say that we are here pursuant to
10 the order re the July 12, 2021, discovery dispute
11 issued by the court on July 26, 2021. So that's
12 our understanding about the purpose of this
13 deposition.

14 And so we're going forward without any
15 waiver of any objections that we had previously
16 raised, but we understand that the court has
17 authorized some additional deposition in that
18 order. So I just wanted to state that for the
19 record.

20 MR. BLOMBERG: And then Amy, as we've
21 done in the past depositions, can you just confirm
22 that both sides are agreeing we can do depositions
23 by Zoom and it's admissible for trial purposes?

24 MS. LEVINE: Yes.

25 MR. BLOMBERG: All right.

Espiritu

Page 6

1 MS. LEVINE: I stipulate.

2 MR. BLOMBERG: Okay.

3

4

EXAMINATION

5 BY MR. BLOMBERG:

6 Q. Mr. Espiritu, could you please state your
7 name for the record.

8 A. Herb Espiritu.

9 Q. And do you understand you're under the
10 same oath today as you would be if you were
11 testifying in a courtroom?

12 A. Yes.

13 Q. And is there anything that would prevent
14 you from being able to testify clearly and
15 truthfully today?

16 A. No.

17 Q. I'm going to assume that my questions to
18 you are clear and understandable unless you tell
19 me otherwise.

20 And if they're not, can you please just
21 let me know?

22 A. Yes.

23 Q. Great.

24 As Amy mentioned when we started off, our
25 last deposition together, when you were talking

Espiritu

Page 7

1 with Reed Smith from the plaintiffs, your counsel
2 instructed you not to answer some questions about
3 investigations into Mr. Glasser's actions toward
4 Pioneer FCA student leaders in the context of this
5 case. And the magistrate judge ruled that those
6 questions were questions that we could get answers
7 to, so that's what we're here to do today, is to
8 ask you about those issues and the related matters
9 that came up with those.

10 On August 12, your attorneys gave us
11 discovery responses that described the
12 investigations that had taken place regarding
13 Mr. Glasser, his conduct towards the Pioneer FCA.

14 And I'd just like to start off by showing
15 you a copy of those so that we have kind of a
16 common reference point.

17 Is that okay?

18 A. Yes.

19 Q. Great.

20 So if you go into Veritext and to Exhibit
21 Share, you should be able to see what's marked as
22 Exhibit 131.

23 Can you just let me know when you can see
24 that?

25 Do you have that up, Mr. Espiritu?

Espiritu

Page 8

1 A. It's asking for a password.

2 Q. Okay. So I'm sorry. Did you not get a
3 chance to log into Exhibit Share before we got
4 started?

5 A. I did. There was quite a bit of email
6 that was sent to me.

7 Q. Yeah. It can be a little complicated
8 sometimes. If it doesn't look like it's quickly
9 loading in right now, what we'll do is go off the
10 record so we can get that taken care of for you.

11 Does it look like it's coming up right
12 now?

13 A. Yeah. I just need to get the password.
14 Here it is. Yeah, maybe --

15 Q. That's fine.

16 MR. BLOMBERG: Ms. Simmons, if we can go
17 ahead and go off the record for a second, we'll
18 help Mr. Espiritu get onto Exhibit Share.

19 (Brief pause in the proceedings.)

20 Q. (BY MR. BLOMBERG) Mr. Espiritu, can you
21 see Exhibit 130 in Exhibit Share?

22 A. Yes.

23 Q. All right. Can you see how this is
24 marked in bold on the right-hand side "Defendants
25 Second Amended Responses to Plaintiffs First Set

Espiritu

Page 9

1 of Interrogatories"?

2 A. Yes.

3 Q. And if you scroll down a few pages to
4 page 6, you'll see it's signed by your counsel and
5 dated August 12?

6 A. Yes.

7 Q. All right. If you scroll back up, this
8 has two pages to page 4. It has a bolded section
9 that says "Amended Response to Interrogatory
10 No. 9."

11 Do you see that?

12 A. Yes.

13 Q. And then if you scroll down to the next
14 page, you'll see a similar bolded heading that
15 says "Amended Response to Interrogatory No. 10."

16 A. Yes.

17 Q. All right. So those are the two
18 paragraphs, the new paragraphs that we received
19 from your counsel on behalf of the defendants last
20 month.

21 And so could you please read those two
22 paragraphs for me and let me know once you're done
23 reading them?

24 A. The response?

25 Q. Yes, sorry. So the amended response to

Espiritu

Page 10

1 Interrogatory No. 9 and the amended response to
2 Interrogatory No. 10, if you could just read the
3 paragraphs under each of those particular
4 headings.

5 A. Okay.

6 Q. Thank you.

7 A. Okay. I'm done.

8 Q. Great. Thank you.

9 Do you see how in No. 9 it says, the
10 second paragraph -- sorry, the first paragraph
11 under No. 9. And it says that "In or around April
12 2019, Mr. Espiritu confirmed with Mr. Glasser that
13 Mr. Glasser had posted the FCA statement of
14 faith/sexual purity statement on the white board
15 in his classroom."

16 A. Are you asking me a question?

17 Q. Yeah. Do you see that sentence in
18 Interrogatory No. 9?

19 A. Yes.

20 Q. Okay. Great.

21 Just to make sure we're on the same page,
22 understanding each other, you can close out this
23 exhibit, and we're going to go to what's been
24 previously marked as Exhibit 60. It should show
25 up in your folder in just a second. Once it comes

Espiritu

Page 11

1 up, you can just pull it open real quick for me.

2 A. Okay.

3 Q. Great. Let me know when you can see it.

4 A. I have it up.

5 Q. Okay. Great.

6 Do you see the email at the bottom where
7 it says "April 22, 2019"? Peter Glasser sent an
8 email, and it was talking about -- asking if you
9 were aware of the pledge that members of
10 Fellowship of Christian Athletes required of its
11 members? Do you see that language?

12 A. Um-hmm.

13 Q. And then you see the email later that day
14 where you responded to him saying you were not
15 aware of the pledge?

16 A. Yes.

17 Q. So is this when Mr. Glasser first
18 contacted you about the situation with FCA,
19 Pioneer FCA?

20 MS. LEVINE: Asked and answered.

21 Q. (BY MR. BLOMBERG) You can answer,
22 Mr. Espiritu.

23 A. Yes.

24 Q. All right. Is this the first information
25 that you had about the situation with Pioneer FCA?

Espiritu

Page 12

1 MS. LEVINE: Asked and answered.

2 THE WITNESS: Yeah, as far as I can
3 remember, yeah. I mean, based on these emails and
4 my response, it seems like it was the first time I
5 was informed.

6 Q. (BY MR. BLOMBERG) Yeah. I think at the
7 top, yeah, there is an email from you at 5:06 that
8 says "Thank you for bringing it to my attention."

9 So is that indicating to you this is the
10 first time that the situation with Pioneer FCA
11 came to your attention?

12 A. Yes.

13 Q. Okay. Then if you could go to -- one
14 second. You can close out of that exhibit.

15 A. Okay.

16 Q. So if you could go to Exhibit 131 that's
17 in the folder, and let me know once you have that
18 up, please.

19 A. I have it up.

20 Q. Great.

21 And when we were talking about
22 Interrogatory No. 9 and the whiteboard display,
23 does this look like the whiteboard display that we
24 were discussing?

25 A. Yes.

Espiritu

Page 13

1 Q. Okay. Great. Thank you. I just wanted
2 to make sure we were on the same page.

3 You can close back out of that and go
4 back to Exhibit 130, which is the interrogatory
5 responses. And just let me know once you're on
6 page 4 of the amended response to Interrogatory
7 No. 9.

8 A. I'm there.

9 Q. Okay. Great. Thank you.

10 Do you see the last sentence in that
11 amended response where it says "Defendants are not
12 aware of any further investigation," and then the
13 sentence continues?

14 Do you see that?

15 A. Um-hmm. Yes.

16 Q. And then on -- scrolling down to amended
17 response on No. 10, the last sentence of that
18 section has a similar sentence. It says
19 "Defendants are not aware of any further
20 investigation or complaints regarding
21 Mr. Glasser's conduct or misconduct in response to
22 Judge DeMarchi's order."

23 Do you see that language?

24 A. Yes.

25 Q. Mr. Espiritu, as you sit here today, are

Espiritu

Page 14

1 you aware of any investigation into Mr. Glasser's
2 conduct toward Pioneer FCA and its student leaders
3 other than what is listed in amended response
4 No. 9 and amended response No. 10?

5 A. No. I guess I -- I mean, I need some
6 clarification on investigation and, you know -- I
7 guess it's -- I mean, that's a pretty broad scope.
8 I guess I need some clarification on specifically
9 what you're asking.

10 Q. So --

11 MS. LEVINE: And sorry, I didn't get a
12 chance to object. Can you wait for my objection,
13 Herb, before you answer?

14 THE WITNESS: Yes. Sorry, Amy.

15 MS. LEVINE: Okay. So it's vague and it
16 calls for a legal conclusion.

17 Q. (BY MR. BLOMBERG) Mr. Espiritu, did you
18 conduct personally any investigation into
19 Mr. Glasser's actions toward Pioneer FCA other
20 than what is listed in this document?

21 A. No.

22 Q. Are you aware of any other investigations
23 that were performed by district employees into
24 Mr. Glasser's conduct toward Pioneer FCA other
25 than what is listed in this document?

Espiritu

Page 15

1 A. No.

2 Q. Did you speak to Mr. Bejarano about
3 Mr. Glasser's conduct toward Pioneer FCA?

4 A. Yes.

5 Q. When did you speak to him about that?

6 A. I would say, as far as I can recall,
7 probably right after I was informed of the purity
8 statement being posted in his classroom.

9 Q. So that would be sometime around the
10 April 23rd time frame we were talking about
11 earlier?

12 A. Yes.

13 Q. And was -- how did you contact
14 Mr. Bejarano?

15 A. By phone.

16 Q. And what did you say to Mr. Bejarano?

17 A. I asked him, you know, -- here's the
18 situation. You know, we had a teacher that, you
19 know, posted the purity statement on the
20 whiteboard. What's his advice in terms of, you
21 know, how to proceed, what kind of conversation,
22 you know, I need to have.

23 Just to describe the nature of my
24 relationship with Mr. Bejarano, I was a teacher
25 when he was a principal at my former school. So a

Espiritu

Page 16

1 lot of times he wears two hats with me. He's a
2 mentor and, obviously, the superintendent of HR.

3 And oftentimes, you know, this -- you
4 know, a teacher -- I mean, we're a public high
5 school. There is a lot of topics that can be
6 deemed controversial and can have -- can evoke
7 certain emotions from our students, whether
8 it's -- all the societal things that are happening
9 around us, whether it's previous elections, recent
10 events, and, you know, it's just -- sometimes
11 those topics are discussed in class. Mostly in
12 English and history classes.

13 I don't -- unless it's a safety issue for
14 a student, I don't really deem them to be HR
15 matters. But I do from time to time call
16 Mr. Bejarano for mentorship advice and how to --
17 you know, have those conversations with our
18 teachers and staff members.

19 So the nature of my call, based on
20 information that I had at that time from the
21 students, is one of -- one that is normal, I would
22 say, in terms of students' feelings around certain
23 topics that are discussed in class. So I was --
24 again, the nature of my conversation with him,
25 with the information I had, wasn't around

Espiritu

Page 17

1 discipline. It was more around how should I couch
2 the conversation with the teacher so that it's
3 received positively and, you know -- and again,
4 that they can understand where maybe a student is
5 coming from.

6 Q. So the purpose of your call wasn't to
7 receive guidance on how to give correction or
8 counseling to Mr. Glasser regarding improper
9 behavior?

10 A. I didn't -- no. I didn't deem it to be a
11 violation of any policy of a teacher.

12 Q. And what did Mr. Bejarano tell you?

13 A. He agreed. He said that based on the
14 information that was given, he understands that,
15 again, some topics are -- you know, invoke certain
16 emotions with students, and sometimes not
17 positive, whether we agree with them or not as
18 educators.

19 You know, for example, we've had white
20 privilege conversation discussed in some English
21 classes, mainly Latino literature, and we have
22 some white American students that are sometimes --
23 you know, find discomfort in those conversations.

24 And, you know, my teachers will disagree
25 with me in terms of the kind of feelings students

Espiritu

Page 18

1 are getting in those conversations, but, you know,
2 I try to couch -- I've learned to couch those
3 conversations in terms of it's not about right or
4 wrong. It's about making sure the student
5 feels -- you know, doesn't feel attacked. You
6 know, even if it's indirect, and just trying to
7 approach it from those lines.

8 So Mr. Bejarano and I didn't deem that it
9 was a discipline concern. It was more getting a
10 teacher to understand that, you know, again,
11 certain topics that are brought up in class can
12 bring indirect emotions from students.

13 **Q. And have you ever seen a situation where**
14 **a teacher has posted the beliefs of a student**
15 **group on a board and said they were sorry the**
16 **people in the Pioneer High School community held**
17 **those beliefs?**

18 **MS. LEVINE:** Asked and answered.

19 **THE WITNESS:** I'm trying to think here.
20 I've been in education for a long time.

21 Sorry, Amy.

22 **MS. LEVINE:** No problem.

23 **THE WITNESS:** I would say yes.

24 **Q. (BY MR. BLOMBERG) What is another**
25 **example of where a teacher has posted the beliefs**

Espiritu

Page 19

1 of a student group on the board and said they're
2 sorry that students on the campus hold those
3 beliefs?

4 A. I think one was just recent as it
5 pertained to what our staff deemed as hate crime.
6 There was a senior prank that was done here in
7 May, and there was derogatory graffiti around
8 campus. And we weren't able to connect it to the
9 senior prank around -- you know, it was bigotry
10 comments, racially driven comments.

11 And our teachers, you know, felt that --
12 the need for, you know -- felt that it was
13 appropriate to have those discussions in class.
14 And it had some unintended, you know, connections
15 for the kids that were known -- that had done the
16 senior prank, even though they weren't
17 responsible, in terms of our investigation, for
18 the graffiti. So that was one that I can think of
19 recently.

20 Q. And so a teacher put those statements up
21 on the board and told the students in the
22 classroom that they were sorry that that kind of
23 thing had happened?

24 A. It wasn't something they posted on the
25 board. It was more of a discussion with the

Espiritu

Page 20

1 class. And the kids were in the senior prank --
2 because we were able to identify kids who did the
3 senior prank, which was dropping a big rock in the
4 middle of the quad. They felt that the teachers
5 were trying to connect what happened with the
6 graffiti to their prank, which they felt was
7 unfair and indirectly created some tension between
8 students, their classmates that didn't know all
9 the facts of the case.

10 **Q. In your conversation with Mr. Bejarano**
11 **about Mr. Glasser, did Mr. Bejarano recommend any**
12 **particular action that you should take with**
13 **Mr. Glasser?**

14 A. No disciplinary action. He suggested to
15 have a conversation with Mr. Glasser. And again,
16 you know, we deemed that there was, you know,
17 nothing he did wrong policy-wise. But it is
18 something to keep in mind if, you know, some of
19 the conversation that you are having in class
20 might, again, invoke certain emotions with your
21 students.

22 And, you know, he teaches AP U.S.
23 history, so he has a pretty good reputation, in
24 terms of the years that I've worked here with him,
25 of really being -- you know, being able to raise

Espiritu

Page 21

1 controversial topics in a very -- in a way that
2 he's not influencing students to pick a side.

3 Q. Did it seem like he was influencing
4 students to pick a side here by saying that he was
5 sorry that people held these beliefs on campus and
6 asking students how they felt?

7 MS. LEVINE: Asked and answered.
8 Go ahead.

9 THE WITNESS: I think after my
10 conversation with him and -- I think the biggest
11 effect was -- I'm sure a lot of this conversation
12 with him, you know, after her and I spoke of
13 how -- what he posted and how that made her feel
14 indirectly, you know.

15 And even though Mr. Glasser was -- didn't
16 think that he was putting any of his students in,
17 you know, an uncomfortable situation, you know, he
18 realized that, you know, it might have had some
19 indirect effect to Charlotte and Elizabeth.

20 Q. (BY MR. BLOMBERG) After speaking to
21 Mr. Bejarano, did you tell Mr. Glasser that he
22 should not have posted that on the whiteboard?

23 A. I believe what I told him was we need to
24 be careful about what we -- and be mindful about
25 what we discuss in class, especially with, you

Espiritu

Page 22

1 know, controversial topics. I think this one -- I
2 think this one had more attention to it because of
3 how present it was in what was happening, again,
4 similar to the example that I gave recently in the
5 spring with the senior prank. And I think we just
6 have to be mindful about those conversations and
7 making sure that we are not indirectly making
8 students feel, you know, a certain way while
9 they're in school.

10 Q. Did you send Mr. Bejarano any documents
11 as a part of your conversation with him?

12 A. No.

13 Q. Did you send him any documents at all
14 regarding Mr. Glasser and his conduct toward FCA?

15 A. No.

16 Q. Did you receive any documents from him
17 regarding Mr. Glasser and his conduct toward FCA?

18 A. No.

19 Q. So going back, then, the conversation you
20 had with Mr. Bejarano is not listed in the
21 August 12 document that you and I looked at
22 earlier, correct?

23 A. No.

24 Q. Okay. Other than what's in the document
25 with Mr. -- sorry.

Espiritu

Page 23

1 Other than what's in the document that we
2 looked at earlier that's marked Exhibit 130 and
3 your conversation with Mr. Bejarano, are you aware
4 of any investigations into his conduct by
5 Mr. Glasser regarding his conduct toward FCA in
6 this matter?

7 A. No.

8 Q. Did you ever take any corrective action
9 toward Mr. Glasser because of his conduct toward
10 Pioneer FCA in this matter?

11 MS. LEVINE: Objection; vague, calls for
12 a legal conclusion.

13 THE WITNESS: I can answer, right?

14 MS. LEVINE: Yes.

15 Q. (BY MR. BLOMBERG) She'll tell you if you
16 can't answer.

17 A. Okay. Sorry. No.

18 Q. Did you ever -- other than what you were
19 talking about earlier about being careful with
20 what you say in the classroom, did you ever give
21 him any guidance that his conduct or statements
22 towards Pioneer FCA was improper or incorrect?

23 A. No.

24 Q. Did you ever tell him it was in violation
25 of district policy?

Espiritu

Page 24

1 A. No.

2 Q. Did you ever put anything on his teacher
3 evaluations that indicated that he should have
4 handled the situation with Pioneer FCA
5 differently?

6 A. No.

7 Q. Was he praised in future evaluations for
8 how he handled the situation with Pioneer FCA?

9 A. No.

10 Q. Was Mr. Glasser the commencement speaker
11 this past year?

12 A. Class of 2021?

13 Q. Yes, sir.

14 A. Yes. And he was also voted commencement
15 speaker in the class of 2020.

16 Q. Did you ever recommend that the district
17 impose any punishment on Mr. Glasser for his
18 conduct or statements towards Pioneer FCA?

19 A. No.

20 Q. And did you ever impose any punishment?

21 A. No.

22 Q. Are you aware of any punishment the
23 district ever imposed on Mr. Glasser for his
24 conduct toward Pioneer FCA?

25 A. No.

Espiritu

Page 25

1 Q. Are you aware of any corrective action or
2 guidance given to Mr. Glasser regarding his
3 conduct toward Pioneer FCA other than what is
4 listed in this document and the conversation you
5 had with Mr. Bejarano?

6 A. No.

7 Q. Let me show you -- you can go back to the
8 exhibits folder, and we'll look at what's marked
9 Exhibit 126. It should be up in just a minute.
10 Let me know once you can see it. It just popped
11 up on mine?

12 A. It's giving me a circle right now.

13 Q. You can go ahead and open it up once you
14 can see it. Let me know once you can see the
15 document.

16 A. It's what number?

17 Q. Exhibit 126.

18 A. I'm opening it now.

19 Q. Great. Thank you.

20 A. I see it.

21 Q. If you look at the bottom of the page
22 just above the sticker that says 126, it says from
23 Peter Glasser sent Monday April 29 and to
24 Espiritu, Herbert.

25 Do you see that language?

Espiritu

Page 26

1 MS. LEVINE: Where are you, Daniel?

2 MR. BLOMBERG: This is the first page of
3 Exhibit 126. It's the email that Peter sent to --
4 it starts with "Hi Herb and Amy."

5 THE WITNESS: Got it.

6 Q. (BY MR. BLOMBERG) It's like the second
7 forwarded message thing on the -- from the bottom
8 of the page.

9 A. Yeah, I see it.

10 Q. So you would have received this email
11 about one week after that email we looked at
12 earlier that you got on April 22nd?

13 A. Um-hmm.

14 Q. All right. And do you see at the end of
15 this little paragraph to you and to Amy that says
16 "The contents of the email that he's sending you
17 contained his current thinking and asks for your
18 advice and perspective"? Do you see that?

19 A. Yes.

20 Q. All right. And then scrolling down to
21 the third page and the second full paragraph on
22 the page, starts with "I knew right from the
23 beginning." Let me know when you can see that.

24 A. What paragraph is it on?

25 Q. It's the second paragraph on that third

Espiritu

Page 27

1 page, and it starts with the words "I knew right
2 from the beginning."

3 A. Okay.

4 Q. Okay. Great. Thank you.

5 That sentence says "I knew right from the
6 beginning that I had to hang the FCA document on
7 the board right away."

8 Do you see that?

9 A. Um-hmm.

10 Q. I'm sorry. Was that a yes?

11 A. Yes. Sorry.

12 Q. I know. It's awkward.

13 A. Yeah.

14 Q. So just to confirm from our earlier
15 conversation, after you got this email from
16 Mr. Glasser, you didn't respond to him and say,
17 "No, you didn't have to hang this FCA document on
18 your board right away"?

19 A. Can you repeat the question?

20 Q. Sure. Sure.

21 So when you're talking earlier, I think
22 you said all the corrective actions and all the
23 investigations that you took place are contained
24 in the Bejarano conversation that you and I
25 discussed and that Exhibit 130 document that we

Espiritu

Page 28

1 looked at first.

2 So you didn't respond to this email from
3 Mr. Glasser by telling him that, in fact, he did
4 not have to hang the FCA document on his board?

5 A. Yeah, I don't recall responding to this
6 one.

7 Q. Okay. And you didn't give him any
8 written corrective guidance saying that he should
9 have handled the situation differently?

10 A. I thought -- I think -- I'm trying to go
11 back to, you know, what my thought process was
12 after I was forwarded this.

13 I think, from what I recall after reading
14 this, is I've already said what I need to say in
15 terms of what I thought about what happened the
16 previous week.

17 Q. Nothing that you saw in here suggested
18 that the message that you intended to get through
19 hadn't gotten through?

20 A. Again, this is a message to one of his
21 colleagues that he's known and has a relationship
22 with. I --

23 Q. In that original email that we were
24 looking at together on the April 29th page, he
25 said -- he specifically asked you for your

Espiritu

Page 29

1 feedback on what his thinking was.

2 And when you saw his thinking here, you
3 didn't respond by saying, "No, this isn't what we
4 were discussing; you didn't have to hang that FCA
5 on your board right away"?

6 A. Yeah, I try not to argue about, you know,
7 positions that my teachers have. Again, my
8 conversation with him the previous week is that,
9 you know -- again, be mindful of what he's posting
10 and what questions he's posting in the classroom.

11 I mean, the nature of this is his
12 feelings. I didn't feel the need to respond to
13 it.

14 Q. And you didn't think that he was telling
15 you that he was knowingly violating school policy
16 here?

17 A. Yeah. You have to give me some time if
18 you really want me to read this document and
19 recall. Because I'm trying to listen to your
20 questions and then what exactly was in the body of
21 this email.

22 Q. Yeah. And I'm just asking
23 specifically -- he asked for the feedback, and
24 then here in this part of the email, he's saying
25 that he knew he had to hang the statement up on

Espiritu

Page 30

1 the board.

2 When you saw this, that didn't make you
3 go back to him and say, "You didn't have to do
4 that. You should have done it differently"?

5 MS. LEVINE: Asked and answered.

6 And I think the witness has said he would
7 like to review this before he answers a question
8 about it. So I would ask that he has an
9 opportunity to review this document.

10 Q. (BY MR. BLOMBERG) You're welcome to
11 review the document a little bit. We can come
12 back to it.

13 But I'm asking you about the actions that
14 took, not the contents of the document. I'm
15 asking about the actions that you took after you
16 read this email.

17 My understanding -- and correct me if I'm
18 wrong -- you didn't go back to him and give him
19 another call and say, "No, you shouldn't have done
20 it"?

21 MS. LEVINE: It's the same objections.
22 You're asking him how he responded to this email,
23 which he doesn't remember. He hasn't looked at
24 this email in however long.

25 So I think, in fairness, if you want him

Espiritu

Page 31

1 to answer how he responded to this email, he needs
2 to review the email.

3 Q. (BY MR. BLOMBERG) Did you respond in any
4 way to this email, Mr. Espiritu?

5 A. No.

6 Q. Okay. Thank you. We will go to
7 Exhibit 132 now. So you can sign out of that one.
8 Just let me know when you can see 132.

9 A. Yeah. Can I go back to my answer?

10 Q. Sure.

11 A. I don't recall responding, if I responded
12 or not.

13 Q. Did you send him any emails in response
14 to that communication?

15 A. I don't recall.

16 Q. If you had sent him an email, would you
17 have produced that to us?

18 A. Yes.

19 Q. And if you had texted him, you should
20 have produced that to us?

21 A. Yes.

22 MS. LEVINE: Calls for a legal
23 conclusion.

24 Q. (BY MR. BLOMBERG) And so there are no
25 written communications that you sent to him in

Espiritu

Page 32

1 **response to this email that we haven't received**
2 **already?**

3 A. I don't recall. Again, I've given you
4 guys everything that you've asked for this whole
5 time. So yeah, I think that -- you're asking me
6 if I would respond to the email that he, you know,
7 shared with Amy Hernandez about his thoughts.

8 To me, after I talk to a teacher about
9 something they did, the only thing I'm looking for
10 is if they do something again. I don't go back
11 to, "Hey, remember what we talked about," because
12 he's sharing his feelings or his thoughts with
13 another colleague or even with me. At that point,
14 I've already told the employee that we need to be
15 mindful.

16 I knew the biggest thing from him was
17 receiving it from the student herself. And you
18 know, whatever his thoughts were after that, I
19 don't believe that he did anything in the
20 classroom regarding FCA or conversations about FCA
21 after that point.

22 So to me, that would have been -- even
23 though I don't recall everything that I did after
24 I saw this -- I saw this email at that time, the
25 only thing I would respond to is if something else

Espiritu

Page 33

1 was happening in the classroom.

2 Q. (BY MR. BLOMBERG) Okay. Can you go to
3 Exhibit 132 and let me know when you have it up,
4 please.

5 A. Yes.

6 Q. Thank you.

7 A. I have it.

8 Q. Great.

9 Do you see the date on the email that
10 says Friday, May 10th?

11 A. Yes.

12 Q. Okay. And do you see that you are among
13 the recipients of the email?

14 A. Yes.

15 Q. Great. Thank you.

16 And if you look at the second-to-last
17 paragraph on this page, you see it starts with
18 "Here is what I don't want any of you to share
19 with any students"?

20 A. Um-hmm.

21 Q. Do you see that?

22 A. Yes.

23 Q. Okay. Do you see where it says, as part
24 of that paragraph, "I'm not at all worried that I
25 shouldn't have stated anything that I've written

Espiritu

Page 34

1 or said in class or outside of class disputes. I
2 do not regret anything I've said or done in the
3 last three weeks and would do the same all over
4 again. I believe that I'm morally and
5 professionally bound to have done everything I've
6 done thus far"?

7 Do you see that language?

8 A. Yes.

9 Q. Once you received this email from
10 Mr. Glasser, did you send an email back to him
11 telling him he was wrong to think that he was
12 professionally bound to have done everything he
13 had done thus far to Pioneer FCA?

14 A. No.

15 Q. Did you send him a text message of that
16 nature?

17 A. No.

18 Q. Did you provide any written counseling or
19 guidance to Mr. Glasser correcting him on that
20 point?

21 A. No.

22 Q. Did you instruct Mr. Glasser that he
23 should not do the same all over again?

24 A. I believe that my conversation with him
25 the first time indicated he needed to be mindful

Espiritu

Page 35

1 about conversations he's having in his class.

2 **Q. And have you or the district provided any**
3 **training at Pioneer to Mr. Glasser or any of the**
4 **other teachers instructing them they should not**
5 **engage in this kind of conduct toward student**
6 **groups?**

7 **MS. LEVINE:** I'm going to object. This
8 is beyond the scope of the discovery order. It's
9 not about general practices. It's about --
10 actually, I've let you go pretty far afield at
11 this point, but it's about discovery into the
12 district's investigations, if any, of Defendant
13 Peter Glasser's alleged misconduct. And more
14 specifically, the findings and conclusions from
15 any district investigations into Peter Glasser's
16 misconduct concerning the matters at issue in this
17 case and any documents and information used to
18 develop such findings.

19 So trainings, generally, to teachers is
20 not within the scope of that.

21 **MR. BLOMBERG:** We disagree with you on
22 that. The court order specifically said that it
23 was highly relevant to find out whether the other
24 defendants discouraged, encouraged, or ratified
25 Mr. Glasser's alleged misconduct, which would be

Espiritu

Page 36

1 relevant to the question of training. And that
2 would also be relevant to the conclusions that the
3 district took in its investigations of
4 Mr. Glasser's misconduct.

5 So we've established that investigations
6 occurred. I'm asking whether the training --
7 whether there was any training as a result of the
8 investigations and as a conclusion of the
9 investigation that no one should do the same thing
10 that Mr. Glasser had done.

11 **MS. LEVINE:** Okay. So that's a different
12 question. Now you're asking about trainings as a
13 result of what Peter Glasser did. That's the
14 question?

15 **MR. BLOMBERG:** That's the question.
16 Is he able to answer that question?

17 **MS. LEVINE:** Yes.

18 **Q. (BY MR. BLOMBERG)** So Mr. Espiritu, let
19 me ask that again.

20 Have any trainings been conducted at
21 Pioneer saying that Mr. Glasser or any other
22 teacher should not do the kind of thing that
23 Mr. Glasser did toward the student group?

24 **A.** No.

25 **Q.** Let's go back into the Veritext portal

Espiritu

Page 37

1 and look at what's going to be marked Exhibit 127.

2 It just popped up for me. Just let me
3 know. Once you see it, you can go ahead and open
4 it and let me know once you have it open.

5 A. I have it open.

6 Q. Okay. Great.

7 And you see right about where that
8 sticker is, it says Exhibit 127, you see how it
9 has the from as being from Mr. Glasser, the date
10 as being July 31, and you as being one of the
11 recipients?

12 A. Um-hmm, yes.

13 Q. Thank you.

14 And the subject is "Sexual harassment
15 training and FCA."

16 Do you see that?

17 A. Yes.

18 Q. Do you recall receiving this email from
19 Mr. Glasser?

20 A. You know, vaguely.

21 Q. Do you see -- just go ahead -- if you
22 could just go ahead and read the emails from the
23 bottom of the page there to the top of the next
24 page, and just let me know once you're done
25 reading them.

Espiritu

Page 38

1 A. Okay.

2 Q. Thank you.

3 Do you see at the top of the second page,
4 the second sentence where it said "Could the FCA's
5 published policies on homosexuality and gender
6 identity be seen to violate our district's sexual
7 harassment policies?"

8 Do you see that question?

9 A. From Peter's email?

10 Q. Yes.

11 A. Yes.

12 Q. Then if you look at the next paragraph
13 down toward the end of the paragraph, it says "Is
14 it an appropriate interim action to ban FCA
15 completely from campus?"

16 And then there is a parenthetical that
17 says "(Slide 29)" with a question mark?

18 A. Yes.

19 Q. Just to confirm from our earlier
20 conversation, you didn't take any corrective
21 action toward Mr. Glasser after receiving this
22 email?

23 A. No. Again, this has nothing to do with
24 students in his classroom.

25 Q. All right. So you didn't send him an

Espiritu

Page 39

1 email saying that this would be inappropriate, to
2 accuse Pioneer FCA of sexual harassment due to its
3 religious beliefs?

4 A. I think he's asking the question.

5 Q. And you didn't say it was inappropriate
6 to pursue that line of questioning?

7 A. No. I don't turn down any questions from
8 staff or students or community stakeholders,
9 whether I agree with them or not.

10 Q. Did you ever tell him that it would be
11 inappropriate to pursue that course against
12 Pioneer FCA?

13 A. Again, this had nothing to do directly
14 with students at Pioneer High School. So my job
15 is to be -- ask the question, whether I agree with
16 it or not, to look into it.

17 Q. And did you respond to him? Did you
18 respond to the question he raised here?

19 A. No, because I don't know the answer.

20 Q. So you never sent him a written response
21 to his question here?

22 A. Not that I recall, no.

23 Q. Okay.

24 A. Yeah, I think my corrective action at
25 that point was to go to student services and see

Espiritu

Page 40

1 what their thoughts on it were.

2 **Q. Okay. And you didn't orally tell him**
3 **that this was not appropriate?**

4 A. No. Again, this had nothing to do with
5 our first conversation in April about what he's
6 doing in front of students.

7 **Q. And are you aware of anyone else in the**
8 **district who told him that it was inappropriate?**

9 A. No.

10 **Q. Did you tell Mr. Glasser that it would be**
11 **inappropriate to, quote, ban FCA completely from**
12 **campus, end quote?**

13 A. No.

14 **Q. Why did you forward this email to**
15 **Mr. Caldwell-Holden?**

16 A. Because he would be the one to know if it
17 violated certain things. I don't have the answer
18 to those questions that Mr. Glasser posed on
19 July 31.

20 **Q. Did you ever hear back from**
21 **Mr. Caldwell-Holden on this?**

22 A. You know, I don't recall. I don't think
23 so. He would have responded by email if, in fact,
24 it did violate something. Or he would have gone
25 to Sups Council and discussed it with them. My

Espiritu

Page 41

1 job is to -- you know, a teacher asks a question,
2 and I wanted to make sure that, you know, we had
3 the appropriate response.

4 Q. And when you say "Sups Council," is that
5 a reference to the group of superintendents, the
6 superintendent and the group of superintendents
7 that are over the school?

8 A. Yes.

9 Q. Thank you.

10 Did Mr. Glasser ever send you any other
11 emails following up on this suggestion he sent to
12 you?

13 A. I don't recall.

14 Q. And have you or the district provided any
15 training to Mr. Glasser or other teachers
16 instructing them that it's inappropriate to accuse
17 a religious student group of sexual harassment due
18 to their religious beliefs?

19 MS. LEVINE: And I'm going to make the
20 same objections to this. General training to
21 teachers and staff regarding religious harassment
22 is outside the scope of the court's order.

23 Q. (BY MR. BLOMBERG) To clarify, so as a
24 result of your investigations and review of
25 Mr. Glasser's conduct here, did you -- sorry.

Espiritu

Page 42

1 Did the district provide any training to
2 Mr. Glasser or any other teacher telling him that
3 it's inappropriate to accuse a religious student
4 group of sexual harassment due to their religious
5 beliefs?

6 A. No.

7 **MR. BLOMBERG:** Let me just take a quick
8 break. And we'll come back on the record in a
9 minute and we'll go from there.

10 (Brief pause in the proceedings.)

11 **MR. BLOMBERG:** Nothing further from the
12 plaintiffs.

13 **MS. LEVINE:** Okay. Great.

14 So pursuant to the stipulated protective
15 order for standard litigation modified by the
16 court on September 3, 2021, defendants would
17 designate as confidential all testimony regarding
18 discipline or potential discipline or corrective
19 action of Peter Glasser, Mr. Espiritu's
20 conversations with Pete Glasser, his conversations
21 with Dominic Bejarano, and any communications with
22 Mr. Glasser and Mr. Bejarano that's covered in
23 this deposition, investigation into any
24 misconduct, discipline -- I might have already
25 said that. Sorry -- evaluations, recommendations

Espiritu

Page 43

1 regarding punishment or corrective action or
2 training as a result of any actions or inactions
3 by Mr. Glasser.

4 So, we could designate this entire
5 portion of the deposition, which would probably be
6 easier than going through it line by line, but
7 aside from that, then that's what I would say is
8 the scope of the confidentiality.

9 **MR. BLOMBERG:** Okay. Great. Well, I
10 think we'll probably end up disagreeing with that,
11 but we can talk about it tomorrow, Amy, in our
12 scheduled discussion and work through that
13 process.

14 We might also be able to limit the nature
15 of the dispute by figuring out what portions of
16 the deposition we'd be interested in using, if
17 any.

18 So I think we're done. Anything further
19 from you?

20 **MS. LEVINE:** No, just that I don't think
21 it precludes you from using it. It just requires
22 that if you want to use it, then you would have to
23 seek leave to file it under seal if you were going
24 to use it for purposes of a public filing.

25 **MR. BLOMBERG:** We can talk about that

Re: FCA Pledge

From: Peter Glasser <peterglasser@yahoo.com>
To: Espiritu, Herbert <hspiritu@sjusd.org>

Tue, Apr 23, 2019 at 4:27 AM PDT (GMT-07:00)

Thanks, Herb!

On Monday, April 22, 2019, 5:06:00 PM PDT, Espiritu, Herbert <hspiritu@sjusd.org> wrote:

Thank you bringing it to my attention.

Please encourage the student to reach out to me if they need additional support.

Sent from my iPhone

On Apr 22, 2019, at 3:31 PM, Peter Glasser <peterglasser@yahoo.com> wrote:

Thanks! I don't really know anything about the club or pledge. A student brought it to my attention today because he was upset.

On Monday, April 22, 2019, 3:30:32 PM PDT, Espiritu, Herbert <hspiritu@sjusd.org> wrote:

Peter,

I'm not aware of this pledge.

Do you know if this was something that was given to our students at the assembly?

Let me this discuss this with the admin team and follow up with the club leadership as necessary.

Herb

Sent from my iPhone

On Apr 22, 2019, at 3:23 PM, Peter Glasser <peterglasser@yahoo.com> wrote:

Hi All,

I was wondering if you were aware of the pledge that members of the Fellowship of Christian Athletes requires of its members? I had a student speak to me today who was very upset about the anti-gay prerequisites for membership/officership.

Could you please discuss how to approach the club leadership?

Thanks!

Peter

<image1.jpeg>

<image2.jpeg>

SJUSD007943

3-ER-0401

Yahoo Mail - Re: FCA

https://mail.yahoo.com/d/folders/folders=41&sortOrder=date_asc/...

Re: FCA

From: Peter Glasser (peterglasser@yahoo.com)

To: ahernandez@sjusd.org

Date: Tuesday, April 30, 2019, 11:21 AM PDT

I am slammed for the next couple of days, but I'd love for you to join Herb and me today during 6th if you can make it! Otherwise, we can chat on Thursday?

On Tuesday, April 30, 2019, 10:55:33 AM PDT, Hernandez, Amy <ahernandez@sjusd.org> wrote:

Hello-

Thank you for the letter! Can we talk? I have some thoughts on the news paper article I want to talk to you about. When is a good time. Or maybe I join you and Herb during a 6th period.

:)Amy

From: Peter Glasser <peterglasser@yahoo.com>
Sent: Monday, April 29, 2019 6:33 AM
To: Espiritu, Herbert; Hernandez, Amy
Subject: Fw: FCA

Hi Herb and Amy,

Herb, this is an e-mail I wrote to Amy following up on our conversations. I thought it might be good for me to forward it to you as well. I don't expect to be a part of the decision-making process regarding FCA (unless it involves the Climate Committee...after our conversations a few weeks ago, I arranged with my department before spring break to be able to attend the April and May meetings to represent the social studies department). Mostly, Herb, this email is just an FYI about where I am in my thinking. If you have advice about where my thinking should go next, please let me know. I'd like to hear your perspective.

Thanks!

----- Forwarded Message -----

From: Peter Glasser <peterglasser@yahoo.com>
To: Amy Hernandez <ahernandez@sjusd.org>
Sent: Monday, April 29, 2019, 5:27:19 AM PDT
Subject: FCA

the officers that have to sign that pledge, so I changed what I had written on the board before 3rd period to reflect her feedback. Then, before school on Wednesday, and another officer came to me to tell me that that information was inaccurate as well, and that the pledge the officers sign for the local FCA chapter also doesn't include the language I posted on the board and that they didn't know where the document I posted on the board came from. Additionally, two of the students who initially raised objections about the FCA to Herb told me that they were invited into a very one-sided meeting with Milara Gatoke and the FCA officers where they were essentially shamed for coming forward. I'm not sure what role Milara has in this whole situation (aside from being a very close friend of Kristin Borup)...maybe she was just volunteering to help work out conflict, certainly a good role for a guidance counselor to have...it didn't sound like a very fair meeting, though. Part of my goal in sending the letter to the editor is to state for everyone to see my understanding of the facts so that we can then move forward with the conversation. That's why I also sent the letter to the editor to Kristin--the FCA officers communicated to me that wanted to include their faculty advisor in any future conversations with me, so I wanted to keep Kristin in the loop. My antennae are up--I can't help but feel a bit manipulated...

I would love any feedback you have, any ideas you have to help me keep thinking.

I also know you are talking with Herb a lot about the situation...I haven't talked with him face to face about what's going on in my mind, but you have my permission to share anything in our conversation on Thursday or in this e-mail with him privately and confidentially. I want him to know that I can be flexible in what I include in the final draft of the letter to the editor if he has ideas on what I can say to make an overall better process for Pioneer.

Thanks for being such a valuable thought partner!

Peter

Yahoo Mail - Re: FCA

<https://mail.yahoo.com/d/folders/41/messages/AEDMsYQFTjFo...>*Redacted*

before I acted; for some of them, I am only now really figuring them out. I'm so grateful you asked the question, because I've been giving it a lot of thought. In many ways, I am seeing the necessity of discussing the FCA's views head on--because in order to feel safe, healthy and enfranchised on our campus, our kids need to hear their adults say certain things. We've discussed before how I believe that our campus needs to grow dramatically in our treatment of gender identity, and for me, this FCA issue is the straw (lead pipe, really) that broke the camel's back. In so many ways, I feel that there's only one thing to say that will protect our students who are so victimized by religious views that discriminate against them: I am an adult on your campus, and these views are bullshit to me. They have no validity. It's not a choice, and it's not a sin. I'm not willing to be the enabler for this kind of "religious freedom" anymore. LGBTQ+ kids, you deserve to have your dignity defended by the adults around you.

I knew right from the beginning that I had to hang the FCA document on my board right away. The FCA officers, I know, were insulted that I didn't speak to them privately first. (In fact, I didn't know that [redacted] is an officer, and she was in my first period class that day,,,awkward, but in many ways helpful.) I knew from the start that I had to speak right away, because for all LGBTQ+ kids and their friends and allies, any delay in response-time on the part of adults on campus means the same as those adults tacitly approving of the FCA's views. If my students see me delaying my response to talk about it first, what they see is a teacher who thinks, well, you know what, the FCA's views have some merit too, and they have the right to believe them, and it takes time to figure out if their views belong on campus or not. The message of support, therefore, is lost for the kids whom I need to support with my words and actions. In order for my response to mean anything, it needed to be unequivocal and immediate.

I am also cognizant that the FCA does great things on campus, and believe me, the idea that great students like [redacted] are what amounts to collateral damage in this situation has been agonizing for me. I don't want people to feel attacked for their views, and I know that's how the FCA feels. Then again, part of me thinks that attacking these views is the only way to make a better campus.

In fact, while there is people's feeling to consider, my greatest concern is not with feelings but with compromising my authority as a teacher. I take great pains to establish reliability among all political groups in class, to show that I can represent many different viewpoints in my curriculum and in my comments in class. I'm very worried that I will compromise my credibility as a history teacher.

Making sure that students see my thought process and approach, making sure they see my overall approach to conflict and differences of opinion is my biggest reason for writing the article, after, of course, the moral responsibility I felt to support LGBTQ+ kids. My other goal is to make clear my understanding of the facts of the situation. I'll be honest, I am a bit disconcerted by the mixed messages I am getting from the FCA. I don't know what is true and what isn't. I mistakenly wrote on the board, before 1st period last Tuesday, that the FCA requires its members to affirm the national FCA's beliefs. [redacted] came to me during brunch and told me that it's not the members but

FCA003989

10/15/19, 7:30 PM

----- Forwarded Message -----

From: Peter Glasser <peterglasser@yahoo.com>
To: Amy Hernandez <ahernandez@sjusd.org>
Sent: Monday, April 29, 2019, 5:27:19 AM PDT
Subject: FCA

Hi Amy,

I'm so, so grateful for our conversation on Thursday--it helped me think a lot about the FCA and where I go from here; I so appreciate how articulate you are but also how you let your questions do the talking in such an active-listening kind of way. I'd love it if you have more feedback for me if we could chat again soon. Of course, I've been thinking a lot about the situation over the weekend. I'm extremely grateful for two things--

1. Herb and SJUSD will need to decide what to do about the FCA, and the same decision would have needed to be made regardless of how I reacted to the situation. As we agreed on Thursday, once this information is out, it's out. You can't put the lightning back in the bottle. Once that information became public, Pioneer had to address it. Silence isn't a viable response. We have to talk about it in some way.

2. The Pony Express doesn't go to press for another couple of weeks, and Jason has told me that I'll need to update the letter to the editor before it is printed simply because there will be a resolution to the situation before then. I'm glad to have the chance to have time to come to a final conclusion about what I say.

You helped me tremendously with a couple of the questions you asked. First, you asked what this issue is really about--so insightful!--and I am still torn on my answer. One possible answer is that this issue is about the question whether the national FCA's views belong on a public high school campus--we accept that people out there have different views about gender and homosexuality, and we move right to the question of whether the FCA's views need to be barred from a public high school campus.

I am ambivalent about this one. In one respect, it makes the conversation and therefore resolution much cleaner. If all moral views are treated equally (the FCA can believe what it wants; LGBTQ+ people and their allies can believe what they want...), and the question becomes about whether Pioneer can support an FCA chapter on its campus, the debate is more confined to a narrower topic and it's far more likely a logical and comfortable solution can be worked out. And I can make my letter to editor work just as well by taking out a few of the most strongly-worded phrases in answering this narrower question. I certainly don't need to be a lightning rod unnecessarily.

In another way, though, for me, the issue is about the FCA's views. You were so helpful when you asked me what my goals were in reacting how I did and in writing the letter to the editor. I can articulate some of them, and some not--they are more feelings than words right now. Some of the goals, I realize, I knew what they were

Re: Sexual Harrassment Training and FCA

From: Espiritu, Herbert <hespiritu@sjusd.org>
To: Caldwell-Holden, Dane <dcaldwellholden@sjusd.org>

Tue, Aug 6, 2019 at 3:03 PM PDT (GMT-07:00)

No worries, thank you for the quick response.

Herb Espiritu
Principal
Pioneer High School
(408) 535 – 6310

From: Caldwell-Holden, Dane
Sent: Tuesday, August 06, 2019 3:01 PM
To: Espiritu, Herbert
Subject: Re: Sexual Harrassment Training and FCA

I am going to have to read his slowly and do some research. Give me a couple of days.

Dane

Get [Outlook for iOS](#)

On Tue, Aug 6, 2019 at 2:59 PM -0700, "Espiritu, Herbert" <hespiritu@sjusd.org> wrote:

Dane,

Please read the email below from one of our teachers regarding FCA's presence on campus.

Thank you in advance.

Herb Espiritu
Principal
Pioneer High School
(408) 535 – 6310

From: Glasser, Peter
Sent: Wednesday, July 31, 2019 8:33 AM
To: Peter Glasser; Espiritu, Herbert; Bernhardt, Patrick
Subject: Sexual Harrassment Training and FCA

Hi Herb and Patrick,

I wanted to ask a complex question of you both, and feel free to take time to think on it. I've been thinking a lot this summer about the Fellowship of Christian Athletes' presence on campus. I've reached no conclusions other than 1. that I 100% support and appreciate Herb's and SJUSD's actions thus far, and 2. how important it is to keep up our defense of Pioneer's community values.

I am aware that FCA's equal access to campus is protected by law even if they can't be an official club because they violate SJUSD's anti-discrimination policies.

SJUSD008048

3-ER-0406

Would the same equal access be guaranteed, though, if the FCA violates SJUSD's sexual harassment policy? Could the FCA's published policies on homosexuality and gender identity be seen to violate our district's sexual harassment policies?

Even before I got to Slide 15 in the sexual harassment training, which seems most applicable to the FCA, the slides got me thinking...I think it's fair to argue that a reasonable person would see the FCA's creating a hostile work environment for students and faculty (Slides 3 and 5); perhaps the FCA could fairly be considered an "outside vendor" (Slide 6). In my (reasonable person's) view, the FCA fits both criteria of harassment from Slide 9, especially given that the harasser's intent is irrelevant (Slide 8). Given that the behavior doesn't have to violate law to be in violation of sexual harassment policy (Slide 28), is it an appropriate "interim action" to ban FCA completely from campus (Slide 29)? Also, could students fairly be deemed

"volunteers, unpaid employees and/or independent contractors" and therefore be protected by DFEH (Slide 31)?

Thanks in advance for thinking things over!

Peter

DANNIS WOLIVER KELLEY
2087 ADDISON STREET, 2ND FLOOR
BERKELEY, CA 94704

1 AMY R. LEVINE, State Bar No. 160743
alevine@DWKesq.com
2 WILLIAM B. TUNICK, State Bar No. 245481
wtunick@DWKesq.com
3 KASMIRA M. BROUGH, State Bar No. 308791
kbrough@DWKesq.com
4 Dannis Woliver Kelley
2087 Addison Street, 2nd Floor
5 Berkeley, CA 94704
Telephone: 510.345.6000
6 Facsimile: 510.345.6100

7 KENNETH UPTON, Appearance Pro Hac Vice
upton@au.org
8 RICHARD KATSKEE, Appearance Pro Hac Vice
katskee@au.org
9 Americans United for Separation of Church and State
1310 L Street NW, Suite 200
10 Washington, DC 20005
Tel: (202) 466-3234

11 Attorneys for Defendants

12 NANCY ALBARRAN, HERB ESMIRITU, PETER GLASSER
and STEPHEN MCMAHON

13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 ELIZABETH SINCLAIR, CHARLOTTE
16 KLARKE, FELLOWSHIP OF CHRISTIAN
ATHLETES, an Oklahoma corporation, and
17 FELLOWSHIP OF CHRISTIAN
ATHLETES OF PIONEER HIGH SCHOOL,
18 an unincorporated association,

19 Plaintiffs,

20 v.

21 NANCY ALBARRAN, in her official and
personal capacity, HERB ESMIRITU, in his
22 official and personal capacity, PETER
GLASSER, in his official and personal
23 capacity, and STEPHEN MCMAHON, in his
official and personal capacity,

24 Defendants.

Case No. 5:20-cv-2798-LHK

**DEFENDANTS' SECOND AMENDED
RESPONSES TO PLAINTIFFS' FIRST SET
OF INTERROGATORIES**

27 **PROPOUNDING PARTY:** PLAINTIFFS CHARLOTTE KLARKE, ELIZABETH SINCLAIR,
and FELLOWSHIP OF CHRISTIAN ATHLETES

RESPONDING PARTY: DEFENDANTS NANCY ALBARRAN, HERB ESPIRITU, and PETER GLASSER

SET NUMBER: ONE

Pursuant to Magistrate DeMarchi's July 26, 2021 order (Dkt. 97) requiring Defendants to produce "all [responsive] findings and conclusions from any District investigations into Peter Glasser's misconduct concerning the matters at issue in this case and any documents and information used to develop such findings" as requested in Plaintiffs' discovery requests, Defendants NANCY ALBARRAN, HERB ESPIRITU, and PETER GLASSER (collectively, "Defendants") serve the following amended answers and objections to Plaintiffs' First Set of Interrogatories to Defendants.

PRELIMINARY STATEMENT AND GENERAL OBJECTIONS

These responses are made solely for purpose of this action. Each answer is subject to all objections as to relevance, materiality, and admissibility, and all other objections that would require the exclusion of any statement contained herein if made by a witness present and testifying in court, all of which objections and grounds are reserved and may be interposed at the time of trial.

Defendants object to the instructions and definitions provided by Plaintiffs to the extent they conflict with or impose burdens beyond those contained in the Federal Rules of Civil Procedure. They also object to the instructions and definitions on the grounds that they make the interrogatories compound, vague, ambiguous and unintelligible, burdensome and oppressive, and to the extent they expand the interrogatories into multiple subparts.

Defendants object to the format of these interrogatories in that they are directed to all the Defendants, collectively. Discovery, investigation, research, and analysis in this action are continuing. It is anticipated that further discovery, investigation, research, and analysis may result in the development of new facts and legal theories, which may alter the responses contained herein. Defendants retain the right to revise, correct, supplement and/or clarify any of the responses herein. The responses herein are given without prejudice to Defendants' right to produce evidence of any subsequently discovered fact or facts which Defendants may later discover or recall.

Subject to the foregoing objections, the requests are responded to as follows:

DANNIS WOLIVER KELLEY
2087 ADDISON STREET, 2ND FLOOR
BERKELEY, CA 94704

INTERROGATORY NO. 9:

Identify all policies and practices of the District and of any secondary school within the District regarding teacher speech in the classroom, including both oral speech and written speech, and all persons responsible for the supervision and enforcement of such policies and practices and their role in such supervision or enforcement. For each policy or practice, identify all instances during the 2015-16 academic year and each subsequent academic year relating to any potential, alleged, or actual violation of any policy identified and describe the circumstances of the potential violation, any measures taken by the District or any secondary school within the District to investigate such potential violation, the results of such investigation, any corrective action taken by the District or school in connection with the potential or actual violation, and any person involved in investigating a potential violation and deciding whether to take corrective action, including their specific role

RESPONSE TO INTERROGATORY NO. 9:

Defendants object to this interrogatory as vague and ambiguous as to the phrase “teacher speech.” Defendants further object to this interrogatory as compound, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Defendants also object that this interrogatory contains numerous subparts that are separate and distinct from one another. Defendants consider this interrogatory to be multiple interrogatories.

Defendants also object to this interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege, work product doctrine, official information privilege, and/or deliberative process privilege. Defendants further objects to this interrogatory to the extent it violates the right to confidentiality of its employees and third parties, the privacy of its students and/or their parents under the California Constitution and common law, and also violates the obligation to keep student records and information confidential under state and federal law. (See, Cal. Const. art. I, § 1; 20 U.S.C. §§ 1232g *et seq.*; Ed. Code, §§ 49073 *et seq.*)

Subject to and without waiving their objections, Defendants respond as follows: The District has written board policies and administrative regulations regarding teacher speech on controversial subjects in the classroom, on religious instruction, and on sensitivity to students of

various cultural or other backgrounds. These include but are not limited to Board Policies (“BPs”) and Administrative Regulations (“ARs”) 4119.25, 5137, 6141.2, 6141.6, 6141.61, and 6144. In addition, the rights of teachers are addressed in the collective bargaining agreement between the District and the San Jose Teachers Association.

AMENDED RESPONSE TO INTERROGATORY NO. 9:

Defendants fully incorporate the objections and response above and further state: Plaintiffs have alleged that Peter Glasser violated the Equal Access Act, the First Amendment, and the Fourteenth Amendment by posting the FCA Statement of Faith / Sexual Purity Statement on his whiteboard on or about April 23, 2019. In or around April 2019 Mr. Espiritu confirmed with Mr. Glasser that Mr. Glasser had posted the FCA Statement of Faith / Sexual Purity Statement on the whiteboard in his classroom. Mr. Espiritu also spoke with Plaintiff Klarke about the posting and suggested to Plaintiffs that they communicate their concerns to Mr. Glasser directly. Mr. Espiritu believed the matter to be resolved.

Defendants are not aware of any further investigation of potential policy violation by Mr. Glasser responsive to Judge DeMarchi’s order.

INTERROGATORY NO. 10:

Regarding Defendant Peter Glasser’s whiteboard statement as identified in Paragraph 5 of the Amended Complaint, please identify all persons responsible for or involved in the District’s or Pioneer’s response to such statement or to any complaints regarding the statement and their role in such response and any complaints or expressions of dissatisfaction to the statement. For each person identified as responsible for or involved in the District’s response, describe the circumstances under which the person became aware of the statement or any complaints or expressions of dissatisfaction with such statement. Further identify any actions that the District, Pioneer, or any employee or officer of the District or Pioneer took with response to such statement or complaints, and any discussion that the District, Pioneer, or any employee or officer of the District or Pioneer had regarding whether or not to allow Defendant Glasser to leave the statement or any similar statement up in his classroom and whether or not to discipline or censure Defendant Glasser.

RESPONSE TO INTERROGATORY NO. 10:

DANNIS WOLIVER KELLEY
2087 ADDISON STREET, 2ND FLOOR
BERKELEY, CA 94704

Defendants object to this interrogatory as vague and ambiguous. Defendants further object to this interrogatory as compound, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Defendants also object that this interrogatory contains numerous subparts that are separate and distinct from one another. Defendants consider this interrogatory to be multiple interrogatories.

Defendants also object to this interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege, work product doctrine, official information privilege, and/or deliberative process privilege. Defendants further objects to this interrogatory to the extent it violates the right to confidentiality of its employees, the privacy of its students and/or their parents under the California Constitution and common law, and also violates the obligation to keep student records and information confidential under state and federal law. (See, Cal. Const. art. I, § 1; 20 U.S.C. §§ 1232g *et seq.*; Ed. Code, §§ 49073 *et seq.*)

AMENDED RESPONSE TO INTERROGATORY NO. 10:

Defendants fully incorporate the objections and response above and further state: Plaintiffs have alleged that Peter Glasser violated the Equal Access Act, the First Amendment, and the Fourteenth Amendment by posting the FCA Statement of Faith / Sexual Purity Statement on his whiteboard on or about April 23, 2019. In or around April 2019 Mr. Espiritu confirmed with Mr. Glasser that Mr. Glasser had posted the FCA Statement of Faith / Sexual Purity Statement on the whiteboard in his classroom. Mr. Espiritu also spoke with Plaintiff Klarke about the posting and suggested to Plaintiffs that they communicate their concerns to Mr. Glasser directly. Mr. Espiritu believed the matter to be resolved. On or about April 23, 2019, Plaintiff Klarke spoke with Mr. Glasser regarding his whiteboard statement, in response to which Mr. Glasser updated his posting. On or about April 24, 2019, Plaintiffs Klarke and Sinclair spoke with Mr. Glasser regarding the whiteboard statement, in response to which Mr. Glasser offered to, and did, remove the whiteboard statement.

On or about April 25, 2019, Rigo Lopez emailed Mr. Espiritu regarding “the conversation happening on Pioneer’s campus right now regarding FCA’s Sexual Purity Policy.” On or about April 29, 2019, Mr. Espiritu forwarded the FCA Statement of Faith / Sexual Purity Statement to

1 Dane Caldwell-Holden and Stephen McMahon. On or about May 15, 2019, parents for Plaintiffs
 2 Klarke and Sinclair emailed Mr. Espiritu, stating “[t]here has been... indirect bullying from a
 3 member of your staff.” Their email did not specify the nature or dates of such bullying, nor did it
 4 identify the staff member. On or about May 16, 2019, Mr. Espiritu emailed Plaintiffs Klarke and
 5 Sinclair, inviting them to his office to check-in.

6 Defendants are not aware of any further investigation of complaints regarding Mr. Glasser’s
 7 conduct or misconduct responsive to Judge DeMarchi’s order.

8
 9 DATED: August 12, 2021

DANNIS WOLIVER KELLEY

10 By: /s/Amy R. Levine

11 AMY R. LEVINE

12 Attorneys for Defendants NANCY ALBARRAN,
 13 HERB ESPIRITU, and PETER GLASSER
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

DANNIS WOLIVER KELLEY
 2087 ADDISON STREET, 2ND FLOOR
 BERKELEY, CA 94704

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF ALAMEDA) ss.

I am employed in the County of Alameda, State of California. I am over the age of 18 and not a party to the within action; my business address is 2087 Addison Street, 2nd Floor, Berkeley, CA 94704.

On the date set forth below I served the foregoing document described as **DEFENDANTS' SECOND AMENDED RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES** on interested parties in this action as follows:

Kimberlee Wood Colby
CENTER FOR LAW & RELIGIOUS
FREEDOM
8001 Bradock Road, Suite 302
Springfield, VA 22151
kcolby@clsnet.org

Stephen C. Seto
Steven N.H. Wood
Christopher J. Schweickert
SETO WOOD & SCHWEICKERT LLP
1470 Maria Lane, Suite 300
Walnut Creek, CA 94596
cjs@wcjuris.com

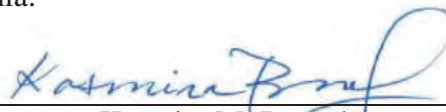
THE BECKET FUND FOR RELIGIOUS
LIBERTY

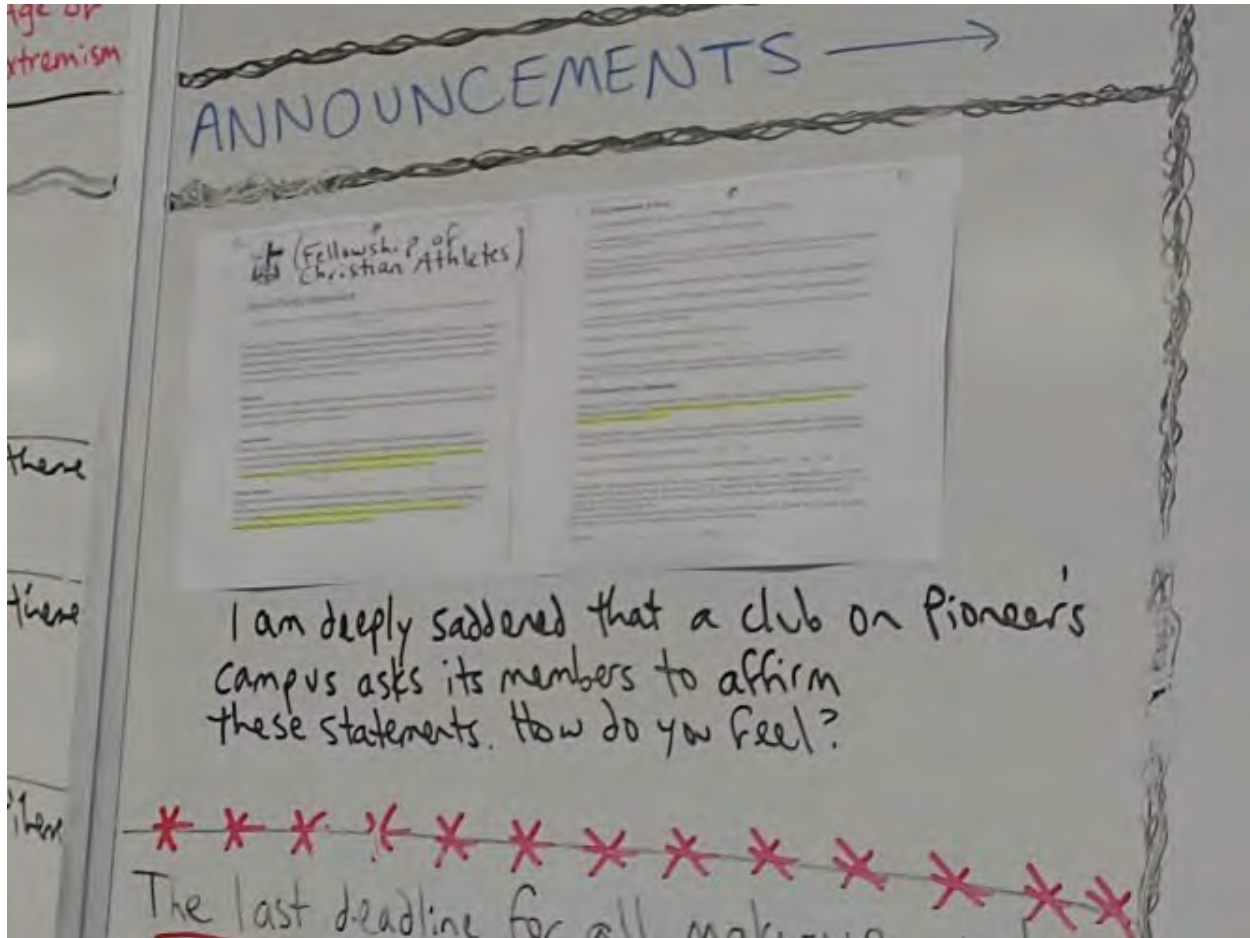
Eric S. Baxter
Daniel H. Blomberg
Nicholas Robert Reaves
Kayla Ann Toney
Abigail E. Smith
1919 Pennsylvania Avenue, Suite 400
Washington, DC 20006
ebaxter@becketlaw.org
dblomberg@becketlaw.org
nreaves@becketlaw.org
ktoney@becketlaw.org

☒ (VIA ELECTRONIC SERVICE) [Code Civ. Proc. Sec. 1010.6; CRC 2.251] by electronic mailing a true and correct copy through 's electronic mail system from kbrough@DWKesq.com to the email address(es) set forth above, or as stated on the attached service list per agreement in accordance with Code of Civil Procedure section 1010.6 and CRC Rule 2.251. The transmission was reported as complete and without error.

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

Executed on **August 12, 2021**, at Oakland, California.


Kasmira M. Brough



Subject: Letter to the Editor

Date: Friday, May 10, 2019 at 2:17:57 PM Pacific Daylight Time

From: Glasser, Peter

To: Hernandez, Amy, Goldman-Hall, Jason, Espiritu, Herbert, Borup, Kristen

CC: Peter Glasser

Hi,

I'm so sorry--I sent this email to all of you early this morning from my Yahoo account, and the message went to my sent folder, but I'm just becoming aware that at least two of you didn't receive it. I'm re-sending the copy...

Hi All,

I want to let you all know that I've decided to pull my letter to the editor and to not publish it this school year. I had in mind two goals for the letter: 1. to support LGBTQ+ kids on campus, as well as everyone else who values human dignity, and 2. to help steer the conversation about the FCA in a direction so that the Pioneer community could discuss the issue productively and respectfully, rather than descending into the same sort of mindless stereotyping and bickering that is plaguing our larger society right now.

I've been trying for three weeks to revise my letter to balance both goals. What I'm discovering is that, if I publish the letter now, I won't be able to accomplish either goal, or, more accurately, I'd have to sacrifice one for the sake of the other. The letter can only be effective if I accomplish both goals, and I've come to the conclusion that I can't be forceful and resolved enough in my defense of human dignity if I also want to be conciliatory enough to play a productive role on campus in framing our conversation/debate about the FCA. I only feel right about stating my truths if it will yield more campus cooperation and understanding in the future. Jason, this is the explanation that I'd like you to share with the journalism staff as to why I am pulling my letter. Kristin, I am including you on this e-mail as a professional courtesy, and you have my permission to share only the first two paragraphs with your FCA officers.

Here is what I don't want any of you to share with any students: I worry about my own humanity in publishing this letter. I'm not at all worried that I shouldn't have stated anything I've written or said in class or outside of class to students. I do not regret anything I've said or done in the last three weeks and would do the same all over again. I believe that I am morally and professionally bound to have done everything I've done thus far.

The big problem, though, is that if I were to publish the letter now, I'd be sacrificing students' feelings to further my adult agenda. The only way to publish this letter is to use the FCA kids as "the other side," and I don't feel right about that. These FCA officers are already being used as pawns for adult agendas. I'm so disgusted that these FCA lawyers are swooping in and using our kids to further their own goals, brainwashing them into thinking that fighting to defend their ability to bring biblical homophobia onto our campus is somehow making them better Christians or better people, or

somehow strengthening their mission as Christians on campus rather than compromising it. What's perhaps best for the kids is to have them do all the same great things they are already doing--without having to be attached to the philosophies of the national FCA organization...have the same club, but under a different name. Our students are being used, and it's repulsive to me.

If I were to publish my letter now, and if I were to state my case as strongly as I want to and need to in order for my message to have any effect, I worry that I'd be guilty of the same sin: using the kids for my adult agenda. If I wait for the process to play out, I won't have to do that. Either there will be an amicable resolution to the FCA question over the summer, providing us all a chance to say our piece in an amicable way, or it will get uglier and more lawyer-y. At that point, these smarmy lawyers can be my "other side" and I can publish the letter I want to publish next school year. My letter to the editor can truly be about human dignity and the larger need on campus and in society to speak our truths on matters of gender, rather than be a specific response to the FCA on campus. I can make my letter about society in general rather than about Pioneer kids' actions, and I'd feel much, much better about that.

I have an interesting day today--because my students are taking the AP test this morning, I will be in my empty classroom all morning grading papers. If any of you have a chance to stop by and talk in person, I'd love to continue our conversations. I certainly value all of your perspectives greatly.

Thanks,
Peter

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ELIZABETH SINCLAIR, CHARLOTTE
KLARKE, FELLOWSHIP OF CHRISTIAN
ATHLETES, an Oklahoma corporation, and
FELLOWSHIP OF CHRISTIAN
ATHLETES OF PIONEER HIGH
SCHOOL, Plaintiffs,

vs.

SAN JOSÉ UNIFIED SCHOOL DISTRICT
BOARD OF EDUCATION, in its official
capacity, NANCY ALBARRÁN, in her
official and personal capacity, HERBERT
ESPIRITU, in his official and personal
capacity, PETER GLASSER, in his official
and personal capacity, and STEPHEN
MCMAHON, in his official and personal
capacity,

Defendants.

CASE NO. 5:20-cv-2798

JUDGE: Hon. Lucy H. Koh

**THIRD DECLARATION OF RIGOBERTO
LOPEZ**

I, Rigoberto Lopez, declare as follows:

1. I am over eighteen years of age and fully competent to make this declaration.

2. I am the Metro Director for Fellowship of Christian Athletes (“FCA”) in the Bay Area. I have been on staff with FCA since 2006. The Bay Area FCA is a regional division of the national Fellowship of Christian Athletes organization (“FCA National”). In connection with my position, I work with and provide support to high school students in the Bay Area, including in the San José Unified School District (“District”), who belong to or would like to establish student FCA “huddles” (FCA’s name for a student club).

3. I hold a B.A. in psychology from the University of San Francisco. Before joining FCA staff, I worked with at-risk youth and coached college baseball.

4. The Fellowship of Christian Athletes of Pioneer High School (“Pioneer FCA”) is a student club that is a certified affiliate of FCA National. Pioneer FCA met and previously was recognized as an Associated Student Body (“ASB”) recognized student organization at Pioneer High School, a public secondary school within the District.

THIRD DECL. OF RIGOBERTO LOPEZ
CASE NO.: 5:20-cv-2798

1 5. The District's hostility to Pioneer FCA and FCA clubs as a class has intimidated
2 students and made it much harder for existing student leaders and members to recruit new members
3 and leaders. In the 15 years I have served within FCA in the Bay Area, I have never seen FCA
4 huddles struggle or disappear like they have within the District.

5 6. But despite the unusual and severe adverse action by the District, four current Pioneer
6 High School students told me in August 2021 that they wanted to participate in the Pioneer FCA
7 huddle this school year: M.H., a freshman; N.M., a junior; and M.C. and M.V., both seniors.

8 7. To help prepare for leading Pioneer FCA, N.M. attended Bay Area FCA's three-hour
9 student leadership training on Saturday, August 28, 2021. There, she received training about how
10 to lead huddles, share her faith with other students, lead prayer time, and teach about the Gospel of
11 Jesus Christ. She told me afterward that she loved learning to be a strong leader in God's love, that
12 her key takeaway was not being afraid in sharing her testimony, and that she wanted to participate
13 in and lead Pioneer FCA this year. She also said she would participate in future FCA leadership
14 training opportunities. N.M. has been a member of Pioneer FCA for years and recently applied for
15 and was accepted to serve as a leader of Pioneer FCA.

16 8. M.H. is another student who expressed excitement to be a part of Pioneer FCA. She
17 said she had attended a Christian ministry event with her church over the summer, and felt inspired
18 to start an FCA club to share the love of Christ on her campus. After speaking with me and other
19 Pioneer FCA students, on her own initiative, she found a copy of the ASB application and started
20 filling it out. However, she was not able to complete it because the new ASB application form
21 requires affirmation that Pioneer FCA will not ask its leaders to agree with its faith. M.H. showed
22 great enthusiasm and follow-through, and agreed to be the student president for Pioneer FCA.

23 9. M.C. and M.V. have both been members in past years and have older siblings who
24 have participated in Pioneer FCA. M.C. told me on Thursday, September 9, that God had definitely
25 called her to be involved with Pioneer FCA this year, and that she would attend as many meetings
26 as possible. She also said that she would have been a leader, but that Pioneer High School's actions
27 toward Pioneer FCA over the past few years had made her feel anxious and unable to take on that
28

1 responsibility.

2 10. M.H. spoke to Ms. Milara Gatcke, an academic counselor at Pioneer High School,
3 about Ms. Gatcke volunteering to support the Pioneer students on campus as they held Pioneer FCA
4 meetings, including by hosting Pioneer FCA meetings in her office. On September 8, 2021, Ms.
5 Gatcke told M.H. that she would be willing to do so. Before Ms. Gatcke responded, M.H. also spoke
6 to another Pioneer teacher, Mr. Steven Boyd, but he said he wasn't sure if he could do it and would
7 need to get back to her because of the hostility in the past towards FCA on campus.

8 11. Pioneer FCA held three meetings so far this Fall. First, an off-campus meeting on the
9 evening of September 8, 2021, with M.H. and M.C. to discuss meetings for the upcoming school
10 year. Second, an on-campus meeting on September 15, 2021, in Ms. Gatcke's office with M.H. and
11 N.M. Third, an on-campus meeting on September 22, 2021, in Ms. Gatcke's office with M.H. to
12 prepare for a student club recruitment event the next day known as Club Rush. (N.M. had planned
13 to attend, but couldn't make it at the last moment.)

14 12. N.M. and M.H. also expressed excitement about Pioneer FCA participating in an off-
15 campus FCA event on November 13, 2021, with an Olympic gold medalist, and discussed exploring
16 ways to invite others to this event and other Pioneer FCA future events.

17 13. At the September 15 meeting, M.H. and N.M. got to know each other, shared their
18 personal stories about how they became Christians, and started planning more meetings for the
19 coming year. Both seemed eager and excited to have an FCA club on campus and to serve as leaders.
20 They said they wanted Pioneer FCA to participate in Club Rush on September 23 and 24 to attract
21 new members. While participation in Club Rush isn't mandatory for ASB-approved clubs or student
22 interest groups, it is very helpful for meeting and inviting other students to join. In addition, Club
23 Rush was particularly important this year because in-person recruitment is crucial after student
24 groups could only hold virtual meetings for most of the past academic year due to the COVID-19
25 pandemic.

26 14. Ms. Gatcke was asked to talk with Ms. Michelle Mayhew, the Pioneer High School
27 Activities Director, about Pioneer FCA's participation in Club Rush as a student interest group
28

1 (because the District's new policy has made it impossible for Pioneer FCA to apply to be an ASB-
2 approved club). That same day, Ms. Gatcke spoke to Ms. Mayhew, who told her that Pioneer FCA
3 must submit an ASB application in order to participate in Club Rush. To the best of my knowledge,
4 no District Policy sets that requirement. Later that day, Ms. Mayhew spoke with Ms. Gatcke again
5 and said that, according to Principal Herb Espiritu, Pioneer FCA could participate in Club Rush
6 without submitting the ASB application.

7 15. But the next day, Principal Espiritu told Ms. Gatcke that he would have to meet in
8 person with the new student president of Pioneer FCA before the club could be a student interest
9 group or participate in Club Rush. To the best of my knowledge, no District Policy sets that
10 requirement. Principal Espiritu never required Pioneer FCA student leaders to personally meet with
11 him in the past as a prerequisite to participating in Club Rush, including when Pioneer FCA was
12 required by the District to operate as a student interest group.

13 16. In response, Ms. Gatcke initially didn't identify M.H. by name to protect the student's
14 privacy and feelings of anxiety coming from the hostility towards Pioneer FCA on campus. As
15 advisor to the students, Ms. Gatcke asked Principal Espiritu if she could serve as the student's main
16 point of contact and school liaison to help alleviate stress M.H. felt in talking to school
17 administration due to school hostility toward FCA. But Principal Espiritu said no and that he wanted
18 to confirm that the group was student led. It concerned me that he was requiring M.H. to meet with
19 him personally before Club Rush, and I didn't understand why Ms. Gatcke or Ms. Mayhew could
20 not confirm that the club was student led, as Ms. Gatcke had already said. But because he is the
21 principal, the students didn't think they could do anything about it. So Ms. Gatcke gave Principal
22 Espiritu M.H.'s name on September 16, and he scheduled a meeting with M.H. on September 21.

23 17. M.H. was eager to continue leading Pioneer FCA, including at Club Rush, but was
24 also clearly intimidated by the school's past actions against the club and was worried that the same
25 things that had happened to Charlotte Klarke and Elizabeth Sinclair might happen to her. She asked
26 lots of questions about that situation, to me, Ms. Gatcke, and Charlotte, and expressed that she felt
27 anxious and worried about what the principal, certain teachers (including Peter Glasser and Jason
28

1 Goldman-Hall), and other students might do to her as president of Pioneer FCA. For instance, she
2 asked what it was like to deal with the protests, including how many people were at the protests,
3 how often the protests were held, and who participated in the protests. She also noted that she had
4 read school newspaper articles about Pioneer FCA, thought they were very biased against FCA,
5 and thought Mr. Goldman-Hall had already expressed approval of those articles in class. And she
6 noted that she was considering taking AP History when she was a junior and was concerned about
7 how Mr. Glasser might treat her. And she seemed nervous about meeting with Principal Espiritu
8 and asked what that would be like.

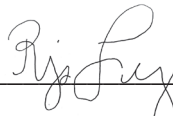
9 18. She never identified any concerns with leading Pioneer FCA other than the school's
10 history of hostility toward the club. But when we spoke on September 20, M.H. was still planning
11 to do Club Rush.

12 19. The next day, September 21, Principal Espiritu held the in-person meeting with Ms.
13 Gatcke and M.H. And two days later, minutes before the start of Club Rush, M.H. contacted me to
14 say she was very sorry but that she was feeling overwhelming anxiety and so could not set up the
15 Pioneer FCA table at Club Rush. Later, M.H. explained that she was afraid, and that she would
16 have to let the other leaders and members of Pioneer FCA lead future meetings. N.M. had come to
17 Club Rush to help with the table on September 23, but left after she couldn't find M.H.

18 20. FCA continues to regard M.H. as a student leader of the Pioneer FCA, in part because
19 she submitted the student application form. Because she was accepted to lead Pioneer FCA and
20 holds the status of a club leader, she is able to resume actively helping lead whenever she's ready.

21
22 I declare under penalty of perjury that the foregoing is true and correct to the best of my
23 knowledge.

24 Executed on this 12th day of October, 2021.

25
26 
27 Rigoberto Lopez
28