

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 5 of 10

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Deposition of:
Herbert Espiritu

June 8, 2021

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

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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-2798

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

VIDEOCONFERENCE DEPOSITION OF HERBERT ESPIRITU

San Jose, California

Tuesday, June 8, 2021

Volume 1

Reported by:

LESLIE JOHNSON

RPR, CCRR, CSR No. 11451

Job No.: 4612114

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2 NORTHERN DISTRICT OF CALIFORNIA
3

4 ELIZABETH SINCLAIR,
5 CHARLOTTE KLARKE, and
6 FELLOWSHIP OF CHRISTIAN
7 ATHLETES, an Oklahoma
8 corporation,
9 Plaintiffs,

vs.

CASE NO. 5:20-cv-2798

9 SAN JOSE UNIFIED SCHOOL
10 DISTRICT BOARD OF EDUCATION,
11 in its official capacity,
12 NANCY ALBARRÁN, in her
13 official and personal
14 capacity, HERBERT ESPIRITU,
15 in his official and personal
16 capacity, and PETER GLASSER,
17 in his official and personal
18 capacity,

Defendants

19
20 VIDEOCONFERENCE DEPOSITION OF HERBERT ESPIRITU,
21 Volume 1, taken on behalf of Plaintiff, at San Jose,
22 California, beginning at 9:08 a.m. and ending at
23 6:50 p.m., on Tuesday, June 8, 2021, before LESLIE
24 JOHNSON, Certified Shorthand Reporter No. 11451.
25

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I N D E X

WITNESS EXAMINATION

HERBERT ESPIRITU

Volume 1

BY MR. SMITH

8

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INSTRUCTED NOT TO ANSWER

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HERBERT ESPIRITU

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19
20
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24
25

1 San Jose, California, Tuesday, June 8, 2021

2 9:08 a.m.

3
4 HERBERT ESPIRITU,

5 having been first duly sworn, was examined

6 and testified as follows:

7
8 MR. SMITH: Okay. First of all, I'd just like
9 to get on the record that we had agreed by stipulation
10 that this deposition would be done by Zoom and that that
11 would be admissible for court purposes.

12 Is that correct, Counsel?

13 MS. LEVINE: Yes.

14 MR. SMITH: Okay.

15 MS. LEVINE: Can I just also ask the court
16 reporter to please keep track of the time that we're on
17 the record.

18
19 EXAMINATION

20 BY MR. SMITH:

21 Q So, Mr. Espiritu, my name is Reed Smith.

22 And have we made appearances?

23 A Yes.

24 Q Okay. Well, I'm sorry. I was asking the
25 court reporter. I don't think all the attorneys have

1 made appearances, but I guess we can take care of that
2 later.

3 Mr. Espiritu, it's nice to see you again. I
4 know we met briefly around in January, I believe.

5 My name is Reed Smith. I'm the attorney for
6 Charlotte Klarke and Elizabeth Sinclair and FCA.

7 I think you know Charlotte and Elizabeth.
8 Correct?

9 A Yes.

10 Q Just laying out a few ground rules.

11 If -- when I ask you a question, can you
12 please provide a verbal answer, like a "yes" or "no,"
13 like no nodding, no "uh-huh," clear "yes" or "no."

14 If you run into any trouble with the
15 technology, let me know as soon as possible, and we'll
16 get that fixed.

17 If you need to take a break at any time, let
18 me know, and, you know, we're happy to work with you on
19 that. If I have a few more questions, I may ask you to
20 allow me to finish the line of questions, but we're
21 happy to work with you.

22 Don't communicate with anyone other than your
23 counsel, the court reporter, or me during your
24 deposition. If you need to take a call or otherwise
25 respond to communications, please let me know.

1 Don't review any documents during this
2 deposition other than the exhibits I share with you via
3 the Veritext Exhibit Share. If you need to review
4 another document or writing for some reason, please let
5 me know.

6 And the parties stipulated that had we have
7 eight hours on the record with you.

8 MR. SMITH: Is that correct, Amy?

9 MS. LEVINE: Yes.

10 BY MR. SMITH:

11 Q Can you please state your name for the record,
12 Mr. Espiritu?

13 A Herb Espiritu.

14 Q And you understand that you're under the same
15 oath today as if you were testifying in a courtroom?

16 A Yes, I do.

17 Q Is there anything that would prevent you today
18 from thinking clearly or testifying truthfully today?

19 A No.

20 Q And I'm going to assume -- when I ask you a
21 question, I'm going to assume that you understood it
22 unless you tell me otherwise.

23 Is that fair?

24 A Yes.

25 Q Have you ever been deposed before?

1 A Yes.

2 Q Can you tell me, how many times have you been
3 deposed?

4 A This will be my second.

5 Q Okay. What were you deposed -- why were you
6 deposed in the first instance?

7 A It's regarding a case we had here a couple
8 years ago, a relationship with a minor with one of our
9 staff members.

10 Q Okay. And you were a witness in that case?

11 A Yes.

12 Q Did you ever -- did you review any documents
13 in preparation for this deposition?

14 A Yes.

15 Q Did you use any of these documents to refresh
16 your recollection?

17 A Yes.

18 MR. SMITH: Amy, do we have those documents?

19 MS. LEVINE: I believe you have all of them,
20 yeah.

21 MR. SMITH: Okay.

22 BY MR. SMITH:

23 Q Do you have any of those documents with you,
24 Mr. Espiritu?

25 A Yes. It's on my email.

1 Q Do you have your email open right now?

2 A No. I can though.

3 Q Okay. So they're not visible to you right
4 now?

5 A No.

6 Q Okay. Do you have any other documents
7 other -- that are visible to you right now other than
8 our screen?

9 A No. Just the Zoom screen.

10 Q Okay. Other than your legal counsel, did you
11 speak with anybody in preparation for this deposition?

12 A No, I did not.

13 Q And other than Zoom, do you have any messaging
14 software open on your computer?

15 A No, I do not.

16 Q Mr. Espiritu, what is your current position?

17 A I'm the principal at Pioneer High School.

18 Q Okay. And when I refer to "Pioneer"
19 throughout this deposition, you'll understand that I'm
20 referring to the Pioneer High School?

21 A Yes.

22 Q I'm not referring to Daniel Boone or somebody
23 in -- you know, Davy Crockett. So Pioneer High School.

24 A Yes.

25 Q How long have you been the principal at

1 Pioneer?

2 A I just finished my fifth year as the principal
3 at Pioneer High School.

4 Q And what did you do prior to serving as
5 principal?

6 A I was two years assistant principal at San
7 Jose High School in the San Jose Unified School District
8 and then three years as an assistant principal before
9 that here at Pioneer High School. And then prior to
10 that six years as a teacher and athletic director at
11 Gunderson High School. All the same district.

12 Q And that's the San Jose Unified School
13 District?

14 A Yes. Correct.

15 Q And, if I refer to "the District" in this
16 deposition, you'll understand that I'm referring to the
17 San Jose Unified School District?

18 A Yes. Correct.

19 Q And Pioneer is a school in that district?

20 A Yes.

21 Q And the District -- San Jose Unified is a
22 public school district, correct?

23 A Yes.

24 Q And Pioneer is a public school?

25 A Correct. Yes.

1 Q So you mentioned being a teacher for a while.
2 And that was at Gunderson?

3 A Yes.

4 Q When you were a teacher, were you a faculty
5 advisor to any student groups?

6 A Just the football team. I was a coach.

7 Q Okay. And so -- so is a coach considered a
8 faculty advisor to the football team?

9 A Yes.

10 Q Is -- is that under the ASB that it would be
11 that -- that you would be the faculty advisor?

12 A Yes. Yeah. We're under the ASB umbrella as a
13 football team and having an account with ASB, yes.

14 Q Is that true of Pioneer as well, that the
15 football team is under the ASB umbrella?

16 A Yes. They have accounts with us, correct.

17 Q Okay. Prior to -- prior to -- well, let me
18 ask it this way.

19 Do you have any experience with FCA?

20 A Yes. In the past, yes.

21 Q And let me specify that when I refer to "FCA,"
22 I'm referring to, like, the national organization. And,
23 if I'm referring to the specific group at Pioneer, I'll
24 refer to them as "Pioneer FCA."

25 So tell me a little bit about your

1 experience -- or how do you have experience with FCA?

2 A One of my assistant coaches was affiliated
3 with FCA.

4 Q And following up on the prior question, we
5 referred to ASB. What does "ASB" stand for?

6 A Associated student body.

7 Q And the football team is recognized under the
8 Associated Student Body at Pioneer?

9 A Yes.

10 MS. LEVINE: Objection as to the term
11 "recognized." Vague.

12 BY MR. SMITH:

13 Q So you said that you worked with an assistant
14 coach with FCA.

15 Did you speak to FCA at any time while you
16 were coaching?

17 A No, I did not.

18 Q Do you have a generally good relationship with
19 that assistant coach?

20 A Yes, I do.

21 Q Do you still have a relationship with that
22 coach?

23 A No, I do not.

24 Q Is there an FCA at Gunderson at this time?

25 A I don't know.

1 Q Was there -- but there was an FCA at Gunderson
2 while you were the football coach?

3 A No. It was -- it was not officially under --
4 not that I recall. It wasn't officially under ASB at
5 that time.

6 Q Okay. Sorry. So -- but there was an FCA
7 student group that met at Gunderson?

8 A Yes. My assistant coach met with them after
9 practice.

10 Q Okay.

11 A And, you know, just had conversations with
12 them and things like that. But they didn't meet
13 officially outside of practice, no. Not that I
14 remember.

15 Q Okay. Were they recognized by Gunderson in
16 any way?

17 A I don't recall.

18 MS. LEVINE: Objection. Vague.

19 BY MR. SMITH:

20 Q But they weren't officially recognized by
21 Gunderson?

22 MS. LEVINE: Vague.

23 Herb, can you slow down and let me get my
24 objections out?

25 THE WITNESS: Sorry, Amy.

1 MS. LEVINE: Okay. Thank you.

2 BY MR. SMITH:

3 Q Other than your role as principal at Pioneer,
4 do you have any affiliation with campus student group?

5 A No.

6 Q Did you -- do you have any roles with
7 organizations like Rotary Club or Red Cross that have
8 affiliated campus student groups at Pioneer?

9 A No.

10 Q In college were you a part of any student
11 groups, like fraternities?

12 A No.

13 Q What's the highest degree that you have?

14 A I have a master's.

15 Q Is that a master's in education?

16 A Yes.

17 Q And where did you get that from?

18 A San Jose State.

19 Q Okay. Did you also do your undergraduate at
20 San Jose State?

21 A Yes, I did.

22 Q Where did you go to high school?

23 A Yerba Buena High School in San Jose.

24 Q And I'm sorry. I didn't catch -- what was the
25 name of the high school?

1 A Yerba Buena.

2 Q Yerba Buena. Okay.

3 Can you describe to me your job duties as the
4 principal of Pioneer?

5 A I'm responsible for hiring and evaluating
6 staff, also hiring and evaluating the administrative
7 team here. I oversee instructional PDs and evaluate
8 teachers. I oversee the overall school programs, ASB,
9 athletics, and our instructional framework.

10 I mean, I'm kind of in charge of everything.
11 At least oversee it.

12 Q Yeah. So you're kind of the chief executive
13 for Pioneer?

14 A Yes.

15 Q So what is your responsibility when disputes
16 arise between student groups or individual students on
17 campus?

18 MS. LEVINE: Vague. Overbroad.

19 You can answer.

20 THE WITNESS: Okay. Sorry.

21 At first I -- you know, depending on the level
22 of it, you know, I could deal with it or I rely on the
23 assistant principals that I have -- that I work with to
24 kind of handle the matter and investigate it
25 appropriately.

1 For matters that may be, you know, bigger in
2 scope, it goes directly to me.

3 BY MR. SMITH:

4 Q So what do you mean by "bigger in scope"?

5 A If my assistant principal says "It's pretty
6 big; you should deal with it."

7 Q And is there an assistant principal that
8 specifically deals with disputes like, I guess, minor
9 disputes?

10 A Yes.

11 Q And who is that?

12 A His name is Tim Gavello.

13 Q Tim Gavello.

14 Okay. And what is his title?

15 A Assistant principal of discipline.

16 Q Does he have any role in enforcing the
17 District's nondiscrimination policies?

18 A Yes, he does.

19 MS. LEVINE: Vague.

20 BY MR. SMITH:

21 Q Okay. And do you have a role in enforcing the
22 District's nondiscrimination policies?

23 MS. LEVINE: Vague and it calls for a legal
24 opinion.

25 Go ahead.

1 THE WITNESS: Yes, I do.

2 BY MR. SMITH:

3 Q Okay. So what is your role in enforcing the
4 nondiscrimination policies with respect to student
5 groups?

6 A My role is to review it, investigate it
7 appropriately, and if needed for clarification, rely on
8 district counsel.

9 Q And as a part of that, do you review
10 applications for recognition of student groups -- let me
11 rephrase it.

12 Do you review applications for ASB approval
13 for student groups?

14 A No.

15 Q Who reviews those applications?

16 A Our activities director.

17 Q And is that Michelle Mayhew?

18 A Yes. Correct.

19 Q If she has a question about a group, would she
20 come to you?

21 A Yes. Correct.

22 Q And when you're enforcing one of these
23 policies, it's important to get all of the facts, right?
24 Correct?

25 A Yes.

1 MS. LEVINE: Vague.

2 BY MR. SMITH:

3 Q And, if you had a personal involvement, a
4 personal -- or were personally invested in a matter, do
5 you think it would be appropriate for you to enforce the
6 rule, or would you go to somebody else to enforce the
7 rule?

8 MS. LEVINE: Calls for speculation.

9 THE WITNESS: Yeah. I've never been in that
10 situation. But, yeah, if I was heavily involved in an
11 organization, yeah, I would recuse myself if it was a
12 decision that needed to be made regarding, you know, a
13 discrimination policy.

14 BY MR. SMITH:

15 Q And, if you were heavily against a group,
16 would you also recuse yourself?

17 MS. LEVINE: Calls for speculation.

18 THE WITNESS: Yeah. I wouldn't even think of
19 that as hypothetical because I wouldn't be against any
20 student group.

21 BY MR. SMITH:

22 Q Okay. And we'll talk about this. I know that
23 you talk a lot in your emails about keeping students
24 physically safe on campus. Does that fall under your
25 responsibilities?

1 A Yes. It's number one, in my opinion.

2 Q What steps have you taken to ensure student
3 safety when -- especially regarding student group
4 conflicts?

5 A I make sure that --

6 MS. LEVINE: Assumes facts not in evidence.
7 It's vague.

8 Go ahead. You can answer unless I tell you
9 not to.

10 THE WITNESS: Okay. I make sure that I have
11 all the information and investigate it appropriately.
12 And timely is important.

13 BY MR. SMITH:

14 Q Okay. And do you have involvement in
15 recognizing or derecognizing clubs at Pioneer?

16 MS. LEVINE: Asked and answered and vague.

17 THE WITNESS: Sorry, Amy. I didn't hear you.

18 MS. LEVINE: Oh, I said it was asked and
19 answered and vague.

20 THE WITNESS: Can you repeat the question
21 again, Mr. Smith?

22 MR. SMITH: Can the court reporter read the
23 question back?

24 (Record read.)

25 THE WITNESS: Yes, I do.

1 BY MR. SMITH:

2 Q Okay. And -- so who has final say at Pioneer
3 as to whether a group is approved or not approved?

4 A Again, it would be me that would be
5 communicating to the groups. You know, again, depending
6 on the situation, I might need District counsel to help
7 advise me.

8 Q And do you ever work with the District office
9 in determining whether a group should be recognized?

10 A Yes.

11 Q And would that be -- well, who do you work
12 with in the District office with respect to decisions of
13 group -- student group recognition?

14 A It would be district counsel. It would be,
15 you know, whoever -- whichever the assistant supe I can
16 communicate with to, you know, give them the
17 information. The assistant superintendents.

18 Q Okay. And do you report to or do you --
19 sorry.

20 Who do you directly report to?

21 A The assistant superintendents.

22 Q The assistant superintendents?

23 A Yes.

24 Q So you directly report to all of them?

25 A Yes.

1 Q Okay. And does that include Stephen McMahon?

2 A Yes.

3 Q And also Jodi Lax?

4 A Yes.

5 Q Do you have specific assignments that you
6 report to each of them for, or do you just kind of
7 generally report to all of them?

8 A Yeah. They all have kind of their duties, so
9 I try to report to them when it kind of meets their
10 duties.

11 Ms. Lax is under instruction. Steve McMahon
12 under, you know, staffing, resources, budget. And then
13 Mr. Bejarano for, you know, human resources-related
14 things and then also with ASB and athletics.

15 Q I'm sorry. Did you say -- who did you say
16 with respect to ASB and athletics?

17 A Dominic Bejarano.

18 Q Okay. With respect to student groups at
19 Pioneer, do you help approve their budgets?

20 A No, I do not.

21 Q Have you ever signed a budget approval for a
22 student group?

23 A I think it officially goes to me at the end,
24 but it's vetted through our activities director first
25 and our faculty advisors and our student leaders.

1 Q But you have ultimate responsibility for the
2 budgeting for student groups at Pioneer?

3 A I do the final signature, so yes.

4 Q What is your professional relationship to
5 Superintendent Albarrán?

6 A Personal or professional? I'm sorry.

7 MS. LEVINE: Vague.

8 BY MR. SMITH:

9 Q Professional relationship.

10 A Oh. I've known her since I became an
11 administrator in the District in 2011. So
12 professionally I've known her for 10 years.

13 Q But you don't directly report to her?

14 A Ultimately, I do. But I rely on the assistant
15 superintendents and the deputy superintendents
16 for issues that might arise on campus.

17 Q Other than superintendent -- and am I saying
18 that correct? Is it Albarrán? I want to make sure.

19 A (Witness nods head.)

20 Q Other than Superintendent Albarrán and the
21 deputy superintendents or assistant superintendents, do
22 you directly report to anybody else?

23 A Yeah. The directors of our district.

24 Q Okay. And what do the directors of the
25 District do?

1 A We have -- the main ones I communicate with
2 is -- so they're under a division of -- you know,
3 different -- you know, like, director of instruction,
4 director of student services, director of special
5 education, and director of fiscal services.

6 So we have a number of directors who are kind
7 of in charge of those things specifically.

8 Q Do you have more interaction with any
9 particular director than others?

10 A I would say our director of instruction.

11 Q Okay. And who is that?

12 A Deepa Mukherjee.

13 Q And what is the nature of your interactions
14 with her?

15 A Mainly around instruction, teacher
16 instruction, evaluation, instructional programs,
17 professional developments. We meet biweekly with our
18 instructional co-chair on site and kind of discuss
19 our -- you know, our goals and how we're following up on
20 those instructional goals here on campus, and
21 calibrating, you know, what we're seeing as trends in
22 the classroom with teachers.

23 Q Okay. And with respect to Superintendent
24 Albarrán, she has responsibility for San Jose Unified
25 School District?

1 A Yes.

2 Q Does she have the ultimate say in what occurs
3 in the District?

4 A Yes.

5 MS. LEVINE: Calls for a legal conclusion.

6 BY MR. SMITH:

7 Q Do you clear decisions with her about student
8 club recognition?

9 A Not typically, no.

10 Q But have there been circumstances where you
11 cleared decisions about student club recognition with
12 her?

13 A Yes.

14 Q What instances were those?

15 A FCA as a club.

16 Q And is FCA the only time that you've spoken
17 with her about club recognition?

18 A I don't recall.

19 Q But the only one you recall right now is FCA?

20 A Yes.

21 Q And you mentioned working with Stephen
22 McMahon. And does -- he also works in the District
23 office?

24 A Yes.

25 Q And so he has responsibilities that relate to

1 all of the schools in the District?

2 A Yes.

3 Q Have you ever communicated with him about
4 District policies at Pioneer?

5 A Yes.

6 Q What types of communications have you had with
7 him about District policies at Pioneer?

8 A There's a good number. Could you be more
9 specific?

10 Q Sure.

11 Have you had any communications with him about
12 student group recognition at Pioneer?

13 A Yes.

14 Q And was that in connection with FCA?

15 A Yes.

16 Q Are there any other student groups that you've
17 spoken with Mr. McMahon about for recognition?

18 A No.

19 Q Okay. What did you discuss with respect to
20 the recognition of FCA at Pioneer with Mr. McMahon?

21 MS. LEVINE: I'm just going to object to the
22 extent that it calls for attorney-client privilege or
23 work product.

24 So to the extent that you know that the
25 information conveyed came from the District's attorneys,

1 then don't answer that part. But if it involved some
2 other kind of communication, you can answer that.

3 THE WITNESS: Can I -- something else just
4 came up in your previous question, Mr. Smith. Can I add
5 to my answer?

6 BY MR. SMITH:

7 Q Absolutely.

8 A Yeah. So, in terms of discussing with
9 Mr. McMahon or Ms. Albarrán another student group to be
10 recognized, there is another time that I recall.

11 Q And what was that time?

12 A It was, you know, whether to recognize Satanic
13 Temple Club as an official club on campus.

14 Q And without getting into any questions about
15 instructions from attorneys, what was the guidance that
16 was provided with you with respect to The Satanic Temple
17 Club?

18 A After all the information was reviewed and
19 vetted, that they were okay to be recognized.

20 Q Okay. And ultimately, the decision of the
21 District was not to recognize Fellowship of Christian
22 Athletes?

23 A Yes. I think -- I know in this particular,
24 that the previous school year there was a conditional
25 recognition, if I recall.

1 Q When you say "conditional recognition," what
2 was recognition conditional on?

3 A Reviewing more matters, I believe, more
4 details.

5 Q Okay. Do you -- were other clubs
6 conditionally recognized last year?

7 A Yes.

8 Q What -- were all groups conditionally -- at
9 Pioneer conditionally recognized last year?

10 A Yes.

11 Q Were you -- when you say you were reviewing
12 additional details about FCA, was that specifically
13 regarding the nondiscrimination policy?

14 A I think it's just more the details of kind of
15 the situation we're in with the pandemic and how -- you
16 know, how do we proceed with clubs, you know, virtually.

17 Q Okay. And so that related more to the
18 availability of ASB, the Associated Student Body?

19 A Yes.

20 Q Do you work with -- I know she's on the call
21 today. Do you work with Jennifer Thomas as a part of
22 your job as principal?

23 A Yes.

24 Q What is your professional relationship with
25 Ms. Thomas?

1 A I've known Ms. Thomas for I would say close to
2 10 years. As well as since I've been an administrator.

3 She was the president of the teacher union
4 prior to her position. I knew her in that capacity
5 professionally as well.

6 Q And how long has she been in that position?

7 MS. LEVINE: Vague as to "position."

8 BY MR. SMITH:

9 Q How long has she been in the position or -- of
10 risk management officer at Pioneer?

11 A I want to say two years -- two or three years
12 in the District.

13 Q Have you communicated with her about FCA?

14 A Yes.

15 Q And were those about recognition of FCA?

16 A Yes.

17 Q And, again, without -- to the extent that this
18 doesn't involve privileged information, what guidance
19 did she provide?

20 A Could you be more specific in which year or --

21 Q Sure. Well, let me ask, when did you first
22 communicate with Ms. Thomas about FCA?

23 A I would say just a little bit after, you know,
24 kind of the issue with recognizing FCA kind of came
25 about in 2019.

1 Q Okay. Was she involved in the decision on
2 whether to recognize FCA as an official club at Pioneer?

3 MS. LEVINE: Calls for speculation.

4 THE WITNESS: Yeah. I don't know her -- the
5 scope of her involvement.

6 BY MR. SMITH:

7 Q But you spoke with her about FCA recognition?

8 A Yes.

9 Q Did she give you any advice on FCA
10 recognition?

11 A Yes.

12 MS. LEVINE: I'm just going to object to the
13 extent it calls for attorney-client privilege or work
14 product.

15 BY MR. SMITH:

16 Q And without getting into attorney-client
17 communications or work product, what did she tell you
18 about recognizing FCA?

19 A Yeah. Again, can you be more specific on what
20 school year you're referring to?

21 Q Well, let's say for the 2018-'19 school year.

22 A In that particular year, FCA was recognized,
23 and I had no communication with Ms. Thomas regarding
24 their recognition for that school year.

25 Q Was it recognized for the entire year?

1 A I believe not once we were aware of the
2 pledge.

3 Q Okay. So was it derecognized -- was FCA
4 derecognized sometime in April or May of 2019?

5 A Yes. Correct.

6 Q Do you know exactly what day FCA was
7 derecognized?

8 A Not exactly the day, no.

9 Q Well, with respect to the 2019-2020 school
10 year, what did Ms. Thomas advise you with respect to --
11 with respect to recognizing FCA as an official student
12 club?

13 A I don't know if I got official advice from
14 her. At that point, you know, we decided as a district
15 to not recognize FCA. So my recollection of
16 conversations with Ms. Thomas is just regarding, you
17 know, recognition of all clubs, you know, that may be
18 controversial.

19 Q Okay. So you said that you decided as a
20 district to not recognize FCA.

21 To the best of your knowledge, who was
22 involved in that decision?

23 MS. LEVINE: Calls for speculation.

24 THE WITNESS: To the best of my knowledge, it
25 would be the all four superintendents and, you know,

1 District counsel.

2 BY MR. SMITH:

3 Q Was Superintendent Albarrán involved in that
4 decision, to your knowledge?

5 A I would say yes.

6 Q And, when you say all four superintendents, is
7 that -- are there four assistant superintendents, or are
8 there -- does that include Superintendant Albarrán?

9 A Yeah. So there is Superintendant Albarrán,
10 Deputy Superintendant McMahon, Associate Superintendant
11 Ms. Lax, and then Assistant Superintendant Mr. Bejarano.

12 Q Okay. Who had the final say with respect to
13 the District as to your recognition of the Fellowship of
14 Christian Athletes?

15 MS. LEVINE: Calls for speculation.

16 THE WITNESS: I would assume it's our
17 superintendant, Ms. Albarrán.

18 BY MR. SMITH:

19 Q And do you know if FCA was derecognized at
20 other schools?

21 A I don't recall.

22 Q Okay. Do you know if FCA was derecognized at
23 Willow Glenn?

24 A I don't -- I don't know. I just kind of
25 concentrate on my school.

1 Q Did you speak to other principals about
2 recognition of Fellowship of Christian Athletes?

3 A Not in detail, no.

4 Q Well, who else did you speak to about it in
5 any level of detail?

6 MS. LEVINE: Vague. Overbroad.

7 THE WITNESS: Just with -- as far as I can
8 recall, just with directors and superintendents that --
9 you know, we were discussing different situations that
10 came about in those months and years. You know, they
11 had a -- I would only speak to someone from the District
12 who was -- maybe would be involved in a situation that
13 we were kind of working through.

14 BY MR. SMITH:

15 Q Okay. So you don't recall any specific
16 conversations with other principals about Fellowship of
17 Christian Athletes?

18 A Yeah. They would ask me questions around
19 what's happening. And, you know, I kind of didn't
20 entertain those conversations. So they would bring it
21 up, and I kind of would be like "Yep. You know, it's
22 kind of private," and really didn't discuss it in
23 further detail outside of just recognizing, you know,
24 and acknowledging their questions, like, yeah, something
25 is happening.

1 Q All right. Did Peter Park ask you any
2 questions about FCA?

3 A Not that I recall specifically me answering.
4 Yeah.

5 Q Well, regardless of whether you answered them,
6 did he ask you any questions about FCA?

7 A Yes.

8 Q Okay. And did Tina Vanlaarhoven ask you any
9 questions about FCA?

10 A Yes.

11 Q Do you recall what the question that Tina --
12 the questions that Tina Vanlaarhoven asked you were?

13 A Yeah, just a general question like "What's
14 going on with FCA?"

15 Q And was that with respect to at Pioneer?

16 A Yes.

17 Q Do you have -- what is your work with -- well,
18 let me take this back.

19 Do you know Dane Caldwell-Holden?

20 A Yes.

21 Q Does he have a role at the District?

22 A Yes. He's the director of student services.

23 Q Okay. Does he have any responsibility over
24 the recognition or derecognition of student groups?

25 A I would assume so, yes.

1 Q Do you know what nature of his responsibility
2 over recognition or derecognition of student groups is?

3 A His responsibility would be to provide the
4 District counsel with, you know, information on if any
5 particular club created an environment that was unsafe
6 for students.

7 Q Have you ever spoken to him about whether a
8 group created an environment that was safe or unsafe for
9 students?

10 A I don't recall specifically.

11 Q Have you ever spoken to him about FCA?

12 A Yes.

13 Q And specifically Pioneer FCA?

14 A Yes.

15 Q What did you communicate with him about
16 Pioneer FCA?

17 A The first time it was around the pledge and if
18 he deemed it to be against our district discrimination
19 policy and how it would affect students who may be, you
20 know, or who may feel a certain way about the pledge.

21 Q And you say the first time -- well, let me ask
22 first, you referred to the pledge.

23 What do you mean by the pledge?

24 A The FCA leadership pledge. I believe it's the
25 purity statement pledge.

1 Q Okay. So are you referring to the student
2 leader application, or are you referring to the sexual
3 purity statement?

4 A The sexual purity statement.

5 Q Okay. So the first time that you spoke with
6 Mr. Caldwell-Holden about FCA was about the sexual
7 purity statement?

8 A Yes. Correct.

9 Q And did you speak to him any other times about
10 Pioneer FCA or FCA?

11 A As it pertained to the club, yes, I did.

12 Q What -- how many times did you speak with him
13 about FCA?

14 A I don't recall the number of times.

15 Q Do you have a ballpark?

16 A I would say three or five.

17 Q Three or five.

18 Were all of those communications about the
19 sexual purity statement?

20 A No.

21 Q What other topics did you discuss with him
22 about FCA?

23 A The protest that was being planned by a group
24 of students outside the meetings of the FCA group.

25 Q And why did you discuss the protest with

1 Mr. Caldwell-Holden?

2 A I wanted to make sure that -- you know, that
3 it was appropriate and something that each group of
4 students were able to do.

5 Q And did those protests ultimately occur?

6 A Yes.

7 Q And without getting into any communications
8 from District counsel or work product, did he advise you
9 that those communications -- or those protests could
10 occur?

11 A Yes. With guidance from San Jose Police
12 Department, yes.

13 Q Okay. Who is the -- you mentioned San Jose
14 Police Department.

15 Does Pioneer have a liaison with San Jose
16 Police Department?

17 A Yes.

18 Q Who is the liaison with San Jose?

19 A Our main chief is -- I'm blanking on his name
20 right now. Yeah, I'm blanking on the name. But we do
21 have one. He's been the chief of our district for I
22 want to say a year and a half. I'm seeing his face, but
23 I'm blanking on his name a little bit.

24 Q Is it Rick Granado?

25 A No Rick is our school resource officer.

1 Q What does Rick Granado do as the school
2 resource officer at Pioneer?

3 A He keeps the school -- tries to keep the
4 school safe. He works in conjunction with Pioneer
5 administration team and the San Jose Police Department.
6 And he was here, I believe, three days a week as the
7 main SRO. And then he has a commanding officer. And
8 then that commanding officer reports to our chief of
9 police for San Jose Unified.

10 Q With respect to Mr. Granado, do you know who
11 he works for?

12 A He works for the District and San Jose Police
13 Department.

14 Q Okay. So it's like a shared responsibility?

15 A I would say so, yes.

16 Q Okay. When you spoke to Mr. Caldwell-Holden
17 about the FCA pledge or the sexual purity statement,
18 again, without going into -- I'm not asking about
19 attorney work product or communications with attorneys,
20 what did he advise you with respect to the FCA pledge?

21 A I don't think -- I don't recall him giving me
22 specific advice during those conversations. I believe
23 we felt the next step would be to discuss it with
24 counsel and the superintendent cabinet.

25 Q Why did you discuss the FCA sexual purity

1 statement with Mr. Caldwell-Holden?

2 A To get guidance and advice on how to
3 appropriately move forward with the matter.

4 Q Well, why did you feel that he could give you
5 guidance and advice?

6 A He's the director of student services.

7 Q And as director of student services, how would
8 his role relate to the recognition or the FCA student
9 purity statement?

10 A I believe --

11 Q Let me -- I apologize, the sexual purity
12 statement?

13 A I believe that his role as director of student
14 services would be, one, to, you know, ensure that
15 students are feeling safe on campus. And, you know, the
16 purity pledge I felt could maybe affect that.

17 Q So you felt that the FCA sexual purity
18 statement could make students feel unsafe on campus?

19 A Yeah. After a group of students brought it to
20 my attention, yes. They expressed their concern.
21 That's when it alerted it for me.

22 Q Okay. Did -- outside of the pledge, did
23 FCA -- let me ask it differently.

24 Prior to learning about the pledge, did you
25 have any concerns that FCA was creating safety issues

1 on -- at Pioneer?

2 A No, I did not.

3 Q Since learning about the pledge, do you have
4 any concerns outside of the pledge about FCA creating
5 safety issues?

6 A Outside of the purity pledge, no.

7 Q We mentioned the directors and the
8 superintendents.

9 Is there anybody else at the District that you
10 work with regularly?

11 A I work with everyone. But yeah -- I'm trying
12 to think in this particular case. You mentioned SROs,
13 our police liaison, our chief, our directors, our
14 assistant sups. And then Ms. Thomas is the risk
15 management. I would say that would be about it
16 regarding this case.

17 Q Okay.

18 A And then my administration team. I'm sorry.

19 Q And who is on the administration team?

20 A Mr. Gavello, our assistant principal of
21 discipline, Ms. Amy Hanna, our assistant principal of
22 guidance. And in those particular years, I had two
23 assistant principals of guidance. The other one is
24 Ms. Elizabeth Brush. And then Mr. Brendan Simon is the
25 assistant principal of instruction.

1 Q I'm going to switch tracks a little bit here.

2 When you're enforcing rules, are those
3 primarily District policies that you're enforcing?

4 MS. LEVINE: Vague. Calls for a legal
5 conclusion.

6 THE WITNESS: I would say it's a combination
7 of District policies, school policies, and Ed Code
8 violations.

9 BY MR. SMITH:

10 Q Okay. So when the District -- does the
11 District have board policies?

12 A Yes.

13 Q And does it also have administrative
14 regulations?

15 A Yes.

16 Q What is -- how is a board policy promulgated?

17 MS. LEVINE: Calls for speculation. Calls for
18 a legal conclusion.

19 THE WITNESS: Can you define that word for me,
20 Mr. Smith?

21 BY MR. SMITH:

22 Q If you know, who creates Board policies?

23 A I would say the Board and the Board cabinet.

24 Q And that's the Board of Education?

25 A Yeah. Yes.

1 Q And how do they create Board policies?

2 MS. LEVINE: Calls for speculation.

3 BY MR. SMITH:

4 Q If you know.

5 MS. LEVINE: Lacks foundation.

6 THE WITNESS: I would say based on the needs
7 of the District, the students, the families, and staff.

8 BY MR. SMITH:

9 Q Do you know who creates administrative
10 regulations for the District?

11 A No, I do not.

12 Q Okay. All right. Let me ask you about -- you
13 talked about the FCA pledge and FCA being derecognized.

14 Why was FCA derecognized?

15 A It was based on the purity pledge that they
16 required of their leaders.

17 Q Okay. The sexual purity statement?

18 A Yes.

19 Q And you referred to it as a pledge and . . .

20 Have you seen any evidence that there is a
21 pledge that officers take?

22 A Just the statement that the students brought
23 to my attention.

24 Q Okay. What, in your view, does the -- what,
25 in your view, is required of the, quote-unquote,

1 "pledge"?

2 A Just to summarize my understanding a bit, it's
3 to not engage in homophobic or homosexual acts.

4 Q Is that your full understanding of it?

5 A I believe there was also, you know, engaging
6 in any sexual acts, you know, before marriage.

7 Q Is there anything else?

8 A That's kind of my understanding of it.

9 Q Okay. Did you investigate the pledge -- did
10 you investigate the FCA policy yourself?

11 A No.

12 Q Who investigated the FCA policy on behalf of
13 the District?

14 A I would assume our counsel.

15 Q Who did you give -- who did you send the FCA
16 policy to, if anybody, when you learned about it?

17 A I don't recall specifically who. I know I had
18 a conversation with Mr. Caldwell-Holden. And then I
19 don't recall which superintendents I communicated with,
20 but it got to them. I just don't know which one I
21 communicated with first.

22 Q Okay. Could it have been Stephen McMahon?

23 MS. LEVINE: Calls for speculation.

24 THE WITNESS: Yeah. It eventually got to him,
25 yes.

1 BY MR. SMITH:

2 Q Do you recall if you sent an email to him
3 about the FCA sexual purity policy?

4 A He doesn't normally check his emails, so I
5 might have sent it to somebody else, and given it to him
6 physically.

7 Q Okay. So you say that FCA was derecognized
8 for that reason.

9 What -- so why was FCA derecognized because of
10 the sexual purity policy?

11 A Because it goes against District policy around
12 discrimination.

13 Q And what is your understanding of the
14 District's nondiscrimination policy?

15 A That any, you know, club, team, or school
16 organization that's affiliated with the school or
17 District are not able to discriminate by sex, religion,
18 or sexual preferences in admittance to, you know, any
19 programs that we offer.

20 Q Okay. And you determined that FCA's sexual
21 purity policy discriminated against groups?

22 A Yeah. As a district, we did, yes.

23 Q What was the determination as to how FCA's
24 sexual purity policy discriminated against groups?

25 A From my understanding, you know, it's students

1 who are homosexual or are engaging in homophobic acts
2 are not able to be a leader -- a student leader within
3 the FCA organization.

4 Q Okay. But you didn't do any -- you aren't the
5 one who investigated whether that's true or not,
6 correct?

7 A I wouldn't say -- yeah, I did not do a
8 detailed investigation on it.

9 Q So do you know whether FCA allows homosexual
10 students to become leaders or not?

11 A I don't know the extent of which they enforce
12 that purity statement on their leaders. I just know
13 that the purity statement existed.

14 Q Okay. Let me -- let me show you Exhibit --
15 and this will be marked as Exhibit 42.

16 MS. LEVINE: Is this in the Veritext or is
17 this on screen share or?

18 MR. SMITH: Well, it's -- it has been
19 introduced now. It should be in the Veritext.

20 (Exhibit 42 marked for identification.)

21 BY MR. SMITH:

22 Q Are you able to pull it up?

23 A It should be under "Marked Exhibits," correct?

24 Q Yes.

25 A It says the -- yep, I see it now. I am

1 downloading it. I'm looking at Exhibit 42-2. So, yeah,
2 I have that in front of me.

3 Q What is your understanding of what this policy
4 requires?

5 MS. LEVINE: I'm sorry. It says 42-2? Mine
6 just says 42.

7 MR. SMITH: Oh, because -- yeah, 2 is just in
8 the file name. It's Exhibit 42.

9 MS. LEVINE: Okay. So, just to identify it
10 for the record, we're looking at BP 0410; is that right?

11 MR. SMITH: Correct.

12 MS. LEVINE: Okay.

13 THE WITNESS: My understanding of it is the
14 District has committed to equal opportunities for all
15 students and individuals as it pertains to programs and
16 activities that we offer.

17 (Exhibit 43 marked for identification.)

18 BY MR. SMITH:

19 Q Okay. And let me introduce one more exhibit.
20 This will be Exhibit 43.

21 A Yep. I have it in front of me.

22 Q Okay. And this is, for the record, BP 5145.3.
23 This also refers to nondiscrimination.

24 What is the difference between these two
25 policies, if you know?

1 MS. LEVINE: Calls for a legal conclusion.
2 The document speaks for itself.

3 THE WITNESS: Yeah. I would say it's similar.
4 BY MR. SMITH:

5 Q So you don't have an opinion on what the
6 difference is between the two?

7 MS. LEVINE: Calls for a legal opinion.
8 BY MR. SMITH:

9 Q Let me ask you this. So, sorry, can you pull
10 up Exhibit 2 -- or Exhibit 42.

11 A Yeah.

12 Q Do you have that open?

13 A Yes.

14 Q Okay. If you look at the first page in the
15 second paragraph, it says "Any school employee who
16 observes an incident of discrimination, harassment,
17 intimidation, or bullying or to whom such an incident is
18 reported shall report the incident to the coordinator or
19 principal, whether or not the victim files a complaint."

20 How often does a school employee or a student
21 report to you incidents of discrimination, harassment,
22 intimidation, or bullying?

23 A I would say probably anywhere between -- to me
24 directly? Maybe once, twice a week.

25 Q Once or twice a week.

1 And is that mostly bullying, or is it -- what
2 is the divide between those four categories?

3 A I would say discrimination is not very often.
4 Harassment, intimidation, bullying are probably pretty
5 even.

6 Q Okay. So what do you do when somebody reports
7 discrimination or harassment or intimidation or bullying
8 to you?

9 MS. LEVINE: Compound.

10 THE WITNESS: I try to gather all evidence and
11 facts, as much as I can from the student or staff member
12 that's reporting it. And then from there I -- it could
13 vary in terms of supports that I might seek out.

14 I am a mandated reporter, so, you know, if
15 there is any mandated reporting that I have to do, you
16 know, I again seek guidance from district-level
17 employees, if appropriate, and also with our school
18 resource officers.

19 BY MR. SMITH:

20 Q And who would you report one of these
21 incidents to?

22 A Again --

23 MS. LEVINE: It's compound again.

24 THE WITNESS: I guess it just depends on where
25 my investigation leads me, if it requires a different

1 level of support and guidance.

2 BY MR. SMITH:

3 Q So what is -- what do you consider in
4 determining whether to report the incident to somebody
5 else?

6 A If the student is physically in danger or was
7 in danger or there has been physical or emotional -- you
8 know, physical and emotional has taken place in terms of
9 strain or actual things happening.

10 Q So you would report it if a student was in
11 physical danger?

12 A Yeah. Or they're physically hurt from it,
13 yes.

14 Q And you would report it if a student suffered
15 some emotional harm?

16 A Yeah. If they're unable to cope and come to
17 school is one of the bigger indicators that I've found
18 over the years working with students. Or suffering
19 grades. Or them expressing to me that they are unable
20 to cope. Oftentimes, you know, students come to me if
21 they aren't able to manage it physically and
22 emotionally.

23 Q And, if a student told you that they felt
24 unsafe, would that be something you would report?

25 A Not -- not -- again, it depends on what they

1 tell me. You know, I do work with young adults and, you
2 know, I have to make certain, you know, before I involve
3 other personnel or authorities that I in fact -- they
4 could in fact articulate to me and I have all the
5 information of what is actually happening based on the
6 claims that they're making in my office.

7 Q Well, how do you make that determination?

8 A With the information that they're giving me.

9 Q Right. But what -- is there any particular
10 factor you're looking for?

11 A Yeah. It's pretty wide, Mr. Smith, and the
12 range is pretty extensive in what happens in anyone's
13 lives at the moment. So, you know, yeah, it's pretty
14 broad.

15 And I think my biggest indicator is, if it's
16 something that, as it pertains to this question, you
17 know, of harassment, intimidation, or bullying is kind
18 of the levels of those things and the frequency and how
19 it's affecting the student or the employee.

20 Q Okay. So you would say you would determine it
21 on a case-by-case basis --

22 A Yes.

23 Q -- whether to report it?

24 A Yeah. Again, with 17 -- 1,600 students and
25 150 employees, you know, I have to vet, you know, what

1 they're telling me as evidence and determine if it is in
2 fact what they're describing. Because oftentimes a
3 student can say "I'm being bullied" but by the
4 definition of the term, you know, I -- there's only
5 certain things that I can do. But I value everyone's
6 feelings.

7 So, again, the extent of my reaction varies
8 based on the evidence that they're giving me and I'm
9 able to retrieve myself.

10 Q Well, you referenced bullying.

11 What is your understanding of what constitutes
12 bullying?

13 A It could be physical or emotional stress
14 that's put on an individual student or staff member by
15 another of their peer or teacher, in this case when
16 they're at school, or another staff member.

17 Again, intimidation and bullying can vary in
18 if it's one instance or an occurrence. But I would say
19 intimidation, bullying would be, you know, a kid
20 feels -- if another kid or another staff member is
21 threatening verbally or physically another student or
22 staff.

23 Q Okay. And what do you mean by emotional harm
24 or emotional bullying?

25 A Yeah. It could be something, you know, way of

1 making a student or a staff member feel based on your
2 actions or words that you use, making them -- you know,
3 striking an emotion that's negative for that student or
4 staff member.

5 Q So bullying is making somebody feel negative
6 emotions?

7 A Yes. I would say --

8 MS. LEVINE: Misstates the testimony.

9 Go ahead.

10 THE WITNESS: I would say so, yes.

11 BY MR. SMITH:

12 Q Okay.

13 A And then I think with bullying it's, you know,
14 in terms of, you know, how I've perceived it as an
15 administrator is something that's constant from one
16 particular group or individual.

17 Q Okay. What is your understanding of the
18 District's sexual harassment policy?

19 A My understanding of it is -- I mean, you have
20 to keep a safe school and working environment free from,
21 you know, any negative, you know, sexual advances from
22 colleagues or a peer or even your superiors.

23 Q Okay. So sexual harassment is primarily
24 sexual advances or?

25 A I would say so, yes. If it's not sexual

1 advances -- if it's not sexual advances, then it would
2 be under some harassment.

3 Q Okay. Does the District have an issue or does
4 it -- well, let me -- I withdraw that question.

5 So is the term "UCP" familiar with you -- to
6 you?

7 A Yes.

8 Q What does "UCP" stand for?

9 A Uniform Complaint Policy.

10 Q Okay. And does the District have a Uniform
11 Complaint Policy?

12 A Yes. Yes, they do.

13 Q Okay. Do you know when the UCP was enacted?

14 A I do not.

15 Q What -- so are complaints of discrimination
16 handled through the UCP?

17 A I would say it's under that umbrella.

18 Q Okay. What about complaints of bullying, are
19 they handled through the UCP?

20 MS. LEVINE: Calls for speculation.

21 THE WITNESS: Yeah. I would say I would guess
22 so, yes.

23 BY MR. SMITH:

24 Q Okay. And are complaints of harassment
25 handled through the UCP?

1 A Yes.

2 Q So as to the uniform complaint process or
3 procedure, how does somebody make a complaint under the
4 UCP?

5 A They can either make an official complaint to
6 school administration or to the District directly.

7 Q So, when you say "school administration,"
8 someone could make a complaint to you under the UCP?

9 A Yes.

10 Q And how does -- how -- what is your
11 understanding of what a complaint is under the UCP?

12 A Again, making sure that everyone has equal
13 access to -- again, to our programs and all our
14 school-affiliated activities, that everyone is feeling
15 safe when they're on campus.

16 Q Is there a specific form that has to be filled
17 out to make a complaint under the UCP?

18 A No.

19 Q At any time, did you talk about -- to
20 Charlotte Klarke or Elizabeth Sinclair about whether
21 they could file a complaint under the UCP?

22 A No.

23 Q How often do you -- well, let me ask -- and,
24 if you got a complaint under the UCP, does the District
25 have an obligation to investigate that complaint?

1 A If it reaches to that level, yes.

2 Q And, when you say "it reaches that level,"
3 what do you mean?

4 A In terms of the scope of the matter, the
5 severity of it. You know, there's things that we can
6 handle here on the site, and there's matters that may
7 be -- requires their support and guidance and
8 investigation.

9 Q What would distinguish a complaint that
10 reached that level, to use your language, from a -- from
11 a complaint that didn't warrant investigation we'll say?

12 MS. LEVINE: Misstates the testimony.

13 THE WITNESS: Yeah. I would say if it's a
14 matter of safety and extreme danger. Again, the scope
15 can vary. I mean, it's -- I would say if the safety of
16 a student is in danger or if a particular complaint
17 maybe would affect a good number of students or staff
18 members.

19 BY MR. SMITH:

20 Q So you think it would require physical harm to
21 be a UCP complaint?

22 A It could be emotional as well.

23 Q Has the UCP at the District changed since
24 you've been principal at Pioneer?

25 A I wouldn't know in terms of, you know, every

1 detail if it's the same every year or not.

2 Q If a student comes to you with a complaint of
3 harassment, do you take that as a serious matter?

4 A Again, it's -- it depends on what they're
5 telling me. Yes. But I would definitely take it as a
6 serious matter. Oftentimes I have to get the
7 information from students and vet it with them, make
8 sure that I'm understanding the full picture of what
9 they're feeling and experiencing.

10 Q After a complaint is made to you -- and I
11 guess do you have any involvement other than potentially
12 investigating the complaint?

13 A Yes. If it's -- if it's not a -- if I don't
14 understand it to be a legal matter and it's school
15 related and it's a school-level related issue, I
16 investigate it in conjunction with my staff.

17 But, if it's -- if I deem it to be a legal
18 matter, you know, I leave that to the SROs, the school
19 resource officers, to investigate it.

20 (Exhibit 44 marked for identification.)

21 BY MR. SMITH:

22 Q I'd like to show you what we will call
23 Exhibit 44 -- introduce -- give me just a second here.

24 (Pause in the proceedings.)

25 MR. SMITH: My apologies. We were having a

1 technical difficulty here.

2 MS. LEVINE: Reed, would now be a good time
3 for a short break?

4 MR. SMITH: No. Let me -- let me -- it
5 will -- I don't anticipate it will be more than a minute
6 or two here.

7 BY MR. SMITH:

8 Q Okay. So we -- it's up now. Exhibit 44 is up
9 now.

10 Do you have it open?

11 A I'm opening it now. It's in front of me now.

12 Q Do you recognize Exhibit 44?

13 A Yeah. I believe it was sent to me. Yes.

14 Q And what is Exhibit 44?

15 A It's a letter from Sherman & Howard stating
16 that they represented FCA. And it was in response to
17 the decision of revoking FCA as an affiliated student
18 group of Pioneer High School.

19 Q What did you do with this letter when you
20 received it?

21 A I think I shared it with counsel.

22 Q Do you know if you sent it to Superintendant
23 McMahon?

24 A I don't recall who I sent it to specifically.
25 I would guess, yes, I sent it to him or one of the other

1 supers, if not Nancy Albarrán directly.

2 Q When you received this letter, did you
3 consider it a complaint under the UCP?

4 A That's not where my mind went immediately. I
5 think it was -- I kind of took this as kind of a "Hey,
6 you know, we didn't think the decision was appropriate
7 or fair." And I think -- I think the goal was for us to
8 reconsider our position of revoking FCA's official
9 affiliation with the school -- or recognition.

10 Q Well, you say your mind didn't go there
11 immediately. Do you think today it qualifies as a
12 complaint under the UCP?

13 A Can you repeat that question, please?

14 MR. SMITH: Can the court reporter repeat the
15 question.

16 (Record read.)

17 THE WITNESS: The previous question didn't ask
18 me if I deemed this letter to be a UCP complaint. I
19 would say when I first saw it I would deem it as a UCP
20 complaint. And I would probably deem it now as a UCP
21 complaint.

22 MR. SMITH: Okay. I think we're good to take
23 a break. 10 minutes, Amy?

24 MS. LEVINE: Sure.

25 (Recess taken.)

1 BY MR. SMITH:

2 Q So, Mr. Espiritu, when -- what do you
3 understand a student group to be?

4 A A student group is -- as it pertains to this
5 case?

6 Q Well, yeah. So, for example, in this case,
7 what -- what is a student group?

8 A A group of students who want to meet or have
9 activities on campus that sparks their interest.

10 Q Okay. And does the School District recognize
11 certain student groups?

12 A Yes.

13 Q And does Pioneer recognize certain student
14 groups?

15 A Yes.

16 Q Why does -- are these groups generally formed
17 around, like, student interests?

18 A Primarily, yes.

19 Q Why does the District give students
20 opportunities to form student groups around their
21 interests?

22 A Yeah. Just, I mean, to kind of continue to
23 spark that interest in a positive way during their time
24 here on campus.

25 Q And it enhances students' sense of belonging?

1 A Yes.

2 Q And provides social and recreational
3 activities?

4 A Yes.

5 Q Does Pioneer benefit from having student
6 groups?

7 A I would say yes. You know, if students are
8 feeling good, we benefit from that. If they feel a
9 sense of belonging, we benefit from that. So I would
10 say yes.

11 Q So student satisfaction is -- benefits from
12 having student groups?

13 A Yes.

14 Q Do you think it benefits GPAs?

15 A Yeah. I think there could be a strong
16 correlation to academic success.

17 Q And so graduation rates also?

18 A Yes.

19 Q Has Pioneer had student clubs as long as
20 you've been at Pioneer?

21 A That's correct.

22 Q How do students join student groups?

23 A Primarily word of mouth. We do have a club
24 rush once a year at the beginning so that clubs can kind
25 of market and recruit their own specific clubs.

1 Q And when groups are recruiting, can they
2 recruit specific people? Can they set requirements for
3 who can join the group?

4 A Yeah. I believe that all clubs, you know, as
5 far as I understand it, can have -- you know, the clubs
6 could be -- if you're going to form a club here at
7 school, it has to be free to all.

8 Q Okay. So are you aware of any clubs that are
9 not available to every student at Pioneer?

10 A Not that I know of, no. Not to my knowledge.

11 Q Does your office monitor how groups approve
12 new members?

13 A Not my office directly. You know, we -- I
14 rely on the activities director who communicates with
15 the teacher advisors, who communicates -- you know, I
16 know my activities director communicates directly to the
17 teacher advisors and student leaders.

18 Q And does she report to you?

19 A Yes.

20 Q And that's Michelle Mayhew?

21 A Correct. Yes.

22 Q Has it been Michelle Mayhew as long as you've
23 been at Pioneer?

24 A Yes. Correct.

25 Q So at Pioneer Ms. Mayhew does the initial

1 screening for recognition?

2 A Yes.

3 Q And then you would have the final say at
4 Pioneer on which groups are recognized?

5 A Yes.

6 Q How often do you interact with student groups
7 as principal at Pioneer?

8 A I would say on a regular basis in terms of
9 just -- you know, it's just like classrooms. I try to
10 be a visible presence and kind of interact with students
11 in a positive way. So I would pop into their meetings,
12 I would say hello. So just kind of like your normal
13 supervision kind of presence.

14 Q Okay. Do you -- outside of just kind of
15 generally being present, do you have any interactions
16 with student groups?

17 A No.

18 (Exhibit 45 marked for identification.)

19 BY MR. SMITH:

20 Q Let me introduce what I believe will be
21 Exhibit 45.

22 A Okay. I see it in front of me.

23 Q And Exhibit 45 is SJUSD -- or starts with
24 SJUSD 000121.

25 A Yes.

1 Q Do you recognize Exhibit 45?

2 A Yes.

3 Q What is it?

4 A It's kind of like our club directory list.

5 Q Do you recognize what year that is a club list
6 for?

7 A No.

8 Q Let me direct you to the second page. If you
9 look about three up from the bottom, does it list The
10 Satanic Temple Club?

11 A Yes.

12 Q Was The Satanic Temple Club a recognized
13 student group at Pioneer for the 2019-2020 school year?

14 A I believe so, yes.

15 Q Do you know if it was recognized at Pioneer
16 any other year?

17 A No, I do not.

18 Q Do you think that this is probably the
19 student -- do you think that this is the student club
20 list for the 2019-2020 year?

21 A I would guess so, yes.

22 Q So let me ask you this. Let's go to the first
23 page again. And you should see -- is the Key Club
24 identified as one of the recognized student groups?

25 A Yes.

1 Q Okay. Does anyone -- do any students attend
2 the Key Club for academic credit?

3 A Not for academic credit, no.

4 Q Does any class require attendance in the Key
5 Club?

6 A Not that I know of or am aware of, no.

7 Q Is the Key Club's mission related -- directly
8 related to the subject matter of any courses taught at
9 Pioneer?

10 A Not to my knowledge, no.

11 Q And is Key Club taught -- is the subject
12 matter of Key Club taught in a regularly offered course
13 at Pioneer?

14 A Not to my knowledge, no.

15 Q And does it concern the curriculum as a whole
16 at Pioneer?

17 A Not to my knowledge.

18 Q What about the Chess Club? Would your answers
19 for the Chess Club be the same to each of those
20 questions?

21 A I would say so, yes.

22 Q And Interact -- Interact is not related to the
23 Pioneer curriculum?

24 A No.

25 Q Noting that -- so, if you see on the right, a

1 number of these groups meet at lunchtime.

2 A Uh-huh.

3 Q Why is it that they're meeting at lunch?

4 MS. LEVINE: Calls for speculation.

5 THE WITNESS: They're meeting at lunch because
6 it's during the time where, you know, it's nonacademic
7 and, you know, it's -- you know, all the student members
8 are here present, and it's a good time for them to meet
9 while at school during nonacademic hours.

10 BY MR. SMITH:

11 Q And are there any classes taught during the
12 lunch period?

13 A No.

14 Q Are students required to be on campus during
15 lunch period?

16 A Yes. Unless they don't have a -- you know, an
17 afternoon schedule, fifth or sixth.

18 Q Okay. And this -- it appears that some of the
19 groups meet at S period; is that correct?

20 A Yes.

21 Q What is S period?

22 A It's designed for students to be able to do
23 their service learning hours -- their community service
24 hours, I'm sorry, if they choose to.

25 Q Okay. And are there classes during S period?

1 A No.

2 Q Are students allowed to leave campus during S
3 period?

4 A Yes.

5 Q And, if students -- you mentioned earlier if
6 they don't -- if a student doesn't have classes in the
7 afternoon, would they be allowed to leave campus during
8 the lunch period?

9 A Yes.

10 Q Does Pioneer publish the list of clubs on its
11 website?

12 A Not to my knowledge. I don't know.

13 Q Does it publish it -- does it publish the list
14 of clubs anywhere?

15 A The only -- to my knowledge, it's just to our
16 staff so that they know. You know, if a student asks
17 them a question, they can kind of refer to this list, to
18 which teacher/advisor to talk to and when their -- when
19 the club meetings are.

20 Q If I went to -- do you know if this year's
21 clubs were -- are posted on the FCA -- or let me --

22 Do you know if the 2021 academic year clubs
23 were posted on the Pioneer website?

24 A Yeah. I don't know for sure.

25 Q So you -- so -- and is that true for '19-'20

1 as well? You just don't know if it was or not?

2 A Yeah. I don't know if Michelle posts club
3 information on the website.

4 Q Okay. So I would point to -- on the first
5 column, do these appear to be in alphabetical order?

6 A Based on this list, yes.

7 Q Is the Fellowship of Christian Athletes on
8 this list?

9 A Not that I can see.

10 Q And why isn't FCA on the list?

11 MS. LEVINE: Calls for speculation.

12 THE WITNESS: I would assume that it's the
13 year '19-'20 -- school year 2019-2020 when they were not
14 recognized as an official club at Pioneer.

15 BY MR. SMITH:

16 Q Okay.

17 A Student club.

18 Q Okay. Just a second here.

19 Were there any other clubs for the '19-'20
20 year that had applied that do not appear on this list?

21 A I wouldn't know for certain.

22 Q Do you recall any student groups that applied
23 for recognition and were not included on this list?

24 A I'm not 100 percent sure. Sometimes Michelle
25 will talk to the students and, you know, maybe say that

1 the club is not appropriate. And, you know, I trust
2 that she makes those decisions as it's written by, you
3 know, the policies within our district. She'll come to
4 me if, you know, she needs support or guidance or if it
5 comes to my attention.

6 Q I'm going to introduce Exhibit 46.

7 (Exhibit 46 marked for identification.)

8 BY MR. SMITH:

9 Q Do you have it up?

10 A Yes.

11 Q And is Exhibit -- do you recognize Exhibit 46?

12 MS. LEVINE: Let the witness read it.

13 THE WITNESS: Yes.

14 MR. SMITH: Sorry, Amy?

15 MS. LEVINE: I said let the witness read
16 through it and make sure he knows what he's talking
17 about.

18 BY MR. SMITH:

19 Q Are you ready, Mr. Espiritu?

20 A Yes.

21 Q Okay. If you'll look on the second page --
22 well, first of all, let me ask you this. Do you
23 recognize Exhibit 46?

24 A Yes.

25 Q And what is Exhibit 46?

1 A It's an email exchange between myself and our
2 history teacher, Mr. Glasser, in regards to the question
3 that he had about the club list that was still being
4 distributed to our students in the -- starting at the
5 2019 school year.

6 Q So going back to my earlier question about
7 whether the club list was published, does it appear now
8 that it was?

9 A Your question was was it published on our
10 website. Yeah.

11 Q But it was published?

12 A Yeah. I think it's published.

13 Q And it's available to students?

14 A Yeah. Students who may be interested in
15 clubs, and that they can join.

16 Q So one way students would find out about clubs
17 that they might be interested in would be through this
18 list?

19 A Yes.

20 Q Does Pioneer have different types of student
21 groups?

22 A Yes.

23 Q What are the different types of student
24 groups, to your understanding, at Pioneer?

25 A I mean, the variations could be in the 50s or

1 60s, right, in terms of numbers. It's whatever sparks
2 their interest.

3 Q Okay. One thing I wanted to follow up on on
4 Exhibit 46, if you've got that up. There's a -- when
5 you're talking to Mr. Glasser, you indicate that you'll
6 make sure not to have FCA on the list. Why is that?

7 A I think his particular question was he was
8 trying to get clarity and understanding of why FCA was
9 on the list that was handed out to the student.

10 Q Uh-huh.

11 A He understood at that point that we made a
12 decision as a district and school not to officially
13 recognize FCA to be an official student club on campus.
14 So I was just informing him that, since they were not
15 officially affiliated for that school year with the
16 club, we'll need to remove them from that list.

17 Q Okay. Was the student Mr. Glasser was
18 referring to, do you know if he was involved in The
19 Satanic Temple Club?

20 MS. LEVINE: Reed, I'm going to interject
21 here. I see that student names were redacted down below
22 at the bottom of this document, but it looks like
23 there's a student name that was included on the first
24 page. So I think that that was probably an oversight on
25 our part, since it looks like it was intended to be

1 redacted.

2 MR. SMITH: Okay. We will just handle that
3 separately.

4 BY MR. SMITH:

5 Q Do you know what student Mr. Glasser was
6 referring to?

7 A Yeah. I'm assuming it was the student name
8 that wasn't redacted. Based on my email, I would say
9 that it was with a student name Blayke.

10 Q Okay. That's Blayke Alexanian?

11 A Yes.

12 Q Do you know if Blayke was involved in The
13 Satanic Temple Club?

14 A I believe he was one of the student leaders in
15 that club.

16 Q Okay. Did he talk to you about any objections
17 he had to FCA being on campus?

18 A Not him, no.

19 Q Did he ever talk to you about either an e-mail
20 or in person about objections to FCA being on campus?

21 A Not that I can recall, no.

22 Q So you're talking about different types of
23 groups. So there are -- so some student groups are ASB
24 approved; is that correct?

25 A All student groups that will be officially on

1 our club list has to be ASB approved, yes.

2 Q Is there a group called student interest
3 groups -- or is there a category called student interest
4 groups at Pioneer?

5 A Not on the -- not on any club list that I can
6 recall, no.

7 Q So there's no recognition status for student
8 interest groups at Pioneer, to your knowledge?

9 A Not to my knowledge, no.

10 Q So what are ASB-approved clubs?

11 MS. LEVINE: Vague.

12 THE WITNESS: Yeah. I mean, clubs that fill
13 out the application and, as far as we know, doesn't
14 discriminate on any particular students.

15 BY MR. SMITH:

16 Q So what are the -- so who serves -- so is
17 there an approval from the Associated Student Body for
18 ASB groups?

19 A Sorry. Can you repeat the question?

20 Q So is there a group at Pioneer that's, like,
21 referred to as the ASB?

22 A Yes.

23 Q Who serves on the ASB?

24 A Our ASB officers, student officers.

25 Q And how many students are on the ASB?

1 A I would say around five.

2 Q So, when you say "student class officers," is
3 that like the class of 2020 officers and the class of
4 2021 officers or?

5 A I believe it's -- it's the student body
6 officers. So yeah, the class officers I don't believe
7 is specifically on that. It's typically the student
8 body president, student body vice president, student
9 body secretary. So . . .

10 Q Okay. How many students are chosen to be on
11 the ASB?

12 A Like I said, about four or five.

13 Q Is that process the same across all the
14 District high schools, to your knowledge?

15 A Yes. It's by student votes.

16 Q And how does the ASB make decisions regarding
17 approval of student groups?

18 A They just need to review all the applications.
19 And you know, if none of the clubs -- there are no
20 questions raised and, you know, they feel like the club
21 is appropriate, they approve it.

22 Q So would it be by majority vote of the ASB
23 club?

24 A Yes.

25 Q Is there someone at Pioneer -- is there a

1 position called the ASB clerk?

2 A Yes.

3 Q Is that Zoe Valenzuela?

4 A Yes.

5 Q What is her job?

6 A Her job is to monitor and kind of facilitate
7 funds coming in and out of the ASB office.

8 Q So she's primarily in charge of ASB funds?

9 A Yes.

10 Q Are there guidelines given to the ASB students
11 on whether to approve a student group?

12 A Yeah. I believe our activities director would
13 review those guidelines with the officers, the ASB
14 officers. Obviously, you know, they can also get
15 guidance from her specifically, the administration team,
16 the principal, and in very few cases the District.

17 Q And are those guidelines written down?

18 A Not to my knowledge, no.

19 Q Can the ASB students approve a group if the
20 administration has decided not to approve that group?

21 A Yeah. I believe that, you know, the District
22 and the school has probably the final say in those
23 approved and non-approved clubs.

24 Q And how does -- so what is required to become
25 an ASB-approved club at Pioneer?

1 A An application from the student interest group
2 for students who are interested in forming a club or
3 group. To my knowledge, it's the application process,
4 and that's about it. I think it's just the application
5 form.

6 Q Okay. And once a student group is formed, is
7 there any mechanism to ensure that the group -- that the
8 student group is meeting its ASB requirements?

9 A Yeah. There's a general meeting at the
10 beginning of the year to kind of review those things
11 with the student leaders and teacher advisors.

12 Q And apart from that meeting at the beginning
13 of the year, is there any review of whether clubs are
14 following the guidelines or not?

15 A No. Not anything official, no.

16 Q Is there anything unofficially?

17 A Again, if things are brought to our attention
18 by either students or staff members. You know,
19 obviously, the application form is the one that our
20 activities directors review. You know, but we assume
21 best intentions with all of our students and our student
22 groups and clubs. Sometimes, you know, we don't know
23 the exact nature of clubs and its intent, and we rely on
24 all of our stakeholders to give us feedback. And we
25 would follow up on those things appropriately.

1 Q But apart from just somebody reporting it to
2 you, there's no review process?

3 A The only review process that we have is our
4 activities director goes through the application forms
5 99 point -- you know, I would say 95 percent of the time
6 it's just ringing clubs from the previous year. And
7 then there might be a handful of clubs that is applying
8 for kind of a new club form.

9 Q And when clubs are applying, do they have to
10 provide an ASB constitution?

11 A I believe so, yes, that's part of the form.

12 Q And why is that required?

13 A You know, just so that they're aware of, you
14 know, kind of the policies that they have to follow
15 throughout the school year and in their meetings.

16 Q What limits does the school -- does Pioneer
17 place on who can lead or join student groups?

18 A There's no -- I don't believe we have any
19 limit.

20 Q Does Pioneer require its groups to be student
21 led?

22 A Yes.

23 Q And what does it mean to you that if a group
24 is student led?

25 A That it's -- you know, the students who are

1 interested in the club are in a particular program
2 that's outside of the school programs, that they're the
3 ones in charge of, you know, kind of facilitating
4 meetings, and if they have to bring an outside
5 organization or outside speakers, that they are
6 facilitating those engagements.

7 Q So the students have the final say on who the
8 speaker is, that would be a student led club?

9 MS. LEVINE: Misstates the testimony.

10 THE WITNESS: Yeah. I would say that, yeah,
11 it's -- you know, they would have the final say on those
12 things. You know, we do have teacher advisors for the
13 clubs that can kind of help guide them and give
14 suggestions on things that is appropriate and things
15 that may not be appropriate during the school day.

16 BY MR. SMITH:

17 Q Do student groups at Pioneer choose their
18 leaders by a democratic process?

19 A Within the student clubs?

20 Q Yes.

21 A Not that I know of. Typically -- you know, I
22 don't pretend to know every club in detail in terms of
23 how they select their student leaders. A typical
24 process that I've experienced is whoever is the most,
25 you know, active in terms of forming that club becomes

1 the leader. I have -- you know, in my eight years here,
2 I haven't really encountered a situation where somebody
3 wanted to be a leader of a particular student club and,
4 you know, they couldn't decide on who is the president
5 and who is the vice president.

6 Q So, generally, the students just decide
7 amongst themselves who the leader of the group is going
8 to be?

9 A Yeah. I would say 90 percent of the time,
10 yes. I don't know of any democratic voting process
11 within the clubs.

12 Q And applications for student groups require
13 the groups to identify their leaders by name; is that
14 correct?

15 A Yes.

16 Q Why is that required?

17 A It states on the form just so that there's a
18 point person that we can reach out to if there is any
19 questions about when the meetings are, information about
20 the club that we can refer students to.

21 Q So the -- so, if they interact -- if the
22 administration wanted to interact with someone from a
23 club, they would most likely interact with the leader
24 identified on the application?

25 A Yes. Typically, yeah.

1 Q And you had mentioned that leaders kind of
2 choose among themselves who the leader should be.

3 Do you think that the leaders have an effect
4 on the direction a student group takes during the school
5 year?

6 A I mean, yeah, I guess it varies in interest
7 and kind of who the leader is.

8 Q But, like -- but some leaders would control --
9 like, so -- sorry. In your experience, do the
10 presidents of a group typically prepare the agendas for
11 club meetings?

12 MS. LEVINE: Calls for speculation.

13 THE WITNESS: Yeah. I wouldn't know how their
14 structure is.

15 BY MR. SMITH:

16 Q But do you think when you're interacting with
17 the group you're interacting with the leader because the
18 leader can kind of speak on behalf of the group,
19 correct?

20 A Yes.

21 Q Okay. And the leaders, do they have influence
22 in how the group interacts with other students?

23 A Again, that varies.

24 Q But can they have influence over whether --
25 can they influence how the group interacts with other

1 students?

2 MS. LEVINE: Calls for speculation. Assumes
3 facts not in evidence.

4 THE WITNESS: I think any member of a club can
5 have influence.

6 BY MR. SMITH:

7 Q Do you think that the leaders would have the
8 most influence in most cases?

9 A Yes.

10 MS. LEVINE: Same objections.

11 THE WITNESS: I guess you could say that,
12 yeah.

13 BY MR. SMITH:

14 Q Are there any specific factors that you know
15 of that when you're looking at groups or Ms. Mayhew is
16 looking at groups -- are there any specific factors that
17 you're looking for to determine whether a group is
18 approved or denied?

19 A Yeah. If it's -- you know, obviously, again,
20 the first thing is it has to be accessible to all. The
21 other thing we look at is making sure that, you know, it
22 continues to foster a safe sense of belonging with our
23 students and it's something positive and not one of, you
24 know, that they would feel, you know, that would not
25 make them feel safe.

1 Q So, when you say it has to be a group that's
2 positive, what do you mean by that?

3 A There are some things that are controversial.
4 You know, we -- we had a group here a couple years ago
5 that -- the same group that I think wanted to name their
6 group "Make America Great Again," and that was a
7 controversial topic in 2016, 2017. And, you know, we
8 had to kind of talk to the student leaders and seeing
9 if -- you know, what their goals were for the club and,
10 if I recall correctly, they would reconsider the name of
11 the club because it was creating an environment that
12 students didn't feel safe here on campus.

13 Q Was the "Make America Great Again Club"
14 recognized?

15 A I believe so they were -- you know, I don't
16 recall. I know that we had -- it was in 2016-2017. I
17 do recall that we had a conversation with them about the
18 name of the club. And I believe they reconsidered --
19 they considered changing it. I just don't know the
20 actual facts of that particular case.

21 Q So sometimes groups can be derecognized
22 because that group's views make other students upset?

23 MS. LEVINE: Misstates his testimony.

24 Go ahead.

25 THE WITNESS: I wouldn't state or say that

1 they're derecognized. I think as long as they're not
2 discriminating its members and leaders or potential
3 members or leaders, you know, we really don't have any
4 jurisdiction for us to derecognize them. I think
5 sometimes we would have conversations and try to get
6 more of an understanding of what the goal of the student
7 clubs are or will be and ensuring that it's -- again,
8 not discrimination, not discriminating to other students
9 or staff, and then that it's a safe space for all.

10 BY MR. SMITH:

11 Q Would you consider The Satanic Temple Club
12 controversial?

13 A I mean, initially with the name, I had some
14 reservations. But after having a conversation with the
15 leaders and leaders sharing the kind of national charter
16 website, you know, I vetted those with my administration
17 team, our activities director, and with Mr. Dane
18 Caldwell-Holden. And based on our findings, we didn't
19 feel that it was against our discrimination policy
20 within the District.

21 Q Do you consider the GSA a controversial group?

22 A I wouldn't consider it a controversial group,
23 but others, you know, are -- others may consider it
24 controversial.

25 Q So how do you distinguish between

1 controversial groups when you're approving groups for
2 ASB recognition?

3 A Again, I rely heavily on pulse of our
4 stakeholders, especially our students and staff, and
5 what is happening in the world outside of us.

6 Q So you look at the general climate of the
7 school in determining whether to approve an ASB club or
8 not?

9 MS. LEVINE: Misstates the testimony.

10 THE WITNESS: Again, I -- yeah. Yeah. I
11 would say that's accurate. You know, we get -- you
12 know, for example, we could have a club in 2004 that is
13 in support of, you know, police officers or -- and then
14 that may be controversial in 2020 or 2021. So that
15 would be a conversation I would have in kind of a
16 hypothetical situation with our student group. And, you
17 know, they would reconsider, you know, their purpose, if
18 I understand it correctly.

19 But at the end of the day, you know, after
20 hypothetically vetting that, it would -- I think it
21 would constitute something that may not be the
22 discrimination of other students or faculty. But that's
23 not to say that it may not make, you know, some students
24 and faculty members upset. So we just try to rely
25 heavily on what our District policies are and what

1 guidance we get from counsel.

2 BY MR. SMITH:

3 Q Okay. Does Pioneer require that student
4 groups turn in attendance lists after every meeting?

5 A Not to my knowledge, no.

6 Q Okay. Do high school -- okay. So when a
7 group is ASB recognized, what are some of the benefits
8 that it receives?

9 A Mainly, you know, it gets guidance from our
10 ASB structures, mainly our activities director. And
11 they also have, you know, access to our ASB kind of
12 accounting. They can have an account officially with
13 ASB. And they can use ASB to kind of, you know --
14 primarily use the ASB funds and accounts to raise money
15 or buy things based on the funds that they raise.

16 Q So they have access to an ASB account and the
17 ability to fundraise.

18 Are there other benefits to being ASB
19 approved?

20 A Yearbook recognition. And then they are also
21 on the ASB-approved club -- student club list.

22 Q What about faculty advisors? Do ASB clubs
23 have faculty advisors?

24 A Yes. They do as well, yeah.

25 Q Do all of the clubs receive the same benefits?

1 A Yes. All of our approved clubs receive all
2 the things that I just stated. Maybe I'm forgetting a
3 thing or two, but those are the primary things that they
4 are receiving by being approved.

5 Q And we discussed -- I think earlier we talked
6 about the -- so what groups -- if a group is not -- if a
7 student group meets at Pioneer but is not
8 ASB-recognized, can they have an ASB account?

9 A No.

10 Q And so can they fundraise?

11 A Yeah. They can certainly fundraise. They're
12 just -- they just wouldn't be able to kind of use the
13 account to deposit or withdraw funds based on those
14 fundraising numbers.

15 Q Would they be able to fundraise at Pioneer?

16 A I believe so. They would have to be
17 affiliated with the 501(c) nonprofit organization.
18 Sometimes clubs are already affiliated with that.

19 So, yeah, I mean, all of our students groups,
20 whether they're ASB approved or not, will have the same
21 opportunities as other approved clubs.

22 Q Do you know if FCA is allowed to fundraise at
23 Pioneer?

24 A They've never asked if they could. From my
25 five years there as principal and three years as an

1 assistant principal, I don't recall them having
2 requested to fundraise on campus. Not to my knowledge,
3 no.

4 Q And do -- and groups that are not ASB
5 approved, as you indicated, are not in the yearbook?

6 A Yes. That's correct.

7 Q And do non-ASB groups have a faculty advisor?

8 A Not in title, no. But they do have faculty.
9 All student groups, whether they're recognized by ASB or
10 not, will have a faculty at the meetings to ensure, you
11 know, they're supported and that things are safe.

12 Q Okay. I'd like to introduce an exhibit that
13 was previously introduced.

14 Okay. Never mind. We will introduce it as
15 Exhibit 47. So that should be up on your . . .

16 (Exhibit 47 marked for identification.)

17 BY MR. SMITH:

18 Q So do you have Exhibit 47 open?

19 A Yes.

20 Q Do you recognize Exhibit 47?

21 A I recognize it to be an ASB club team charter
22 request, yes.

23 Q And is that the charter request for Fellowship
24 of Christian Athletes?

25 A Correct.

1 Q And was that request denied?

2 A It would appear so on this form, yes.

3 Q Do you see in approximately the middle of the
4 sheet it says the club will need an ASB account?

5 A Yes.

6 Q Did the -- does this application indicate that
7 the group is asking for an ASB account?

8 A It would indicate it, yes.

9 Q And does it also indicate that the FCA
10 intended to fundraise for that year?

11 A Yes.

12 Q So do you know if FCA was allowed to
13 fundraise?

14 A Again, we would not say no to that. This form
15 is requesting if their club will be recognized.

16 Q But it was not allowed to have an ASB club or
17 ASB account?

18 A Again, as a nonrecognized student group, it
19 would not have access to the ASB account, no.

20 Q Are there any other student groups that you're
21 aware of that meet at Pioneer that are not ASB approved?

22 MS. LEVINE: Vague as to time.

23 THE WITNESS: I wouldn't know for certain.

24 BY MR. SMITH:

25 Q So there are benefits available to ASB groups

1 that are not available to FCA at Pioneer?

2 MS. LEVINE: Vague as to time.

3 THE WITNESS: Yeah. With the things that we
4 listed earlier, yes. ASB account and yearbook
5 recognition is two in the top of my head that they
6 wouldn't have access to.

7 BY MR. SMITH:

8 Q Okay. And they haven't had access to an ASB
9 account since at least the 2019-2020 school year; is
10 that correct?

11 A That is correct. And then the 2020-2021
12 school year, obviously no clubs had access to our ASB
13 accounts, outside of sports teams.

14 Q Okay. So sports teams did have ASB accounts
15 during the 2020-2021 school year?

16 A Yeah. Towards the end of the school year when
17 sports was approved in our county, obviously, they had
18 expenses and -- they had expenses that needed to be
19 paid. So we had to grant them access to their funds.

20 Q What types of fundraisers do student clubs
21 perform at Pioneer?

22 A Mostly, if it's for student clubs, it's mostly
23 food fundraising. And that's one that's probably the
24 one that I see the most. For our sports teams, it's --
25 you know, it's those cards that they sell for local

1 businesses that it gives you like 20, 30 percent off.

2 Our sports teams also do Snap! Raise where
3 they kind of just ask for donations from our community.
4 But in terms of our student clubs, the main has been
5 food sales.

6 Q And do all of the sports teams have ASB
7 accounts?

8 A Yes.

9 Q Where do ASB funds come from?

10 A ASB funds are generated by the sports teams.
11 You know, we don't give any funds to any sports through
12 ASB or to any clubs. So that's not something that would
13 benefit -- like I said, doesn't benefit any of our
14 teams -- ASB -- they don't benefit from ASB in terms of
15 receiving funds.

16 Q So none of the -- none of the District's
17 budget, for example, or Pioneer's budget goes to ASB
18 fund -- ASB clubs?

19 A No.

20 Q Just for clarity, that means that they -- that
21 they don't receive -- that ASB clubs don't receive funds
22 from Pioneer's budget?

23 A No. Or the district budget, no.

24 Q Does the District receive federal funds?

25 A I believe so, yes.

1 Q Does Pioneer receive federal funds?

2 A Yes.

3 Q So you had mentioned food fundraisers. You
4 mean -- is that, like, groups that are selling cookies
5 or bake sales or pizza, things like that?

6 A Yes.

7 Q Does Pioneer have a food fair?

8 A Yes, they do.

9 Q What is the food fair?

10 A It's -- you know, there's regulations on how
11 many we can have. I believe we had two a year that
12 we're allowed to do. And we have clubs signed up to
13 sell food to fundraise for their clubs.

14 Q Are only ASB clubs allowed to participate in
15 the food fair?

16 A No. Every student group is allowed to
17 participate in the fair.

18 Q Are there any regulations on who can
19 participate in the food fair?

20 A Yeah. I mean, the regulations is -- you know,
21 it's -- and it's one that's -- I want to say fairly new.
22 It's -- they have to sell food products that meet the
23 kind of nutritional guidelines for -- to be available
24 for sales in school. Like has to be under a certain
25 amount of calories, and it can't be homemade.

1 Q Does Pioneer have a diversity week?

2 A I'm sorry, Mr. Smith. It's been a while since
3 we've been in person, so . . .

4 Q Fair enough.

5 A Yeah. I -- I think we do. We've had some in
6 recent years, in previous years, but I just -- the last
7 years have been kind of a blur.

8 Q And that's fair.

9 Are ASB -- are only ASB groups allowed to
10 participate in diversity week?

11 A No. Any student group that is wanting to
12 participate in diversity week we would allow to
13 participate as long as it's creating a safe environment
14 for our students and staff and community.

15 Q You had mentioned that ASB clubs are put in
16 the yearbook.

17 Is the yearbook a way in which students might
18 find out about clubs that they didn't know about
19 otherwise?

20 A I would assume so. I mean, I couldn't say for
21 certain if that's a way for them to -- I mean, the
22 yearbook is published at the end of the school year, so
23 for that particular student, I don't know what purpose
24 that would serve them that school year. Because we have
25 changes in clubs -- you know, changes I would say about

1 maybe 30 percent -- yeah, 70 to 90 percent of our clubs
2 return, but there's a handful of changes.

3 Q But for the clubs that return, it might be
4 useful to be in the yearbook so that like people who
5 came to the school maybe after club rush could learn
6 about the club, correct?

7 A Yeah. I would assume so, yes.

8 Q For the sports teams, are they classified --
9 so you mentioned that they were classified as ASB or
10 they have ASB approval.

11 Do they have any other separate
12 classification?

13 A They have an ASB account. Obviously, their
14 classification is an after-school activity as a sport.
15 So I would say those two are the main classifications or
16 recognitions.

17 Q Okay. Are there other ASB -- like, are there
18 nonsports teams that are recognized as after-school
19 groups?

20 A Yeah. Robotics is one. You know, drama is
21 considered extracurricular too. We have a class, but,
22 you know, they also do a lot of things after school.

23 Q What kind of records does ASB keep with
24 respect to its ASB-approved groups?

25 A Again, it's the application process, you know,

1 or form that they have. I would imagine also their
2 expense reports and, you know, their kind of ASB account
3 records. But those are the only things that I can think
4 of in terms of records that we would have with any
5 particular teams or clubs.

6 Q Okay. Does Pioneer recognize any difference
7 between like -- with respect to the ASB, like between
8 the varsity teams and, like, other sports clubs, like
9 say for example the Spike Ball Club?

10 A Not us in particular. I mean, we recognize
11 them all as student groups and activities. They may
12 have fallen under other classification or guidelines
13 based on, you know, what the affiliations are within our
14 district or our area.

15 Q Okay. And would -- I'm sorry. I forgot the
16 name of the ASB clerk. Would she be the person that
17 would have records with respect to ASB funding?

18 A Whoever sits on that seat of ASB clerk would
19 have access to it, yes.

20 Q Is there anyone else that would have access to
21 that?

22 A A different school and our activities
23 director.

24 Q Does Pioneer have any criteria to ensure that
25 ASB funding is allocated in a viewpoint neutral manner?

1 MS. LEVINE: Calls for a legal conclusion.
2 Calls for expert opinion.

3 THE WITNESS: Yeah. We don't really have any
4 funds to allocate, so, yeah, it's -- you know, we don't
5 fund any of the sports teams or clubs that we have.

6 BY MR. SMITH:

7 Q Okay. Are you familiar with the Equal Access
8 Act?

9 A Yes. I've seen it.

10 Q Okay. Have you received any training about
11 complying with the Equal Access Act?

12 A No. No particular training, no.

13 Q Have you ever trained others about the Equal
14 Access Act?

15 A No.

16 Q Okay. Does the District offer any -- does the
17 district offer any training about the Equal Access Act?

18 A Not to my knowledge, no.

19 Q What is your understanding of what the Equal
20 Access Act requires?

21 A It requires schools -- public schools to make
22 sure that they don't deny students their First Amendment
23 rights to conduct meetings, whether it be religious,
24 political, or other views.

25 Q What have you done to ensure that Pioneer

1 complies with the Equal Access Act?

2 MS. LEVINE: Calls for a legal conclusion.

3 Vague. Overbroad.

4 THE WITNESS: I would say to not say no to
5 anything at first request and make sure that every
6 student can have all the same equal access to the club
7 sports, programs that we have, anything that we offer.

8 BY MR. SMITH:

9 Q I'm sorry. Go ahead.

10 A And that they're free to be able to -- that
11 students primarily are able to meet and discuss pretty
12 much anything that they desire, as long as it's not
13 intimidating or harassing anyone else. Yeah.

14 So I always give an example like if my
15 group -- if there is a student group that wants to
16 meet -- this is an example -- how I interpret the Equal
17 Access Act. If they wanted to have a KKK meeting,
18 obviously, that would be going against -- if they're
19 discriminating and saying that only certain groups can
20 come in, obviously, we would say that's against our
21 discrimination policy. Again, we'd have a conversation
22 with them about -- you know, because it's controversial.
23 But at the end of the day, I wouldn't be able to say no
24 to them meeting on campus during lunchtime or anytime
25 outside of the instructional day.

1 Q Would you consider FCA to be a religious
2 group?

3 A You know, I don't attend their meetings. I
4 wouldn't say I've attended them regularly or have sat
5 through a whole meeting. But just by name, I would say
6 yes, there's a religion affiliation with the Fellowship
7 of Christian Athletes.

8 Q Do you feel that the FCA is the equivalent of
9 the KKK?

10 A No.

11 Q Why not?

12 A My knowledge on my readings of history and
13 listening, you know, KKK has a history of discriminating
14 and violence with groups as it pertains to recent
15 history. I have no knowledge of FCA having that
16 history.

17 Q So you don't think that FCA is discriminatory?

18 MS. LEVINE: Argumentative. Asked and
19 answered. Misstates the testimony.

20 THE WITNESS: Yeah. I would say that -- I had
21 this conversation with Rigo. From my experience, no.
22 Obviously, the sexual purity statement is a different
23 thing. You know, I think that itself is discriminatory.

24 BY MR. SMITH:

25 Q Okay. So I know at one point you mentioned

1 being proud of Charlotte and Elizabeth.

2 Why were you proud of Charlotte and Elizabeth?

3 A I think it's difficult to be a leader. You
4 know, there's a lot of things that comes with being a
5 leader of anything. And for them to do it at an age
6 where you don't see a lot of those qualities formed yet
7 was impressive. And the way they handled, you know,
8 kind of the certain situations that they were faced with
9 was admirable for their -- I mean, for any age really.
10 And, you know, they were always respectful, even though
11 they didn't receive the answers that was favorable to
12 them or their group.

13 Q You referenced certain situations that they
14 were faced with. What situations were those that they
15 handled admirably?

16 A I think students trying to gain clarity about
17 what the sexual purity statement was and what it stood
18 for. You know, as leaders of the group, you know, they
19 had to face some of those questions from, you know, some
20 of our students.

21 Q And would you say that that was a stressful
22 situation for them?

23 A Yeah. I mean, I don't want to speak on their
24 behalf. You know, I know that different students react
25 to things differently. It's certainly something that

1 they, you know, had to face and -- be faced with during
2 those months.

3 Q But it would have been reasonable for them to
4 feel stress because of that have situation, correct?

5 A Yeah. I try not to answer -- I try not to
6 answer questions like that, you know, because my wife
7 always tells me, like, just because you wouldn't feel
8 like it's stressful, that doesn't mean it's stressful
9 for them.

10 To answer your question, it wouldn't stress me
11 out if it was me. But, you know, like I said, ask the
12 question and they'd be able to answer it.

13 Q But you don't have any reason to think it
14 wouldn't be stressful for them?

15 MS. LEVINE: Asked and answered.
16 Argumentative. Calls for speculation.

17 THE WITNESS: Yeah. I wouldn't have a reason
18 to think if it was or if it wasn't.

19 BY MR. SMITH:

20 Q Did they tell you at any point they felt
21 unsafe because of the situation?

22 A No. Not those words. They did not say that
23 they felt unsafe on campus, no.

24 Q What did they say?

25 A That they would rather not get questions about

1 the purity statement.

2 Q Anything else that they said?

3 A I mean, there was a lot of conversation.

4 MS. LEVINE: Calls for a narrative.

5 THE WITNESS: Yeah. There was a lot of
6 conversations that I had with Elizabeth and Charlotte
7 and Rigo and their families. So I think you'd have to
8 be more specific in asking me which specific
9 conversations you're wanting me to answer and speak to.

10 BY MR. SMITH:

11 Q Did they indicate to you that they felt
12 bullied?

13 A I would say no.

14 Q Did anyone indicate to you that Charlotte and
15 Elizabeth felt bullied?

16 A I think their parents expressed concerns of
17 the protest specifically. You know, that's the time
18 when we met as a group, you know, with Rigo and both
19 parents of Elizabeth and Charlotte.

20 Previous to that, you know, I seeked out
21 Elizabeth and Charlotte to make sure that they were
22 okay. Because, again, I can understand the pressures of
23 leadership and expressed to them that I support them.
24 They're our students and can always come to me if there
25 is -- you know, if there is a situation that rises up to

1 the point where they are not feeling safe on campus and
2 they are not able to attend because of, you know,
3 constant, you know, intimidation or harassment.

4 I try to articulate to them, you know, what
5 constitutes those things and make sure they understand.
6 I do that with all students who may be experiencing or
7 may experience, you know, constant, you know, pressures
8 from students. You know, there are certain differences
9 with a student asking you a question. But again, how
10 you interpret that and how you feel, I try not to argue
11 with our students when they feel a certain way. So when
12 a student comes in here and says "Hey, I'm being
13 bullied, you know, I'm not going to question that
14 feeling. My job as a principal is to investigate it and
15 make sure that it's vetted, and, if it is in fact
16 bullying, you know, what authority do you have by Ed
17 Code to be able to give it a consequence.

18 I would say that 80 percent, 90 percent of the
19 time, you know, it's a conversation on both parties and
20 making sure that they understand, you know, what they
21 can and can't do and what jurisdictions do I have to be
22 able to protect both parties.

23 Q You indicated that you checked in with them to
24 see that they were okay. What caused you to check in
25 with them to see that they were okay, Charlotte and

1 Elizabeth?

2 A Again, I was getting -- I was getting a sense
3 that this was getting more public than I would -- it was
4 getting public -- it was getting public to a point
5 where, you know, I -- if I had any control of it I
6 wouldn't want. I mean, I want all of our students here
7 to just concentrate on school and fun things and
8 positive things. Unfortunately, that doesn't happen.
9 There are things that are out of my control and out of
10 things that I can even put a consequence to. So I just
11 wanted to make sure that -- you know, again, I've got a
12 pretty good sense -- pulse of my campus and my students
13 and staff and our community, and I knew that this was
14 something controversial and something that they -- and
15 it's more public than I ever wanted it to be.

16 Q Why didn't you want it to be public?

17 A Again, I want my students concentrating on
18 school and positive things. But there are things
19 that -- and they're teenagers and young adults that --
20 and even adults here on campus that -- you know, there's
21 a lot of controversial things that are happening outside
22 us that I would be naive to think that it wouldn't come
23 into our school.

24 And with the sexual purity statement being --
25 kind of the questions that some of our students and

1 staff had, I wanted to make sure that they were okay.
2 Because they were the leaders of FCA as it pertained to
3 here at Pioneer High School. And you know, obviously,
4 our students -- some of our students -- a handful of our
5 students knew that.

6 Q Do you feel that the derecognition made it
7 more public?

8 A I think there was a lot of things that made it
9 public. I think, if I had to take a pulse of our
10 campus, I would say that, you know, before the Pony
11 Express article, I would say that 80 percent, maybe even
12 more, 90 percent of our students didn't know anything
13 about the derecognition of our -- of FCA.

14 After the Pony Express, it may have gone to
15 maybe 40 percent of them knew. I mean, not everyone
16 reads the Pony Express.

17 Q Okay. And, when you refer to the Pony
18 Express, was that the May 2019 Pony Express?

19 A I don't recall when the exact issue that it
20 was, but it was an article. But I knew that there was
21 an article that was written on -- in regards to FCA and
22 the purity statements and our decision to not recognize
23 it as an official club.

24 Q So the article is about the derecognition of
25 FCA?

1 A I would say so, yes.

2 Q Did the article indicate why FCA was
3 derecognized?

4 A I don't recall the exact details of the
5 article. I would say that the only communication that I
6 have always given people that ask in terms of, you know,
7 Charlotte and Elizabeth's families, Rigo, and staff
8 members that may inquire what is happening with FCA, the
9 language that I continued to use was the language that I
10 was given by counsel in terms of the reasons for our
11 decision. That may have been used in the article.

12 Q Okay.

13 MS. LEVINE: I'm going to move to strike to
14 the extent that he referred to communications between
15 the District's attorneys and the witness.

16 MR. SMITH: Well, what in particular, Amy?
17 Because I think all he just said was that he was giving
18 an answer publicly that he had been given by counsel.

19 MS. LEVINE: Well, if he's been given it by
20 counsel, then I --

21 MR. SMITH: Well, I mean he's giving it
22 publicly. You can't claim privilege over public
23 statements.

24 MS. LEVINE: Right. But I think to the extent
25 that that suggests that a communication between client

1 and attorney, then that portion of it is privileged. So
2 to the extent he distributed information publicly,
3 that's fine. I think the part of it that I'm concerned
4 about is where he got it.

5 MR. SMITH: Okay. Understood. We'll oppose
6 that objection. But, obviously, we'll -- we're not
7 trying to get into any privileged conversations.

8 MS. LEVINE: Yeah. I just don't want it to be
9 deemed as a waiver.

10 MR. SMITH: Yeah. We don't deem it as a
11 waiver.

12 (Exhibit 48 marked for identification.)

13 BY MR. SMITH:

14 Q So I think article -- or Exhibit 48 is in
15 Exhibit Share.

16 MS. LEVINE: Reed, is there a good time to
17 take a lunch break coming up soon?

18 MR. SMITH: Yeah. Let's -- just after this
19 exhibit I think we'll take a lunch break.

20 BY MR. SMITH:

21 Q Do you have Exhibit 48 up, Mr. Espiritu?

22 A Yes, I do. It's not very clear, but I'll do
23 my best to review it, if there is anything in particular
24 you want me to review.

25 Q Fair enough.

1 In particular, I'd focus on the article -- or
2 I believe it's an editorial that says Christian clubs --
3 I don't actually have the article so I can't see it
4 myself. But the editorial by Annika Dahlberg and Emily
5 Nguyen at the bottom of page 1. And you can take a
6 moment to familiarize yourself with that.

7 A I see the article, and I couldn't make
8 anything clearly out of the article.

9 Q Well, do you see at the bottom -- can you zoom
10 in too?

11 A Yeah. That's what I'm trying -- the print is
12 still unclear. But I can make it out if you want me to
13 review any particular part.

14 MS. LEVINE: If you can't read it, then -- I
15 think that we need a new exhibit if he can't read it.

16 BY MR. SMITH:

17 Q Well, let me see if I can pull that up. And
18 we'll just do it as a screen share. I believe it's on
19 the screen now. Is that correct?

20 A Yes.

21 Q Okay. So I'd like to you focus on the second
22 column. And it indicates that Climate Committee and
23 District officials made the decision to revoke club
24 status from FCA.

25 Can you see that?

1 A Yes.

2 Q Can you read the paragraph under that
3 paragraph?

4 A That's my quote?

5 Q Yeah.

6 A "The pledge is of a discriminatory nature. We
7 decided that we are no longer going to be affiliated
8 with them," said Espiritu. "The Equal Access Act
9 requires any public school to provide equal access for
10 students to meet and in facilities during the
11 noninstructional time. Even though we disagree with the
12 pledge, we are going to continue to give them full
13 access to what normal clubs have. It's about giving
14 every student those rights. Respect and listening have
15 to go both ways."

16 Q Do you think that -- first of all, is that
17 quote correctly attributed to you?

18 A Yeah. My student reporters are pretty -- they
19 record all of my quotes. So I would say it's -- yeah,
20 it's accurate of whatever I said to them at the time.

21 Q Do you feel that brought negative attention
22 onto FCA?

23 A I think I was trying to answer the question
24 that they were asking at the time. If it brought
25 negative attention to FCA, that's not one I can answer

1 for our school community.

2 Q Well, do you think that indicating that a
3 group is -- a group's pledge is of a discriminatory
4 nature is a positive?

5 A I mean, if you're asking for my opinion, I
6 think that the last part of my statement is about giving
7 access to all student groups whether we agree with
8 their -- what they're meeting about or not. And we have
9 to respect and listen to all groups because those things
10 have to go both ways. So . . .

11 Q Well, do you think that the student body
12 largely agreed with the FCA statement?

13 MS. LEVINE: Calls for speculation.

14 THE WITNESS: Again, I can't speak for my
15 student body. Yeah. I couldn't speak for my student
16 body. I think the first part of my statement was
17 stating facts of what decision we as a district made and
18 the pledge that FCA had. I don't think I was trying to
19 paint a picture of me disagreeing with those things or
20 not.

21 BY MR. SMITH:

22 Q Well, did the District withdraw benefits from
23 FCA because of this pledge that's referred to here?

24 MS. LEVINE: Asked and answered.

25 Argumentative.

1 THE WITNESS: I think the two that we
2 highlighted is ASB access and yearbook recognition.

3 BY MR. SMITH:

4 Q And why didn't the District -- why did the
5 District no longer want to be affiliated with FCA?

6 MS. LEVINE: Asked and answered.

7 THE WITNESS: The pledges -- we felt that the
8 pledge was discriminatory in nature.

9 BY MR. SMITH:

10 Q So you felt that that was something that the
11 District should disaffiliate itself from FCA because of,
12 correct?

13 A We decided that as a whole, yes.

14 MR. SMITH: Just a second. Okay. We're good
15 for taking a lunch break, Amy.

16 MS. LEVINE: Okay. Great. How much time?

17 MR. SMITH: How much do you need?

18 MS. LEVINE: I guess at least 45 minutes would
19 be good.

20 MR. SMITH: Sure. But let's just make sure
21 that we're back and ready to go in 45 minutes.

22 MS. LEVINE: Okay. What time is that?

23 MR. SMITH: That would be 3:53 here. So
24 probably 12:53 your time.

25 MS. LEVINE: Okay. Sounds good.

1 MR. SMITH: Thank you, ma'am.

2 MS. LEVINE: Thank you.

3 (Recess taken.)

4 BY MR. SMITH:

5 Q Mr. Espiritu, I hope you had a good lunch.
6 I'd like to ask you about some specific groups that have
7 been recognized at Pioneer. And when I talk about a
8 group being recognized, I mean that it has ASB approval.

9 Do you understand that?

10 A Yes.

11 Q So let me introduce what will be Exhibit, I
12 think, 49.

13 (Exhibit 49 marked for identification.)

14 BY MR. SMITH:

15 Q I think it should be in the share file.

16 Do you have it up?

17 A Yes.

18 Q Do you recognize Exhibit 49?

19 A Yes. I recognize it to be a charter ASB club
20 request.

21 Q And is this specifically a club request for
22 the Harry Potter Club?

23 A Yes.

24 Q Is this what an approved ASB charter looks
25 like?

1 A Yes.

2 Q What is the stated purpose of the Harry Potter
3 Club?

4 A Meeting fandom friends, discussing Harry
5 Potter in a safe and welcoming environment.

6 Q Why does Pioneer ask students about the
7 purpose of their club?

8 A Just to know the nature of why they're meeting
9 and forming the club.

10 Q And is that something that the -- that Pioneer
11 considers when it's determining whether it should
12 approve a club or not?

13 A That would be the initial, yeah, information
14 of understanding of why they're meeting.

15 Q So are there certain purposes of which -- for
16 which Pioneer would not recognize a club?

17 A Yeah. If the purpose of their meeting is to
18 create an unsafe environment for school or if it's,
19 again, just discriminating against another group or
20 individual.

21 Q And, when you say the purpose of the meeting
22 is to create an unsafe environment, what do you mean by
23 an unsafe environment?

24 A You know, they're discussing topics that are
25 not -- you know, not appropriate in the school setting.

1 They're not welcoming of all students and community
2 members.

3 Q So I just want to make sure that I'm
4 understanding here. So, if their purpose was not
5 welcoming of all members, would that be a reason to deny
6 the ASB approval?

7 A That would be a reason for us to investigate
8 it, yes.

9 Q Okay. To investigate it? And what would you
10 be investigating?

11 A We would investigate, again, the nature of the
12 meeting, their goals, and you know, making sure that
13 it's not making anyone feel unsafe.

14 Q Okay. Well, what would you look at
15 specifically with regard to their goals?

16 A Again, specifically, if it's school
17 appropriate.

18 Q Well, what do you mean by a school appropriate
19 goal?

20 A It could mean a lot of things. Like I said,
21 it's -- I think you're asking me for specifics, but, you
22 know, I'm lacking context here.

23 Q Okay. Well, maybe if I switch the question up
24 a little bit.

25 What would be an inappropriate goal for a

1 student for an ASB-approved club?

2 MS. LEVINE: Incomplete hypothetical. Calls
3 for speculation.

4 THE WITNESS: Like I said, it's just hard for
5 me to -- I mean, if I saw something, I could tell you if
6 it's inappropriate or appropriate.

7 BY MR. SMITH:

8 Q Okay.

9 A What you're showing me I would say is
10 appropriate for them to meet about, if they're meeting
11 about Harry Potter in a safe and welcoming environment,
12 this wouldn't raise a red flag to any of us who is
13 reading this application.

14 And if the purpose of the club is to hurt
15 other students, I guess that would be one that would be
16 a red flag right away.

17 Q And, when you say the purpose of the club is
18 to hurt other students, again, what do you mean by
19 hurting other students?

20 A Again, it's a hypothetical that I just came up
21 with.

22 Q Right.

23 A I didn't have any meaning behind it. I would
24 just say that that would create a red flag for me.

25 Q Well, let me ask. Do you mean physically

1 hurting other students or do you mean emotionally
2 hurting other students, or would both of those be --

3 MS. LEVINE: Speculative and incomplete
4 hypothetical.

5 THE WITNESS: I think physically would be one
6 that is going to be obvious. Emotional one is sometimes
7 a little bit harder to dig into. And, like I said,
8 it's -- for the purpose of the question, you're asking
9 me, you know, I would have to see it to determine if
10 it's in fact safe or not safe.

11 But what you're showing me, I would say my
12 opinion on this application is this is a safe and
13 acceptable club to approve.

14 BY MR. SMITH:

15 Q And, I guess, are there some circumstances in
16 which emotional harm -- a goal of emotional harm would
17 be enough to exclude -- to not approve an ASB
18 application?

19 A That would be -- it would be enough for me to
20 start an investigation into the matter, yes.

21 Q Okay. And the investigation would be into
22 whether it was appropriate to approve the ASB club or
23 not?

24 A Yes.

25 Q Can we go back to Exhibit 47, which you should

1 already have. Do you have that up?

2 A Yeah.

3 Q And is this the FCA charter application?

4 A Correct. Yes.

5 Q Is the purpose of the FCA an appropriate
6 purpose, in your view?

7 A Yes.

8 Q Well, so why is the FCA's purpose appropriate
9 then?

10 A Why is it appropriate?

11 Q Yeah.

12 A It's appropriate because nothing on what's
13 stated here I would say would make any student -- I
14 mean, I guess any statement can make anyone feel
15 offended, but if I investigated this in terms of what
16 the statement actually read in this application form, I
17 would deem it as safe.

18 I mean, you may not agree with the purpose of
19 the club, but again, we don't base approval based on if
20 our students agree with the purpose of other clubs or
21 not.

22 Q Do you think the FCA was fulfilling that
23 purpose at Pioneer?

24 MS. LEVINE: Calls for speculation and vague.

25 THE WITNESS: In terms of the purpose of why

1 they're meeting, I would say that my observation has
2 been what is stated here.

3 BY MR. SMITH:

4 Q So that accurately describes FCA's purpose?

5 A From what I've experienced in their meetings
6 and the speakers that they've brought in, I would say
7 that's accurate, yes.

8 Q Okay. And I'd like to introduce another
9 exhibit, which will be Exhibit 50.

10 (Exhibit 50 marked for identification.)

11 BY MR. SMITH:

12 Q Do you have that?

13 A Yes.

14 Q Okay. And do you recognize Exhibit 50?

15 A Yes, I do.

16 Q What is Exhibit 50?

17 A It's a club request for The Satanic Temple
18 Club.

19 Q And was that request approved?

20 A Yes. It was granted.

21 Q So can you read out the purpose of The Satanic
22 Temple Club?

23 A Yes. To promote religious pluralism,
24 encourage political activism, to teach the students
25 effective protest, to practice the seven tenets of TST,

1 to protest injustice.

2 Q And TST, do you think that means The Satanic
3 Temple?

4 A I would guess so, yes.

5 Q Do you know if The Satanic Temple Club at
6 Pioneer was affiliated with the national Satanic Temple?

7 A I don't know for sure. My guess, I don't
8 think they were officially affiliated with the national
9 charter. But again, that would just be my guess.

10 Q So you didn't investigate that one way or the
11 other?

12 A I don't investigate any of our clubs, student
13 clubs, if they're affiliated with national
14 organizations. Some of them share with us that they
15 are. In this particular instance, their student leaders
16 didn't state that they were.

17 Q Does anybody at Pioneer investigate whether
18 groups are affiliated with a national organization?

19 A No. I don't know how that would affect us
20 approving the student club.

21 Q So that's not a factor you consider when
22 determining whether a group should be ASB approved?

23 A In my opinion, no. As long as it's student
24 led, I think that's kind of like -- you know, again, the
25 purpose of the club, you know, keeping -- make sure

1 students are safe and inclusive. And yeah, I don't
2 know -- and it's student led, right? All activities are
3 what students want to do. If they're affiliated with
4 national charters, I don't think that's relevant.

5 Q So one of the -- so this is a group that you
6 said you had investigated -- correct? -- before granting
7 approval; is that correct?

8 A Yeah. I vetted it.

9 Q Okay. Did you ask them about what they meant
10 by "to protest injustice"?

11 A Not that particular -- I didn't ask
12 specifically what they felt -- I mean, I just -- I just
13 read it to be to teach students effective protest,
14 meaning how to do it safely and without harm to others.

15 And again, you know, when I brought this up to
16 student services, which is Mr. Dane Caldwell-Holden, you
17 know, it's about -- I mean, we'd rather not have
18 students protest each other on campus, but, you know, in
19 speaking with the police department, it wasn't something
20 that we would be able to prevent them doing.

21 And, you know, we'd rather not have them do
22 it. So I think that's a conversation -- that's what the
23 red flag was that was raised to me. You know, obviously
24 the name is, you know, not one that's ideal. And then,
25 obviously, anytime you see something that says you know,

1 "protest," you know, that was a concern. But that was
2 vetted by SJPD and our student services office that it
3 was in fact something that students were entitled to do.
4 So, at that point, I couldn't prevent the club from
5 happening or if they wanted to, you know, organize
6 peaceful protests.

7 My duties as the principal was make sure it's
8 supervised appropriately and that, as much as possible,
9 all students knew what the guidelines were.

10 Q When you were investigating The Satanic Temple
11 Club, did you speak to any students involved in The
12 Satanic Temple Club?

13 A I spoke to Blayke, who was the name on the
14 charter, and then I also spoke to Ryan Dunker. And I
15 believe that was it.

16 Q So it was your understanding that Ryan Dunker
17 was associated with The Satanic Temple Club?

18 A When I spoke to both Blayke and Ryan, my
19 conversation with them actually concluded that Ryan was
20 not affiliated with them, at least not in a leadership
21 capacity. Blayke just stated that -- he actually made
22 it very clear that this was not something in relation to
23 GSA, LGBTQ, or with the students who were actually
24 organizing the protest outside of the FCA meetings.
25 Yeah, he made sure to make that clear to me. I didn't

1 even ask that.

2 Q Did you do anything outside of talking to
3 Blayke to confirm that The Satanic Temple Club didn't
4 have anything to do with organizing the protest?

5 A Yeah. I spoke to Ryan, who was the organizer
6 of the protest.

7 Q Outside of talking to Ryan and Blayke, did you
8 do anything to confirm that The Satanic Temple Club
9 wasn't involved?

10 A Yeah. Once I spoke to the president of The
11 Satanic Temple Club and organizer of the protest, I felt
12 that I had enough, you know, evidence that I needed to
13 make sure that when -- that they were not together.

14 I mean, I don't think it would have changed
15 anything, to be quite honest. So, again, those were
16 information that, again, Blayke made clear to me. And I
17 just wanted to make sure of what Ryan's involvements
18 were. Just for the purpose of me understanding, you
19 know, what their motives were.

20 Q And did you talk to Mr. Glasser about whether
21 The Satanic Temple Club was involved in the protest?

22 A He reached out to me. I didn't reach out to
23 him. Based on my conversation with Blayke and Ryan,
24 Mr. Glasser's name was never brought up.

25 Mr. Glasser reached out to me when Blayke

1 asked him to be their teacher advisor. And he had just
2 shared with me that he wasn't -- he didn't think it was
3 a good idea for him to be the teacher advisor for the
4 club.

5 Q Did he share with you why he didn't think it
6 was good for him to be the teacher advisor of the club?

7 A I believe -- you know, it's -- I vaguely
8 recall that, you know, he just didn't want to, you know,
9 muddle the water, so to speak, in terms of, you know,
10 again, reading the purpose of the club and what was
11 happening during that time. He just wanted to make sure
12 he stayed out of any situation with any students
13 organizing protests. And this -- the purpose of this
14 club clearly stated that those are one of their
15 purposes, to teach students effective protest.

16 Again, I don't specifically remember what the
17 conversation or the email was between Mr. Glasser and I,
18 but the general -- what I recall generally is just him
19 removing himself or even being -- he declined Blayke's
20 request to be an advisor.

21 Q And did you ask them what they meant by
22 "injustice"? Did you ask Blayke and Ryan what they
23 meant by "injustice"?

24 A Well, I didn't ask Ryan because he wasn't
25 affiliated with the group. I did ask Blayke. I do

1 remember asking him. And he listed some injustices that
2 were kind of happening during that time.

3 Q And what were those injustices?

4 A From what I remember, it's, you know, human
5 rights, human trafficking, LGBTQ, you know, police --
6 not brutality but, you know, stuff that was happening
7 with the police. Those are just some of the few that he
8 named.

9 Q Do you know if The Satanic Temple Club ended
10 up protesting police brutality at Pioneer?

11 A No. The only protest that occurred -- that
12 have occurred during my time here is outside the FCA
13 meetings.

14 Can I not redact, but can I add to that last
15 statement?

16 Q Yeah.

17 A We did have -- we did have a student protest
18 regarding the outcome of the election in 2016. Sorry.
19 I forgot about that one.

20 Q Thank you. Not a problem. Thank you.

21 Well, you mentioned LGBTQ. Did FCA come up as
22 part of the reason that he was protesting?

23 A Not from Blayke, no.

24 Q Okay. But Ryan had mentioned that he was
25 going to protest LGBT -- or protest FCA?

1 A Yes.

2 Q Did other students talk to you about
3 protesting FCA?

4 A Yes. Another student that I remember is
5 Nicole Le.

6 Q Outside of Ryan and Nicole, did other students
7 talk to you about protesting FCA?

8 A No. Ryan and Nicole were the main students
9 that were kind of organizing it and was asking me for
10 guidance. But, also, the students I spoke with,
11 pleading maybe an alternative route in expressing their
12 concerns about the sexual purity statement.

13 Q Going back to Exhibit 50, another one of the
14 purposes of The Satanic Temple Club is to practice the
15 seven tenets of the TST. Are you familiar with the --
16 when you did your investigation, did you become familiar
17 with the seven tenets of The Satanic Temple?

18 A I remember reviewing the seven tenets. I
19 wouldn't say that I'm familiar with it. I just --
20 during my investigation, you know, I deemed it was
21 appropriate at the time.

22 Q So The Satanic Temple Club -- The Satanic
23 Temple -- The Satanic Temple Club is allowed to have --
24 to promote certain beliefs?

25 A I think I -- I mean, from my understanding of

1 the seven tenets, it's more fundamentals that they kind
2 of abide by. I wouldn't necessarily understand it as
3 saying you have to believe those things to be part of
4 the club.

5 (Exhibit 51 marked for identification.)

6 BY MR. SMITH:

7 Q Let's go ahead and introduce Exhibit 51. It
8 should be available now.

9 Do you have it in front of you?

10 A Yeah.

11 Q I'd like to focus on Exhibit 5 -- or not
12 Exhibit 5. Point 5, which says "Beliefs should conform
13 to one's best scientific understanding of the world.
14 One should take care never to distort the scientific
15 facts to fit or" -- it might be cut off there.

16 Well, let's just focus on the first part of
17 the sentence then, "Beliefs should confirm to one's best
18 scientific understanding of the world."

19 So is The Satanic Temple Club allowed to
20 promote that students' beliefs should confirm to
21 the best scientific -- their best scientific
22 understanding of the world?

23 A Yeah. I don't understand the question about
24 "allowed." I mean, we don't -- I don't know what that
25 group -- if this was something that they were -- I guess

1 what -- I'm not understanding. Based on what you're
2 showing me is what they were being required to do with
3 their leaders or their members.

4 Q Well, I'm just asking, as a part of their
5 purpose -- part of their purpose is to promote the -- to
6 practice the seven tenets, correct?

7 A Yeah.

8 Q So one of the things that Satanic Temple Club
9 did, at least according to its purpose, was to promote
10 practicing that beliefs should conform to one's
11 scientific understanding of the world; is that correct?

12 A Yes. That is correct based on the tenets on
13 here, yeah.

14 Q And that was -- that was determined to be
15 acceptable as a part of your investigation?

16 A Yeah. I mean, it didn't say that they had to
17 sign the fundamental tenets as a leader or member of the
18 club. So my conclusion, our conclusion, Mr. Dane
19 Coldwell Holden's is this is not discriminatory in
20 nature.

21 Q Do you think that the leader -- so the leader
22 of The Satanic Temple Club was Blayke, correct?

23 A Uh-huh.

24 Q And he's the one who put in the application?

25 A (Witness nods head.)

1 Q Do you think as the leader he promoted
2 practicing The Satanic Temple -- or the tenets of The
3 Satanic Temple Club?

4 MS. LEVINE: Calls for speculation.

5 THE WITNESS: Yeah. I have no clue. I have
6 no clue of what Blayke did with the fundamental tenets
7 of The Satanic Temple. If he -- yeah. I don't know
8 what he did with its members or leaders.

9 BY MR. SMITH:

10 Q Do you think that it made -- do you think that
11 he would -- so the -- so we -- so the purposes -- one of
12 the things of clubs is to bring like-minded groups
13 together, correct?

14 A I think -- yeah. I think the main purpose of
15 clubs is interests. I wouldn't say that -- there could
16 be somebody in the club that, you know, may not agree on
17 everything but wants to -- maybe a friend has joined the
18 group. I mean, there is so many reasons why kids join
19 clubs. I wouldn't be able to state 100 percent that
20 it's because they agree on 100 percent of the things
21 that that club stood for or believed in.

22 Q Right. But do you think that -- do you think
23 that The Satanic Temple Club -- that the person who said
24 that one of the purposes -- that started the club and
25 said one of the purposes was to promote the satanic --

1 the seven tenets of The Satanic Temple Club was to
2 promote those -- those tenets?

3 MS. LEVINE: Vague.

4 Can you read back the question? I'm not sure
5 I got what that question was.

6 MR. SMITH: I'll just withdraw the question.

7 BY MR. SMITH:

8 Q So one of the things that -- let me see.

9 So let me ask about -- so we've talked about
10 the ASB approval of The Satanic Temple Club. We had
11 mentioned student interest groups before, and I think
12 you had indicated that there are no satanic -- or there
13 are no student interest groups at Pioneer. Is that
14 correct?

15 A I would say in the past that they've all
16 either been clubs or charters or teams.

17 Q Okay. Are you aware of any student interest
18 groups that have been at Pioneer in your time as --

19 A Outside those three?

20 Q Uh-huh.

21 A Outside those three categories?

22 Q Right.

23 A No.

24 Q Okay.

25 A Obviously, in 2019-2020, FCA was meeting as a

1 student interest group because they weren't officially a
2 club charter.

3 Q Well, what -- are there any other groups that
4 were meeting as student interest groups?

5 A Not to my knowledge, no.

6 Q So before FCA, were you familiar with the term
7 "student interest groups"?

8 A No.

9 Q And during your time as principal, FCA is the
10 only student interest group that you're aware of at
11 Pioneer?

12 A Yeah. That's -- from my understanding, that's
13 been -- that's by default because, you know, they were
14 not -- they applied for a club charter, and it was
15 denied for 2019.

16 (Exhibit 52 marked for identification.)

17 BY MR. SMITH:

18 Q Let me introduce what will be Exhibit 52.

19 Okay. It should be up.

20 And I'd like to go to the answer to
21 Question 6, which is on page 11.

22 And we were talking about earlier whether FCA
23 would be allowed to fundraise, and you had indicated
24 that you thought that they may be.

25 But if you look at on page 11 the first full

1 paragraph, it says "On or around May 2, 2019, Pioneer
2 created the status of a 'student interest group,' which
3 was a non-approved -- non-ASB-approved student
4 organization. A Pioneer student interest group may
5 still participate in club rush, hold campus-wide events,
6 use school meeting space to meet on campus during
7 non-instructional time, post announcements or distribute
8 fliers or informational material on campus, and announce
9 meetings and events on bulletin boards and on the PA
10 system."

11 And then it says "A student interest group at
12 Pioneer may not have an ASB financial account or engage
13 in fundraising."

14 So is it your understanding that Pioneer was
15 not allowed to engage in fundraising -- or that --
16 sorry. Let me -- that FCA -- Pioneer FCA was not
17 allowed to engage in fundraising.

18 A Yeah. I think the way I read that is -- the
19 way I interpret that is it wouldn't be able to use ASB
20 accounts to fundraise. But we couldn't stop FCA from
21 fundraising.

22 It's just -- I interpret that to be, like, we
23 have foundation, our parent group, we have athletic
24 booster, we have our music program, we have robotics.
25 They're not affiliated with ASB. They're still able to

1 fundraise under a 501(c).

2 So I interpreted this to be, since they're not
3 an ASB-approved club, they don't have access to ASB
4 financial accounts or able to fundraise within the
5 parameters of that. But we don't have any jurisdiction
6 if they wanted to fundraise outside of that account.

7 Q But is -- would FCA be allowed to fund --
8 would the Pioneer FCA be allowed to fundraise at the
9 food fair?

10 MS. LEVINE: Asked and answered.

11 THE WITNESS: And my interpretation of this
12 would be to give them access that all of our clubs have.
13 So they would still be able to fundraise at a food fair,
14 just not be able to use our ASB facility to have a
15 fundraiser.

16 BY MR. SMITH:

17 Q Okay. So that wouldn't be the same access
18 that your ASB clubs have, correct?

19 A Not having access to ASB, not being recognized
20 in the yearbook, or they don't have access to that as a
21 recognized club at Pioneer or . . .

22 Q Or being on the official recognized club list?

23 THE REPORTER: Can I interrupt, please. I'm
24 having a really hard time hearing the witness and
25 getting a record. Is anyone else having a hard time

1 hearing?

2 (Discussion held off the record.)

3 MS. LEVINE: Maybe we should read back the
4 last question.

5 (Record read as follows:

6 "Q Okay. So that wouldn't be the same
7 access that your ASB clubs have, correct?")

8 THE WITNESS: Yeah. Unrecognized ASB clubs or
9 charters do not have access to ASB accounts, yearbook
10 recognition, and being placed on the club -- official
11 club charter list for that given school year.

12 BY MR. SMITH:

13 Q Okay. So let me pull up another exhibit.

14 So we were talking about ASB approval earlier,
15 and I think that you had indicated that one of the
16 requirements to be an ASB-approved club was that all of
17 the students at Pioneer are allowed to participate and
18 be members and leaders; is that correct?

19 A Yes. That's one of the factors.

20 Q Is it a factor or is it a requirement?

21 A A requirement.

22 (Exhibit 53 marked for identification.)

23 BY MR. SMITH:

24 Q Okay. I'm pulling up what's Exhibit 53, I
25 believe. You should have access to it.

1 A I see it.

2 Q Okay. And do you recognize Exhibit 53?

3 A Yes. I recognize it as an ASB constitution
4 and bylaws for the Pioneer's Big Sister, Little Sister
5 Club.

6 Q If you look at Article II, can -- and
7 Article II is entitled membership; is that correct?

8 A Yes.

9 Q Can you read Article II for me?

10 A "All freshmen and senior females enrolled at
11 Pioneer High School are eligible for membership."

12 Q So, if a sophomore wanted to join Big Sister,
13 Little Sister, would she be allowed to under this
14 constitution?

15 MS. LEVINE: Calls for speculation. Lacks
16 foundation that this witness has seen this before.

17 THE WITNESS: Sorry. I didn't hear that from
18 you.

19 MR. SMITH: Sorry, did you not hear me?

20 THE WITNESS: No. Can you repeat, please?

21 MS. LEVINE: I said it calls for speculation
22 and it lacks foundation that this witness has seen this
23 document before.

24 MR. SMITH: He said that he recognizes the
25 document, Amy.

1 BY MR. SMITH:

2 Q You can answer.

3 A Can you repeat the question?

4 Q Can you read -- so would a sophomore -- under
5 this constitution, would a sophomore girl be allowed to
6 join Big Sisters, Little Sisters?

7 A If they wanted to --

8 MS. LEVINE: Same objections.

9 Go ahead.

10 THE WITNESS: If they wanted to, yes.

11 BY MR. SMITH:

12 Q And on what basis do you say that?

13 A If they want to keep their charter.

14 Q Okay. Did you ever investigate whether they
15 admitted sophomore girls and junior girls?

16 A No one, from my experience, have asked.

17 Q Okay. So you don't know whether they admitted
18 sophomore girls or junior girls?

19 A I would not know, no.

20 Q You don't know if they admitted boys?

21 A I would not know that.

22 Q So you don't know whether -- so -- okay.

23 So do you know why this club was approved?

24 A Yeah. It was approved because it was
25 something of a mentorship for our freshmen students who

1 are females to be mentored by senior students, senior
2 female students.

3 Q So it didn't matter that they don't allow
4 sophomore or junior girls to become members?

5 MS. LEVINE: Misstates the testimony.

6 THE WITNESS: Yeah. I think that if one -- if
7 one did -- if a sophomore boy wanted to be part of the
8 club, we would address -- I think this club would have
9 to be inclusive and consider it.

10 BY MR. SMITH:

11 Q But you didn't investigate it when the club
12 was approved -- before the club was approved?

13 A No. There wasn't a red flag.

14 Q Okay.

15 A Yeah. Like, you know, you brought up the
16 Harry Potter, you know, Club. I don't know what their
17 bylaws are, you know, did it require a member to watch
18 all Harry Potter movies. If a student didn't watch
19 Harry Potter movies and people wanted to still join the
20 club, you would have to talk to the club and make sure
21 that they include that individual.

22 So a lot of times an investigation is prompted
23 by someone raising a question on the inclusiveness of
24 the club.

25 Q What if a junior boy was potentially

1 interested and he read the constitution, would he feel
2 included?

3 MS. LEVINE: Calls for speculation.

4 THE WITNESS: Again, I don't read this to be
5 mandatory in terms of the membership.

6 BY MR. SMITH:

7 Q Is there anything in the document that you can
8 point to to say that it's not mandatory?

9 MS. LEVINE: The document speaks for itself
10 and it calls for speculation.

11 THE WITNESS: Yeah. I wouldn't state that
12 anything is mandatory. There is nothing that needed to
13 be signed or requirement. It just says "are eligible."

14 BY MR. SMITH:

15 Q Okay. Does -- okay. I'd like to pull up
16 Exhibit 54.

17 (Exhibit 54 marked for identification.)

18 BY MR. SMITH:

19 Q Do you know if the Big Sister, Little Sisters
20 Club's ASB approval was ever revoked?

21 A Not to my knowledge, no.

22 Q Do you know of any club at Pioneer, other than
23 FCA, that has had its approval revoked?

24 A I believe the -- my recollection the last five
25 years I've been the principal, the Make America Great

1 Again I think was not approved.

2 Q Okay. Was not approved.

3 But was there any club that had gotten
4 approval and had that approval revoked?

5 A Not to my knowledge.

6 Q And do you know why the Make America Great
7 Again Club was not approved?

8 A Again, the timing of it was around
9 post-election or pre-election of 2016. I don't recall
10 specifically. But we just felt that it was
11 controversial in nature and would spark, you know, other
12 things to occur in our school. So I don't -- you know,
13 we spoke to the student group that was leading it and
14 they kind of withdrew their application as it was
15 written.

16 Q What makes a student group controversial?

17 A Again, if it sparked negative emotions within
18 our students and in the school community.

19 Q And that would be a basis for denying ASB
20 approval?

21 A No. I think it would start a conversation,
22 which we did with FCA, and then in terms of gathering
23 more information about the purity statement.

24 And then from there, you know, if we can't
25 come to a compromise or an amicable resolution, you

1 know, then, again, that's above my pay grade, and that's
2 when I would need guidance from the District.

3 Q Did you come to a compromise with the Make
4 America Great Again Club?

5 A Yeah. I believe the compromise was that they
6 were -- they understood our concern and was going to
7 withdraw their application as it was written.

8 Q I'd like to point you to Exhibit 54, which you
9 should already have.

10 A Yeah. It's in front of me.

11 Q Okay. Do you recognize Exhibit 54?

12 A Yeah. I recognize it to be the Model United
13 Nations Security Council Club Constitution.

14 I will say that this particular charter
15 doesn't ring a bell with me. But, again, we have 60
16 clubs, and, you know, I don't read all constitutions.

17 Q Do you see "Club Logistics" that's on page 1?

18 A Yeah. I see that category.

19 Q It says -- the third paragraph. Can you read
20 the third paragraph for me under "Club Logistics"?

21 A Starts with "All participating members"?

22 Q Yes.

23 A "All participating members will be grouped
24 either randomly or by popular decision into one of the
25 15 countries, whereby they are required to take the

1 country stance on the particular topic discussed
2 regardless whether they agree with their represented
3 country's perspectives or not."

4 Q So what if a student's political or
5 ideological beliefs conflict with the position they're
6 assigned?

7 MS. LEVINE: Speculative. Incomplete
8 hypothetical.

9 THE WITNESS: I would hope that they would
10 bring it up to their leaders -- student leaders and
11 their teacher advisor and see if they can come up with a
12 resolution amicably in solving that particular
13 complaint.

14 BY MR. SMITH:

15 Q So do you know if -- do you know if the Model
16 UN required students to take positions that they -- that
17 they did not personally agree with?

18 A I do not, no.

19 Q Did you investigate whether the Model UN would
20 be -- would require students to take positions they
21 didn't personally believe in?

22 A No. A concern was not raised in my office.

23 Q Did anyone complain to you?

24 A No.

25 Q If any student had complained to you about --

1 or if no student had complained to you about FCA, would
2 they still be allowed to be on campus?

3 MS. LEVINE: Incomplete hypothetical.

4 BY MR. SMITH:

5 Q Or let me restate that.

6 If no student had complained to you about FCA,
7 would they still have ASB approval?

8 MS. LEVINE: Calls for speculation.

9 THE WITNESS: I would say -- sorry, Amy. When
10 you -- should I answer those things when you -- when
11 you --

12 MR. SMITH: You can answer the question.

13 MS. LEVINE: Well, he is supposed to testify
14 based on his personal knowledge.

15 So, if I don't instruct you not to answer, you
16 can answer.

17 THE WITNESS: Okay. So I can go ahead and
18 answer, right?

19 MR. SMITH: Yes.

20 THE WITNESS: I would say that if -- yeah, if
21 I wasn't made aware of the sexual purity statement,
22 yeah, I would say that the FCA would be approved.

23 BY MR. SMITH:

24 Q Do you know -- so are you aware of some clubs
25 that have national affiliations on campus -- some

1 student clubs at Pioneer that have affiliations on
2 campus?

3 A I am not, no.

4 Q You're not aware of any clubs on campus that
5 have an affiliation with a national group?

6 A I'm sorry. Outside of FCA, I think Key Club
7 is. I'm not sure if that's a current national
8 affiliation. But outside of those two, I really -- I
9 really don't -- I'm not for certain if they're
10 affiliated with a national group.

11 Q Do you know if Interact is affiliated with a
12 national group?

13 A I do not.

14 Q Okay. Can I pull up Exhibit -- yeah. This
15 will be Exhibit 55.

16 (Exhibit 55 marked for identification.)

17 BY MR. SMITH:

18 Q It's been introduced.

19 Do you have it in front of you?

20 A Yes.

21 Q Okay. Is this group affiliated with a
22 national organization?

23 MS. LEVINE: Calls for speculation. Asked and
24 answered.

25 THE WITNESS: I don't know for certain.

1 BY MR. SMITH:

2 Q If we -- if you could pull up or look under
3 Article III. And do you -- can you read Article III?

4 A No. 1 and 2?

5 Q Just No. 1, please.

6 A Okay. "The sponsor of this Interact Club is
7 the Rotary Club of San Jose/Santa Clara which, through a
8 committee of not less than five Rotarians, shall
9 exercise supervision and control over all activities,
10 programs, and policies of this Interact club. The
11 continued existence of this Interact club shall depend
12 upon the continued active personal participation of the
13 sponsoring Rotary club. In the case of a club composed
14 of young women only, the committee shall also include
15 one or more responsible women as ex officio members."

16 Q Okay. So based on your reading there, is the
17 Rotary Club of Pioneer or the Interact Club of Pioneer
18 affiliated with the national organization?

19 MS. LEVINE: Calls for speculation. The
20 document speaks for itself.

21 THE WITNESS: Yeah. I don't know if the
22 Rotary Club San Jose/Santa Clara is affiliated with a
23 national organization. I couldn't say for certain.

24 BY MR. SMITH:

25 Q Have you investigated that?

1 A No.

2 Q Would it have made a difference to you
3 whether -- would it -- whether they were or not, as far
4 as approval for ASB goes?

5 MS. LEVINE: Calls for speculation.

6 THE WITNESS: Them being affiliated
7 nationally?

8 BY MR. SMITH:

9 Q Right.

10 A No.

11 Q So that doesn't bother you --

12 A No.

13 Q -- that they're affiliated nationally?

14 A No.

15 Q Can we go to Article VI -- or Article IV.
16 Sorry.

17 A Okay.

18 Q Can you read paragraph 1 of Article IV?

19 A Yeah. "To be eligible for membership, a
20 person must possess good character and leadership
21 potential and (a) in a school-based club be a student at
22 the secondary-school or pre-university level, or be age
23 12 to 18; (b) in a community-based club be a young
24 person 12 to 18 years."

25 Q Have you -- does the sponsoring club define

1 what is good character and leadership potential for
2 membership?

3 MS. LEVINE: The document speaks for itself.

4 THE WITNESS: It doesn't generally state it.
5 It just says that you must possess good character and
6 leadership potential.

7 BY MR. SMITH:

8 Q Have you investigated what the Rotary Club
9 means by "good character and leadership"?

10 A No.

11 Q Have you spoken with the students about
12 whether the Rotary Club defines what is good character
13 and leadership?

14 A No.

15 Q When it uses the word "must possess," does
16 that seem like a requirement to you?

17 A Yeah. I mean, it's pretty vague to me.

18 Like I said, as I understand, accessibility to
19 clubs and programs. Nothing is really a requirement.

20 Q But you haven't investigated whether it's a
21 requirement or not?

22 A No. But if they denied someone based on this,
23 I would in fact start an investigation.

24 Q And, if someone didn't have good character,
25 could the Rotary Club keep them out of -- could the

1 Rotary Club of Pioneer keep them from becoming a member?

2 A No.

3 Q Could they keep someone from becoming a member
4 if they weren't between the ages of 12 and 19? Or 12
5 and 18, sorry.

6 A If they were at Pioneer, they would have to at
7 least be 13. I don't know if I've ever had a
8 12-year-old on campus.

9 But no, if they want to stay affiliated with
10 Pioneer High School, none of their requirements for
11 membership would hold water.

12 Q Have you told them that?

13 A No.

14 Q Are you going to tell them that after this
15 deposition is over?

16 A No.

17 Again, if a student felt like they were not --
18 they felt, you know, excluded, that would prompt my
19 investigation and hence having a conversation with the
20 Interact Club and the Rotary of San Jose/Santa Clara.

21 Q It would require a student to complain first?

22 A Yes. I mean, I -- I mean, they're the ones
23 that matter the most. So, yeah, to spark any
24 investigation that I do here at Pioneer High School,
25 it's either I experience, you know, discrimination

1 personally, you know, witness it personally that one of
2 my students are being excluded or a student is
3 experiencing it directly and is informing me.

4 Q And, if a student did come to you and
5 complain, you would tell the Rotary Club that they had
6 to admit somebody of bad character?

7 MS. LEVINE: Calls for speculation.
8 Incomplete hypothetical.

9 MR. SMITH: I'm asking him as the person who
10 enforces these rules, Amy.

11 MS. LEVINE: It's -- my objections still
12 stand.

13 THE WITNESS: I would say that I would have to
14 have a better understanding of what -- those character
15 traits that they're requiring. Again, they -- we
16 wouldn't be able to deny access to any of our students
17 if it's an ASB-acknowledged club here at Pioneer High
18 School. And that goes for any of our educational
19 programs.

20 BY MR. SMITH:

21 Q Are you familiar with the Pony Express?

22 A Yes.

23 Q Is the Pony Express part of the curriculum at
24 Pioneer?

25 A Yes. Technically, they're under the

1 journalism class.

2 Q What is the relationship of Jason Goldman-Hall
3 to the Pony Express?

4 A He's the teacher of the class, of the
5 journalism class.

6 Q And is he also the faculty advisor for the
7 Pony Express?

8 A I don't think they're a club.

9 Q Okay. Do they not have any ASB club?

10 A They might have. I know the yearbook has an
11 ASB account. I'm not for certain about journalism. I'm
12 not sure if they fundraise or anything like that.

13 Q And so students would get academic credit for
14 their work at the Pony Express?

15 A Yeah. They get credit for journalism.

16 Q Do you know if Jason Goldman-Hall exercises
17 any editorial control over the articles that Pony
18 Express publishes?

19 MS. LEVINE: Vague.

20 THE WITNESS: I believe the way that the class
21 is structured, he lets his student editors decide what
22 is published in the Pony Express.

23 THE REPORTER: I'm sorry. I didn't hear that.

24 "I believe the way the class is structured."

25 THE WITNESS: He -- it's the student editors

1 who are -- who decides what will be published and what
2 articles will be written on the Pony Express.

3 BY MR. SMITH:

4 Q Are you aware of any situations in which
5 Mr. Goldman-Hall has decided that the -- for the
6 newspaper that it wouldn't cover certain news items?

7 A No. I am not aware of those instances, no.
8 Or any of those instances.

9 Q Who publishes the Pony Express?

10 A In terms of who prints them?

11 Q Yeah.

12 A I don't know who -- which printing company
13 they go through, no.

14 Q And I think you indicated that the -- you
15 aren't sure where the Pony Express funding comes from?

16 A I'm not sure -- ASB account. I know that --

17 THE REPORTER: I'm sorry, I didn't get that.

18 "I'm not sure."

19 THE WITNESS: I'm not sure -- I'm not for
20 certain if they have an ASB account. But in terms of
21 funding, I recall that foundation -- educational
22 foundation supports them with printing.

23 BY MR. SMITH:

24 Q We're going to introduce Exhibit -- I believe
25 it's going to be Exhibit -- no. Hold on. Yeah. Just a

1 second. I'm sorry. Sorry. How long have we been going
2 since the last break?

3 A An hour and 5 minutes.

4 MR. SMITH: Let's take a little bit of a
5 break. 5 minutes?

6 MS. LEVINE: Can we go 10?

7 (Recess taken.)

8 BY MR. SMITH:

9 Q Mr. Espiritu, I'd like to -- if -- so when
10 school resumes for the 2021-2022 school year, is ASB
11 approval going to be under the same conditions as it was
12 under the 2019-2020 school year?

13 A I think those were -- I think there's things
14 that are being considered at the District level and at
15 the school level. I wouldn't say it's all exactly the
16 same.

17 Q You say they're being considered. Have any
18 changes been adopted by the District yet?

19 A I wouldn't be able to share with certainty at
20 this point in time, no.

21 Q Are you familiar with any new policies? Like,
22 for example, were you included on any new policies that,
23 say, Ms. Mayhew distributed to clubs?

24 A No. I mean, it may have come across my email
25 or desk, but I don't know of it for certain what they

1 are, if there were changes for this school year. This
2 past school year, sorry, for the 2020-2021 school year.

3 Q Okay. Well, let me show you a document we
4 received from the School District that's the
5 December 20th -- December 2020 affirmation form. And
6 that will be Exhibit 56. It should be available.

7 Do you have that up?

8 A Yes.

9 (Exhibit 56 marked for identification.)

10 BY MR. SMITH:

11 Q Okay. Do you recognize Exhibit 56?

12 A I've seen it. It's come across my desk. But
13 I don't know it -- I don't have it memorized, no.

14 Q Okay. But it is something you've seen as a
15 part of your work as principal of Pioneer High School?

16 A Yes.

17 Q Okay. And when I talk about the ASB
18 nondiscrimination policy, I'm going -- I'm referring to
19 this document.

20 Do you understand that?

21 A Yes.

22 MR. SMITH: Hold on just a second. I'm having
23 an echo when I speak. It's fixed itself.

24 BY MR. SMITH:

25 Q Okay. Is it -- do you know if this policy is

1 in place at the District level?

2 A I think it's in our plan to have it in place
3 when we return to school in person.

4 Q Okay. Do you -- is -- are there plans to
5 return to school in person for next school year?

6 A That's our hope, but things are, you know,
7 changing constantly. Our hope is to return in person.

8 Q So, unless the situation changes, you
9 anticipate returning in person for the '21-2022 school
10 year?

11 A Yes.

12 Q Does this policy apply to all student clubs?

13 A Yes. It will.

14 Q Will it apply to student interest groups?

15 A If they are wishing to be recognized by the
16 ASB.

17 Q Does it apply to the athletic teams?

18 A We wouldn't normally give this to the athletic
19 teams. Again, the athletic teams have access to ASB
20 and, in turn, would be required to have constitutions
21 and processes for decisions to how to spend funds. But
22 this is not typically something that we would give our
23 athletic teams.

24 They're under a different umbrella within our
25 school system because there are CIF, California

1 Interscholastic Federation bylaws that they and the
2 school have to abide by.

3 Q But athletic teams receive ASB funding?

4 A They do not receive ASB funding. They have
5 access to ASB to facilitate fundraising and purchases.

6 Q And they get ASB approval, correct?

7 A Yes. They get approval to use the ASB name.

8 Q Is the process for -- are there different
9 forms for them to apply for ASB approval than for other
10 student clubs?

11 A I believe it's the same form, unless we're --
12 unless there's been modification and changes to that.

13 (Exhibit 57 marked for identification.)

14 BY MR. SMITH:

15 Q I would like to also introduce a -- an Exhibit
16 56 -- or 57. Apologies.

17 And that should be available to you.

18 Do you have it up?

19 A Yes.

20 Q Okay. Do you recognize Exhibit 57?

21 A Mr. Smith, I just want to clear up, when you
22 ask me do I recognize it, are you asking have I seen it
23 before?

24 Q Well, I'm asking if you know what it is. So,
25 if you've seen it before or you know what it is, yeah.

1 A Can I clarify that some previous documents
2 earlier in relation to club constitution, when you asked
3 me if I recognize it, I said I recognize it to be a club
4 constitution for this particular club. I'm not saying
5 that I've seen it before or have reviewed it.

6 Q Okay. That's fine.

7 But you don't have any reason to doubt that
8 the documents are what they say they are, correct?

9 A Yeah. I mean, I said I recognize it to be a
10 constitution for this club. I just want to make sure
11 that it's clear that I haven't -- I've never reviewed it
12 or seen it in the past.

13 Q Okay.

14 A So, in this particular question, I understand
15 this to be an email to, you know, student leaders and
16 club advisors potentially, but I haven't -- I don't know
17 if I was cc'd on this email specifically.

18 Q Well, if you look at the "cc" line, do you see
19 your name there?

20 A Yeah. Yeah.

21 Q So do you think you were cc'd on this email?

22 A Yes. I was cc'd on it. I guess I can clarify
23 that I don't know if I read it to the full extent of
24 what I'm going to asked, but I'll do my best.

25 Q Well, that's all we're asking for you to do is

1 your best. So we try to be nice on you that way.

2 A Thank you.

3 Q So this is dated February 3rd, and it was sent
4 out on April 19th, 2021 by Michelle Mayhew; is that
5 correct?

6 A Yes.

7 Q So do you know if this is the most recent
8 version of the District's ASB nondiscrimination policy?

9 A I would assume so, yes.

10 Q Okay. And when clubs begin to meet again,
11 presumably next year, will they be required to fill out
12 this form?

13 A Yes.

14 Q I'm going to ask you -- and I know that we're
15 asking you to maybe flip between documents. You can
16 also download documents, if it's easier for you, through
17 the Veritext exchange.

18 But I wanted to note a few differences between
19 Exhibit 57 and Exhibit 56.

20 So you have those documents ready?

21 A Yeah.

22 Q Okay.

23 A Yes.

24 Q Thank you.

25 So at the bottom of Exhibit 57, the first page

1 of Exhibit 57, there is a sentence that says "This
2 policy of nondiscrimination requires ASB-recognized
3 student groups to permit any student to become a member
4 or leader if they meet nondiscriminatory eligibility
5 criteria."

6 Does that appear to have been added from
7 the -- from when Exhibit 56 was sent?

8 MS. LEVINE: The documents speak for
9 themselves.

10 THE WITNESS: It seems that way, yes.

11 BY MR. SMITH:

12 Q Do you know who added that language?

13 A I do not.

14 Q So do you know why it was added?

15 A I do not.

16 Q Had anyone discussed a specific problem that
17 this language was addressing?

18 A I don't recall.

19 Q What do you understand this policy to require
20 regarding student groups with leadership requirements?

21 A Can you point it out to me again so that I can
22 read it and interpret it?

23 Q Well, I'm actually asking about Exhibit 57
24 more or less as a whole right now, but the sentence that
25 was added was the bottom sentence on what's FCA19001.

1 But I'm asking --

2 A What page? Sorry.

3 Q That's the first page of the policy that's
4 attached to the email, FCA019001. But I'm asking about
5 the whole policy.

6 MS. LEVINE: Can you repeat the question? I
7 think we've lost what the question is. At least I have.

8 MR. SMITH: Yeah.

9 BY MR. SMITH:

10 Q Well, let me pull that question back real
11 quick and then we'll get to it again.

12 Have you been consulted at all about this --
13 the new policy requirements for ASB student groups,
14 ASB-approved student groups?

15 MS. LEVINE: Don't answer to the extent it
16 calls for communications with your attorney or to the
17 extent that it occurred during mediation.

18 BY MR. SMITH:

19 Q So outside of mediation and outside of
20 discussions with your attorney, has someone at the
21 District consulted with you about the new ASB approval
22 requirements?

23 A I don't recall.

24 Q You don't remember if anyone has or not?

25 A I don't recall specifically, no.

1 Q Okay. What do you understand this policy to
2 require for student groups with leadership requirements?

3 A That there really can't be any requirements.

4 Q So, if a student goes to a club and says that
5 "I want to be a leader of this club," are they
6 automatically entitled to be a leader of the club?

7 A I think whatever democratic process that they
8 have, they have to be at least considered for it, you
9 know.

10 Like I said, I wouldn't know how each club
11 select their leaders, but I think it's about being able
12 to have equal access to having that opportunity.

13 Q So, when it says any student should be allowed
14 to become a member or a leader, that's with the
15 agreement of the members of the club?

16 A Yes. I would assume so, yes.

17 Q What if the student meets all attendance and
18 participation requirements but doesn't get voted in,
19 does that person still get to be a leader?

20 A I think I try to interpret this like, you
21 know, our leadership elections. You know, everyone is
22 allowed to run for office or leadership positions.
23 Again, our process is by student votes.

24 As long as they're eligible to have those
25 positions available to them without any restrictions,

1 whatever democratic process that each club chooses
2 that's appropriate would be deemed as okay.

3 Q Well, what considerations are students allowed
4 to consider when they make that vote?

5 A Are you referring to class officers and
6 student body officers?

7 Q So well, when -- well, let's start with that.
8 So when students vote for a student body officer, what
9 factors are they allowed to consider?

10 A Allowed to consider?

11 Q Yeah.

12 A What do our student body -- what are they
13 allowed to consider when it comes to voting for --

14 Q Right.

15 A I don't know if we -- I mean, they -- I mean,
16 everything is allowable in terms of their experience
17 with that individual student as a leader or a potential
18 leader. It would be their experiences with them in the
19 classroom, outside the classroom. I mean, now you have
20 to consider what their social media page looks like,
21 what they're posting.

22 So I think a lot of those experiences by
23 students factor in their decision in voting for a leader
24 either in their class or within the student body office.

25 Q So, if a student who is a member of the

1 Pacific Islander Club says "I'd like to vote for this
2 person to be ASB president because they're also a
3 Pacific Islander and I'd like to advance our culture,"
4 would that be acceptable?

5 A If they shared that information with me of why
6 they were voting that way, I wouldn't be able to really
7 say anything to that.

8 Q Okay. So that person would be allowed to vote
9 for the ASB president?

10 A Yeah, I wouldn't see why not.

11 Q Would it be okay for a student who was Muslim
12 to say "I want to vote for the Muslim candidate for ASB
13 president"?

14 A You know, again, I wouldn't --

15 MS. LEVINE: Calls for speculation.

16 Incomplete hypothetical. Vague.

17 Is the hypothetical that he -- this person
18 says this to Mr. Espiritu? Or I'm not sure I understand
19 the question.

20 MR. SMITH: The court reporter can repeat the
21 question.

22 (Record read.)

23 THE WITNESS: If he said it to me in a
24 conversation, yeah, I wouldn't -- I wouldn't prevent
25 that student from voting due to, you know, religious

1 affiliation.

2 You know, if he said it publicly in the middle
3 of the quad, it may be a conversation that he or her
4 would have in terms of the appropriateness of that.

5 But yeah, I mean, I wouldn't be able to tell
6 anybody to vote a certain way.

7 BY MR. SMITH:

8 Q All right. Well, let's say it was the Girls
9 Who Code Club and one of the students said "I would like
10 to vote for the -- for the Muslim" -- "I'm a Muslim and
11 therefore -- my only consideration is that I will vote
12 for the Muslim candidate for president of the Girls Who
13 Code Club." Would that be allowed?

14 MS. LEVINE: Vague. Calls for speculation.
15 Incomplete hypothetical.

16 You can answer.

17 THE WITNESS: And they said it to me
18 personally?

19 BY MR. SMITH:

20 Q Yeah. They told you that "I'm going to vote
21 for the Muslim candidate for Girls Who Code. And that's
22 the reason I'm voting for that candidate."

23 A I would say "Okay."

24 Q So are there any criteria that a student
25 couldn't consider when voting for a leader for an

1 officer for an ASB-approved club?

2 A Again, that would be up to them.

3 Q Okay. So there is no criteria that they
4 couldn't consider personally?

5 A Yeah. I don't -- yeah, I don't -- yeah, I
6 don't control their minds. So they can pretty much --
7 you know, they can, for example, hypothetically vote on,
8 you know, Mr. Espiritu as the mayor of San Jose because
9 they think he's good looking.

10 Q So the policy says that -- let me take you to
11 FCA019002. And it's the third bullet point.

12 Can you read --

13 A I'm sorry, on page 2, Mr. Smith?

14 Q It's page 3 of the document, it's 019002.

15 A On Exhibit 57?

16 Q Yes.

17 A Page 3. Bullet?

18 Q Bullet 3. It begins with "We may adopt."

19 A Got it. I'm there.

20 Q Can you read that? And I think it's
21 sufficient to read the first sentence.

22 A "We may adopt nondiscriminatory criteria
23 regarding being a member, leader, or representative of
24 the organization, or exercising voting privileges, such
25 as regular attendance at group meetings, participation

1 in group events, participation in the group for a
2 minimum period of time, or participation in orientation
3 or training activities. Membership levels, e.g., voting
4 versus nonvoting membership, will not be based on any
5 prohibited discriminatory criteria."

6 BY MR. SMITH:

7 Q Okay. What is your understanding of what a
8 nondiscriminatory eligibility criteria is? Or
9 nondiscriminatory criteria.

10 A I have to be honest, I'm getting a little
11 mental fatigue here in terms of -- can you repeat the
12 question?

13 Q Yeah. So --

14 MS. LEVINE: It sounds like the witness needs
15 a break, but -- if he's not able to provide good
16 testimony --

17 THE WITNESS: Yeah. I just -- yeah. I mean,
18 it's easy for me to answer questions based on things --
19 I feel like I'm getting a lot of questions around
20 interpretation of some, you know, policies that --

21 MR. SMITH: Right.

22 BY MR. SMITH:

23 Q Well, let me see if I can simplify this a
24 little bit.

25 So the policy refers to nondiscriminatory

1 criteria.

2 Would you consider grade point average a
3 nondiscriminatory criteria?

4 MS. LEVINE: Calls for a legal conclusion.

5 THE WITNESS: Would a grade point average be a
6 nondiscriminatory criteria?

7 I mean, it's -- anyone can have a certain
8 grade point average. So it's not specific to one -- I
9 would say that's nondiscriminatory.

10 BY MR. SMITH:

11 Q So the National Honor Society can require a
12 certain GPA for its members?

13 A I would say yes.

14 Q And it can require a certain GPA for its
15 leaders?

16 A I don't know for certain what their criterias
17 are for their leaders.

18 Q But if they had a GPA requirement for leaders,
19 they would be allowed to do that, correct?

20 MS. LEVINE: Calls for speculation.
21 Incomplete hypothetical.

22 THE WITNESS: Yeah. I don't know anymore, to
23 be honest.

24 MS. LEVINE: Reed, it sounds like -- it sounds
25 like he needs a break. I mean, he's telling you he

1 needs a break and he can't track the questions.

2 MR. SMITH: We've only been going for a little
3 bit, so I'm going to continue the line of questions.
4 And then we'll just have to go.

5 THE WITNESS: I'll do my best.

6 MR. SMITH: We made it aware that, you know,
7 that this is -- deposition is for eight hours, and we're
8 barely halfway through.

9 MS. LEVINE: I realize that, but he -- it's
10 coming from him saying he can't.

11 THE WITNESS: Yeah. Like I said, I feel like
12 I'm not being asked things I was involved with. I'm
13 being asked to interpret things. And I feel like I'm at
14 the end of the SAT test where it's just kind of all the
15 answers look correct to me.

16 MS. LEVINE: So I'm not sure he's giving you
17 good testimony at this point, so --

18 MR. SMITH: That's -- we're going to trudge
19 ahead, Amy.

20 BY MR. SMITH:

21 Q Do you know if the Rotary Club requires a GPA
22 for the Interact members?

23 A I do not.

24 Q If the Rotary Club -- or if the Rotary Club
25 imposed a GPA requirement on the student group, would

1 that be allowed?

2 A No.

3 Q Why not?

4 A Because we would have to accept -- everyone
5 would have to have access to leadership positions at any
6 of our clubs.

7 Q But is GP -- but GPA is a nondiscriminatory
8 criteria, correct?

9 A Correct. Like I told you about the NHS
10 question, I don't know if that holds water anymore. I'm
11 going to have to look into it. I don't know the answer
12 to it right now as you're asking it to me.

13 Q Do you know if the Robotics Club has a GPA
14 requirement?

15 A I do not.

16 Q If it does, are you concerned that that would
17 exclude people from becoming leaders of the Robotics
18 Club?

19 A If a concern was raised to me, yes.

20 Q But if no one -- no one complains to you --
21 well, withdraw the question.

22 (Exhibit 58 marked for identification.)

23 BY MR. SMITH:

24 Q We'll pull up Exhibit 58. Oh, and it's
25 already in the system, I've been told.

1 Do you have that in front of you?

2 A Yes.

3 Q Can you look at Article II.

4 A Yes.

5 Q And does Article II indicate that there is a
6 membership or that there is a GPA requirement for
7 membership?

8 A Yes.

9 MS. LEVINE: The document speaks for itself.

10 BY MR. SMITH:

11 Q And do you know if the Robotics Club is an
12 ASB-approved club at Pioneer?

13 A They're not. They don't have an ASB account
14 with us.

15 Q Is it a part of the curriculum at Pioneer?

16 A Yes.

17 Q Does it -- has it ever applied for an ASB
18 account?

19 A Not that I remember.

20 Q Let me pull up -- or it's -- it's an exhibit
21 we already have pulled up. It's Exhibit 45.

22 Do you have 45 available?

23 A Yeah.

24 Q If we go to the -- and this is a list of ASB
25 clubs at Pioneer, at least for the 2019-2020 year,

1 correct.

2 If you go -- if you look on the second page,
3 does it identify robotics as one of the ASB clubs?

4 A Yes.

5 Q Okay. So robotics does have an ASB account?

6 A According to this, they're on the club charter
7 list. I don't know if currently they have an ASB
8 account.

9 Q But at least at some point, at least for the
10 2019-20 year, they were an ASB-approved club at Pioneer?

11 MS. LEVINE: Misstates the testimony.

12 THE WITNESS: It would appear so, yes.

13 MS. LEVINE: Reed, I'm sorry, but if the
14 witness is not able to testify, I'm going to -- we're
15 going to have to take a break and we're going to --

16 MR. SMITH: He hasn't said that he's not able
17 to testify, so -- and we haven't been going very long
18 since the last break.

19 MS. LEVINE: I realize that. But, I mean, I
20 am going to -- I am going to suspend the deposition to
21 let him take a break, if that's what he needs to do.
22 So . . .

23 MR. SMITH: Well, if -- I mean, if you want to
24 give us extra time on the end, we're happy to talk about
25 that. But, otherwise, I'm going to proceed with my

1 deposition.

2 MS. LEVINE: Well, let's ask the witness if
3 he's able to proceed.

4 THE WITNESS: I think the line of questioning
5 is requiring me to interpret things, you know, and
6 remember things. Again, I -- there's been a volume of
7 questions around, you know, club charters and, you know,
8 what I know. I think it's been clear that, you know, I
9 don't review every single charter and constitution. So
10 it's just a bit exhausting.

11 But, you know, I'll do my best to answer the
12 questions as best as I can and obviously as truthful as
13 I can.

14 MR. SMITH: That's all we're asking you to do.
15 And, you know, one of the reasons this is important is
16 because, as we discussed, you're the -- you're one of
17 the people who enforces these policies. And so we're
18 just trying to determine how these policies work.

19 BY MR. SMITH:

20 Q So, if a student wanted to start a Catholic
21 student group, would they be eligible for ASB approval?

22 MS. LEVINE: Calls for speculation.

23 THE WITNESS: If all criterias are met, yes.

24 BY MR. SMITH:

25 Q What if they wanted all of their leaders to be

1 Catholic? Would that be approved?

2 A I would have to seek advice on counsel. My
3 first inclination would be that would be a no. But,
4 again, I would seek advice from the sups cabinet.

5 Q What if they requested all their leaders to
6 believe in Jesus? Or what if they required all their
7 leaders to believe in Jesus? Would that be a basis for
8 denying their ASB application?

9 MS. LEVINE: Calls for speculation.

10 THE WITNESS: If that's a requirement, again,
11 I would probably seek guidance around that.

12 BY MR. SMITH:

13 Q Would you view that as a leadership
14 requirement that was based on religion?

15 A Yes.

16 Q So under the language of this policy, that
17 would not be allowed?

18 MS. LEVINE: Asked and answered.

19 You don't have to answer it again. I mean,
20 it's the same question.

21 MR. SMITH: It hasn't been answered, Amy, so
22 he can answer.

23 MS. LEVINE: It was. It was the question
24 before the last question.

25 MR. SMITH: Well, instruction -- an objection

1 is not a basis to not answer. So . . .

2 MS. LEVINE: Well, I'm instructing him not to
3 answer it again. You can take me up on it.

4 BY MR. SMITH:

5 Q Okay. Are you following your counsel's advice
6 not to answer my question?

7 A What was the question again? Can you repeat?

8 Q The question was -- I'll have the court
9 reporter repeat the question.

10 (Record read as follows:

11 "Q So under the language of this policy,
12 that would not be allowed?")

13 THE WITNESS: Yes.

14 BY MR. SMITH:

15 Q Just a second.

16 Do you know if the Pioneer FCA leaders lead
17 their groups in prayer?

18 A I'm sorry. Can you repeat, please?

19 Q Yes.

20 Do you know if students in the Pioneer FCA
21 lead their groups in prayer?

22 A I do not.

23 Q If they do, how would a leader who doesn't
24 believe in God -- how should -- let me withdraw the
25 question.