

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 8 of 10

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Deposition of:
Stephen McMahon

June 23, 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.

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.

CASE NO. 5:20-cv-2798

VIDEOCONFERENCED DEPOSITION OF STEPHEN McMAHON
San Jose, California
Wednesday, June 23, 2021
Volume I

Reported by:
CHRIS TE SELLE
CSR No. 10836
Job No. 4612107

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1 UNITED STATES DISTRICT COURT
 2 NORTHERN DISTRICT OF CALIFORNIA
 3

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

8 Plaintiffs,)

9 vs.)

CASE NO. 5:20-cv-2798

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

19 Defendants.)
 20)
 21)
 22)
 23)
 24)
 25)

26 Videoconferenced Deposition of STEPHEN McMAHON,
 27 Volume I, taken remotely, San Jose, California,
 28 beginning at 9:04 a.m. and ending at 4:28 p.m., on
 29 Wednesday, June 23, 2021, before Chris Te Selle,
 30 Certified Shorthand Reporter No. 10836, present via
 31 videoconference.

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19 Tim Kowalczyk

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STEPHEN McMAHON

(present via videoconference)

Volume I

BY MR. BLOMBERG

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1 San Jose, California, Wednesday, June 23, 2021

2 9:04 a.m.

3
4 STEPHEN McMAHON,
5 having stated to tell the truth under penalty of
6 perjury, was examined and testified as follows:

7
8 EXAMINATION

9 BY MR. BLOMBERG:

10 Q. Mr. McMahon, my name is Daniel Blomberg. I'm
11 counsel for the plaintiffs today, and so I'll be asking
12 you the questions as we go through.

13 MR. BLOMBERG: Just as we get started, Amy, can we
14 just go ahead and do the stipulation we've done in the
15 past, that we are stipulating on the record our consent
16 to this manner of deposition, and that we waive any
17 objection to this manner of deposition, including an
18 objection based on this manner of deposition to the
19 admissibility at trial of this testimony?

20 MS. LEVINE: We stipulate to doing this via video
21 conferencing.

22 MR. BLOMBERG: And no objections to doing this via
23 video conferencing.

24 MS. LEVINE: Right.

25 MR. BLOMBERG: Thank you.

1 BY MR. BLOMBERG:

2 Q. Mr. McMahon, just a few ground rules, as we're
3 getting started. Please, provide verbal answers, so,
4 for instance, you want to say yes or no to a question,
5 instead of nodding or saying uh-huh.

6 Our goal for both of us is to just be as clear
7 as possible as we can for Mr. Te Selle, and so we'll
8 just try to avoid any answer that he won't be able to
9 easily put down into the transcript.

10 Does that make sense?

11 A. Yes.

12 Q. If you run into any trouble with the
13 technology, like a poor connection, or difficulty seeing
14 documents, please, just tell me right away, and we will
15 make sure we get that fixed.

16 If you need a break, please, let me know, and
17 we'd be happy to accommodate you. And, as we're going
18 through the deposition, please, don't communicate with
19 anyone other than your counsel, the court reporter, or
20 myself during the deposition. If you need to take a
21 call or otherwise respond to some sort of
22 communications, please, just let me know, and we'll
23 accommodate that as we can.

24 If you have right now like any e-mail or
25 communications function up on your computer, can you go

1 ahead and close it.

2 A. The only portal I have up now is the Zoom.

3 Q. The Zoom and Exhibit Share are the two ones
4 you have up?

5 A. Yes.

6 Q. Okay, perfect. Excellent. Thank you.

7 As we're going through the deposition, please,
8 don't review any documents, other than the exhibits that
9 I share with you via the Exhibit Share portal. If you
10 need to review another document or writing for some
11 reason, please, just let me know, and we can talk that
12 through.

13 During the process of the deposition, I will
14 ask some questions that your counsel will object to.
15 For instance, she might say, objection, speculative, or
16 something like that, but, unless she instructs you not
17 to answer, please, plan on going ahead and answering the
18 question to the best of your ability.

19 The deposition testimony that you're providing
20 here today occurs under the same rules and procedures as
21 if you're testifying in federal court, so you remain
22 under oath throughout the pendency of the deposition,
23 so, please, don't talk to anyone about the substance of
24 your deposition until it's over, unless you're talking
25 to your counsel about a privilege objection that she

1 wants to raise.

2 Does that make sense?

3 A. Yes.

4 Q. Can you please state your full name for the
5 record.

6 A. Stephen McMahon: S T E P H E N, M C M A H O
7 N.

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

11 A. Yes.

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

14 A. I will definitely testify truthfully.
15 Thinking clearly, it's been an exhausting 18 months, so
16 I will admit to not being 100 percent as sharp as I
17 normally would be, but I think that's normal, given the
18 pandemic. But I'm thinking clearly in the, in the
19 literal sense of fully present, ready to go.

20 Q. You're not under, like, you didn't take some
21 medication for a headache, or something like that, and
22 you're drowsy, and just unable to hear me or understand
23 the questions?

24 A. I'm ready.

25 Q. Great. I'm going to assume that you

1 understand my questions unless you tell me otherwise.

2 Is that fair?

3 A. Yes.

4 Q. Have you been deposed before?

5 A. Yes.

6 Q. Can you tell me about when you've been deposed
7 before.

8 Let me ask that again. About how many times
9 have you been deposed?

10 A. Probably, less than six, and mainly related to
11 my work here at San Jose Unified.

12 Q. When was the last time you were deposed?

13 A. Approximately, three years ago.

14 Q. Without going into detail about the case, what
15 was the general subject matter?

16 A. Personnel.

17 Q. And what have the other depositions been
18 about, generally speaking?

19 A. Personnel.

20 Q. Have there been any depositions on issues
21 other than personnel?

22 A. Not that I can think of at this time.

23 Q. Did you review any documents in preparation
24 for this deposition?

25 A. Yes.

1 Q. Do you have them with you today?

2 A. No.

3 Q. Did you use any of those documents to refresh
4 your recollection?

5 A. No.

6 Q. So, all the documents you reviewed, you
7 already recalled the substance of the documents?

8 A. Yes.

9 *DI Q. Why did you review them?

10 MS. LEVINE: Calls for attorney-client privilege.
11 Don't answer.

12 BY MR. BLOMBERG:

13 Q. But you remember the substance of all the
14 documents you reviewed in preparation for today?

15 A. Yes.

16 Q. Other than legal counsel, did you speak with
17 anyone in preparation for this deposition?

18 A. No.

19 Q. What is your current position?

20 A. Well, let me clarify that answer. In the
21 sense of it's calendared, colleagues know that I have a
22 deposition calendared, but nothing related to the
23 specifics of it, but that I'm being deposed today, that
24 the staff knows that I'm unavailable for other work.
25 So, people know there's a deposition today, but they

1 don't know the specifics.

2 Q. Got you. Got you. So, just to make sure I
3 understand, you're saying you talked to other members of
4 your staff regarding the fact that you were being
5 deposed today, but not the substance of the deposition.

6 A. Yes. And it's on a shared calendar that the
7 deposition is scheduled for 9 a.m.

8 Q. Thank you. What is your current position at
9 the school district?

10 A. I'm the deputy superintendent.

11 Q. And how long have you been in that position?

12 A. Approximately, five years. And, prior to
13 that, I was the chief business officer.

14 Q. And how long were you the chief business
15 officer?

16 A. In that role, for eight years.

17 Q. So, five years as deputy superintendent, eight
18 years as the chief business officer before that?

19 A. That's cumulative. As deputy superintendent,
20 I maintained all of the responsibilities of the chief
21 business officer, so I became the chief business officer
22 approximately eight years ago, continued with those
23 roles and responsibilities, but the title was changed to
24 deputy superintendent about five years ago.

25 Q. Okay. And what are your responsibilities as a

1 deputy superintendent?

2 A. I work directly with the board of education
3 and the superintendent, mainly focused on the
4 operational items to support teaching and learning in
5 the classroom, student nutrition, enrollment, fiscal
6 services, human resources, transportation. You can
7 think of the school district in two halves, teaching and
8 learning, and, then, all of the things that support
9 that, I oversee all of the support functions.

10 Q. And who oversees the teaching and learning
11 function?

12 A. There's an associate superintendent of
13 instruction, Jodi Lax.

14 Q. So, you have the administrative side, and she
15 has the teaching and support side?

16 A. Yes.

17 Q. What were your distinct responsibilities as
18 chief business officer?

19 A. The same. The chief, as chief business
20 officer, I also oversaw all of the operational aspects
21 of the district.

22 Q. And so what was added when you went from chief
23 business officer to deputy superintendent?

24 A. Workwise, nothing. It was more of a title
25 change to distinguish that I was the direct support to

1 the superintendent.

2 Prior to the title change, everyone had a
3 similar title, assistant superintendant, so the title
4 change was just to make it clear to the organization
5 that I was the direct support to the superintendent.

6 Q. Okay. And before being in that chief business
7 officer role, in which you started about eight years
8 ago, did you work at the district?

9 A. Yes.

10 Q. What did you do?

11 A. Immediately preceding this role, I was the
12 president of the San Jose Teachers Association. I was a
13 teacher for the school district, but I served in that
14 capacity.

15 Q. So, you did, you did both? You were both a
16 teacher and the president of the San Jose Teachers
17 Association?

18 A. The teachers association is large enough that
19 it has a fulltime relief president, so, when you serve
20 as president, you're on leave from your classroom
21 teaching responsibilities, and serve fulltime as the
22 president.

23 Q. How long were you serving fulltime as the
24 president?

25 A. Approximately, three years.

1 Q. And then before that, you were a teacher?

2 A. Yes. I was a classroom teacher.

3 Q. And where did you teach?

4 A. Pioneer High School and Hoover Middle School.

5 Q. How long were you at Pioneer High School?

6 A. Four years.

7 Q. And were you teaching at Hoover Middle School
8 at the same time, or was that before Pioneer?

9 A. Before Pioneer.

10 Q. About how long were you at the middle school?

11 A. Four years.

12 Q. And was that kind of the beginning of your
13 relationship with the district, at Hoover?

14 A. I was a student in San Jose Unified. Once I
15 had my teaching credentials, I became an employee here.
16 My first teaching assignment was at Hoover, in 2002.

17 Q. And what did you teach at Pioneer High School?

18 A. Mathematics and leadership.

19 Q. Were those, those were two distinct classes
20 you were teaching?

21 A. Mathematics is a range of classes, depending
22 on the school year, different specific courses, and
23 leadership is a course. It was a course at Pioneer when
24 I was there.

25 Q. Okay, okay. Is it not any longer?

1 A. I don't know exactly what the course schedule
2 is at Pioneer.

3 Q. But when you were there, you were teaching
4 some mix of mathematics classes, and a leadership
5 course?

6 A. Yes.

7 Q. And were you teaching both of those at the
8 same time, every semester?

9 A. Throughout the four years, no, but, in my last
10 year at Pioneer, I had a mix of math, and the leadership
11 class.

12 Q. What did the leadership class cover, generally
13 speaking? It doesn't have to be detailed. I'm just
14 going to trying to get a sense. Math, I get.

15 A. The main role of the leadership class was to
16 administer the associated student body.

17 Q. And how did that, so, what was that like?
18 What did you do in administering the student ASB?

19 A. So, ASB has a system where officers are
20 elected to represent the student body at large, as well
21 as each class. All of those officers would be enrolled
22 in the leadership class, and then they would spend the
23 year doing activities and functions on behalf of the
24 student body.

25 Q. And you were, was it more of an administrative

1 role, and you were supporting them in that job, or did
2 you have, you know, kind of a pedagogical function where
3 you're teaching them about leadership responsibilities,
4 and things like that?

5 A. A mix. There's not a leadership curriculum,
6 per se, but the teacher of leadership does try to
7 encourage the students to learn from their experiences
8 how could they make it better for their peers, how do
9 you create a more welcoming school, so, how do you, as
10 an elected student body representative, best support
11 your peers on campus.

12 Q. Did you coach any sports teams at either
13 Pioneer or Hoover?

14 A. Yes.

15 Q. What teams did you coach?

16 A. Basketball at Hoover.

17 Q. Anything at Pioneer?

18 A. No.

19 Q. How long did you coach basketball at Hoover?

20 A. Two or three years. I was not the head coach.
21 I was an assistant for the 7th and 8th grade teams.

22 Q. Both the boys and girls teams?

23 A. Boys.

24 Q. So, did Hoover have, it had a head coach, and
25 then you were the assistant for the boys 7th and 8th

1 grade basketball team?

2 A. It's, it's middle school basketball. It's a
3 little less structured, so there was a coach, and then I
4 would be there every day to help the coach with
5 practices, with games.

6 The middle school basketball in San Jose
7 Unified is pretty loose. The teams only compete within
8 the school district. There's not an officially
9 sanctioned, like, area-wide league or statewide league.
10 It's pretty localized, and just to give the kids the
11 opportunity. So, I would not put on my resume
12 basketball coach.

13 Q. Fair. Were you a faculty advisor for any
14 student clubs at either Pioneer or Hoover?

15 A. Yes.

16 Q. Which student clubs?

17 A. At Pioneer, the Key Club.

18 Q. What was the Key Club?

19 A. Key Club is a organization that does
20 community, it's community service-based club.

21 Q. Has it been part of the Pioneer community for
22 awhile?

23 A. My understanding is yes.

24 Q. What years were you the student advisor, or
25 faculty advisor, rather?

1 A. I'd have to estimate, but I think for two
2 years, I was the Key Club advisor. There was an
3 additional club, I'm trying to remember the name, that
4 didn't last very long. It was about students had
5 interest in a certain type of movie, and they needed an
6 advisor to meet.

7 I'm trying to remember exactly what that club
8 was, but they never really got formalized and had
9 regular meetings or large attendance, but I let them use
10 the classroom to watch the movies during lunch. But,
11 the Key Club was the main club I was the advisor for.

12 Q. What kind of movies did the second club like
13 to watch?

14 A. I'm, I'm unable to remember the exact content.
15 I think that's a reflection of, I was a high school
16 teacher, they were interested in high school things that
17 I was too old for, and I'm trying to remember the
18 specifics, but those are the only two clubs I can
19 remember working with as a teacher.

20 Q. Fair. I've been doing some movie watching
21 with high schoolers myself, and some of it I try to
22 forget afterwards.

23 Can you tell me who in the district's office
24 that you kind of most often work with on a day to day
25 basis.

1 A. Superintendent.

2 Q. Anyone else?

3 A. Associate superintendent of instruction,
4 assistant superintendant of administrative services, and
5 then there's 10 directors. The 10 directors each
6 oversee departments, and I work closely with the
7 directors. On a day to day basis, it really is the
8 superintendent.

9 Q. Do they, the directors you were talking about,
10 do they report directly to you?

11 A. More than half of them. The directors of
12 instructional services report to associated
13 superintendent of instruction.

14 Q. And this goes back to what you were talking
15 about earlier with the difference between the kind of
16 pedagogical side and the administrative side?

17 A. Yes.

18 Q. And you're, so, you're focused and your direct
19 reports are the ones speaking to you about more of the
20 administrative side of the district's business?

21 A. Yes.

22 Q. Can you identify the directors that report to
23 you.

24 A. Yes. Jill Case oversees student support.
25 Arthur Cuffy oversees fiscal services. Denny Pini

1 oversees facilities. Jacqueline Murphy oversees human
2 resources. There's a vacancy in procurement.

3 I probably should look at the org chart, but I
4 will wait to make sure you say it's okay. I feel like
5 I'm missing the sixth one. Human resources, fiscal
6 services, operations, procurement. Oh, and student
7 nutrition. Janet Wolk is the director of student
8 nutrition.

9 Q. Who do you report to?

10 A. Superintendent.

11 Q. What is your, what's the nature of the way
12 that you're working on a day to day basis with the
13 superintendent?

14 MS. LEVINE: Vague.

15 THE WITNESS: Amy, I didn't catch that, and I don't
16 understand the question.

17 MS. LEVINE: I said, vague, and speculation.

18 BY MR. BLOMBERG:

19 Q. You mentioned that you work with the
20 superintendent on a day to day basis.

21 What's the nature of the interactions that
22 you're having with her? What are the kinds of things
23 that you're working with her on, regarding?

24 A. Work. I don't understand how to apply the
25 nature. We're colleagues. We work together

1 professionally. We carry the responsibility of making
2 sure that we execute the responsibilities of the school
3 district.

4 Much of that work has to do with working with
5 the board of education on the agenda items, making sure
6 we run good public meetings. So, the day to day work is
7 collaborative, and focused, and challenging.

8 Q. So, all of the things that are kind of under
9 your purview, the administrative side that you were
10 talking about, and the directors that report to you, do
11 you report to her about those things, or are you more
12 working alongside her as she's handling other matters?

13 MS. LEVINE: Vague, overbroad. You can answer, if
14 you understand the question.

15 THE WITNESS: San Jose Unified is a large school
16 district, and there are many things I oversee that the
17 superintendent would not get a briefing on. And then
18 there are issues where she would need support, and I
19 would be, as the deputy, the chief support for that,
20 challenge.

21 So, I guess I'm, is everything that's worked
22 on at the superintendent's level? No, nor is everything
23 she's working on as superintendent getting my support.

24 BY MR. BLOMBERG:

25 Q. So, there are certain matters that come to

1 your attention that stop with you, and you make the
2 final decision on them?

3 MS. LEVINE: Misstates the testimony. You can
4 answer.

5 THE WITNESS: It would be rare for me to make a
6 decision in isolation that wasn't a clear execution of
7 an existing policy, procedure, contractual agreement.
8 Items that are clear workflows stay with the people who
9 are responsible for them. Items that need collaboration
10 and joint decision-making are shared responsibility.

11 BY MR. BLOMBERG:

12 Q. Are there any distinct areas that you have a
13 shared responsibility with the superintendent?

14 A. Preparing board of education meetings.

15 Q. That would be it?

16 A. As a distinct shared responsibility? I'll try
17 to describe it through the org chart. The five board of
18 education members hire the superintendent. The
19 superintendent is then responsible for all of the staff
20 in the school district.

21 As the deputy, I sit directly under the
22 superintendent, so it's more her determination when I
23 need to support workflows with the rest of the staff.
24 There's no written distinction on workflows that say,
25 superintendent, yes, collaborative, no. It really is a

1 matter of what is that work, and how can we best address
2 it.

3 Q. How do you work with Principal Espiritu? What
4 is the nature of your interaction with him?

5 A. Limited. In our structure, he should be
6 working with his supervisors and his evaluators, and his
7 primary focus is instruction. Most of his work is going
8 to happen with the instructional side of the system.

9 Q. And so when would he be getting in direct
10 contact with you?

11 A. When there was an issue or concern that he
12 felt, well, if he was going to be in direct contact with
13 me, it's likely someone told him, you need to contact
14 Stephen.

15 Q. Why would they do that? It'd be for
16 administrative support, or was it some, what would be
17 the reason to kind of step outside the instructional
18 lane and bring it to your attention?

19 MS. LEVINE: Calls for speculation. You can
20 answer.

21 THE WITNESS: I mean, I can provide an example from
22 this morning. There was a construction project
23 happening at a school while there's a summer program.
24 The principal met with the construction team. They had
25 a disagreement on the best next step. They were unable

1 to resolve their disagreement. I was asked this morning
2 if I would step in and make the final decision.

3 BY MR. BLOMBERG:

4 Q. What are the times when Principal Espiritu has
5 contacted you in the last few years? Sorry, let me
6 rephrase that question.

7 What are the specific issues about which
8 Principal Espiritu has contacted you in the last three
9 years?

10 A. So, three years is a large window. I can talk
11 about most recently, as we were reopening from the
12 pandemic, there were several questions about our sports
13 leagues, and which sports could play, and which sports
14 couldn't.

15 And Principal Espiritu works with our league
16 commissioners, and I was overseeing the safety protocols
17 for the entire district, so I was talking to him. It
18 was not specific to his school, but we were in
19 communications about how do we open up sports for all of
20 the high schools within San Jose Unified and our partner
21 districts for sports.

22 So, there were several communications
23 regarding sports, in response to the pandemic. Prior to
24 that, I think this issue is the only other one within
25 the last three years.

1 Q. When you say, this issue, you mean the issue
2 regarding Fellowship of Christian Athletes?

3 A. Yes.

4 Q. Are you familiar with the ASB approval process
5 for student clubs?

6 MS. LEVINE: Vague. Overbroad.

7 THE WITNESS: In its current form, I could not
8 speak to the specifics.

9 BY MR. BLOMBERG:

10 Q. Were you familiar with it during your time as
11 the leadership teacher at Pioneer?

12 A. For the entire school district? No. For my
13 administration of it at Pioneer? Yes.

14 Q. So, you were familiar with how the ASB
15 approval process worked at Pioneer while you were
16 teaching the leadership classes?

17 A. Yes.

18 Q. Since leaving Pioneer, what involvement have
19 you had with the ASB approval process, in your current
20 role?

21 A. Very little. Approval of clubs? None.

22 Q. Have you been at all consulted in
23 decision-making by lower, by schools within the district
24 regarding either approval by the ASB, or decisions to
25 derecognize a group that had been recognized by the ASB?

1 A. I can't think of any example since I've been
2 the CBO or the deputy superintendent.

3 Q. Were you consulted at all as it regards
4 Fellowship of Christian Athletes, and I'll just call
5 them FCA, but, were you consulted at all regarding FCA?

6 A. So, I want to make sure I'm clear on my
7 response. Consulted on the recognition of the club?
8 No.

9 Q. In what way were you consulted?

10 A. Regarding the nondiscrimination policy.

11 Q. And what about the nondiscrimination policy?

12 A. It was brought to my attention that not all
13 students could serve as officers of FCA, and, that
14 concern, I was consulted on.

15 Q. Have there been any other times where you've
16 been consulted regarding the nondiscrimination policy's
17 application to a student club?

18 A. Not that I can think of.

19 Q. Have there been any other times that you've
20 been consulted regarding a student organization's
21 leadership requirements?

22 A. In my current role, no.

23 Q. In your previous role, were you consulted
24 about it, regarding, when you were at Pioneer?

25 A. Consulted? No.

1 Q. Did you have any conversations about
2 derecognizing a student group because of their
3 leadership policies?

4 A. No.

5 Q. Are you aware of any times when a group other
6 than FCA was derecognized because of its leadership
7 policies?

8 A. No.

9 Q. Is Principal Espiritu required to seek the
10 district's consent before approving individual student
11 clubs at Pioneer?

12 A. All of the principals are responsible for
13 following the board policies. They do not need to
14 consult club by club, but they do need to adhere to the
15 policies of the school district.

16 Q. So, he can make that decision on his own, when
17 it comes to granting recognition under, for ASB
18 recognition?

19 A. The school district, as a organization, does
20 not approve or disapprove club by club, but we do ensure
21 that the staff is aware of the policies, and that they
22 implement them.

23 Q. But, other than making sure they have that
24 awareness, and helping them with implementation, you're
25 not responsible, the district level is not responsible

1 for making those determinations?

2 A. No.

3 Q. So, ASB approval would be handled at the
4 individual school level?

5 A. Yes.

6 Q. When a principal raises the issue to the
7 district, what kind of guidance does the district
8 provide regarding ASB approval?

9 MS. LEVINE: Calls for speculation. Assumes facts
10 not in evidence.

11 THE WITNESS: My role would be to inform them of
12 the policies, and provide guidance on the next steps.

13 BY MR. BLOMBERG:

14 Q. Have you ever provided guidance to encourage a
15 principal to decline recognition under the ASB approval
16 process?

17 A. No.

18 Q. Have you ever supported or encouraged a
19 decision to deny ASB approval?

20 A. No. Maybe -- can you clarify the question.

21 If a club is seeking approval, I've never told
22 a principal yes or no.

23 Q. So, in the context of FCA, for instance, when
24 Principal Espiritu is making a decision, and brings it
25 to your attention, did you encourage him to make the

1 decision to decline recognition to FCA?

2 A. The guidance was that all clubs have to follow
3 the board policies.

4 Q. And so did you encourage him to decline
5 recognition on the basis that FCA was not following the
6 board policies?

7 A. The guidance was that we have a
8 nondiscrimination policy for all school district
9 activities. If any activity has a discriminatory
10 policy, we can't support it as a school district.

11 However, I also gave the guidance that the
12 individual student groups need to be supported, because
13 they still have a right to meet, and participate in
14 their organization's beliefs.

15 I would, I clarified the distinction between
16 district support and individually meeting.

17 Q. And what is that distinction?

18 A. There's the equal access rights that all
19 students have, and then there's ASB, which is a school
20 district activity. School district activities fall
21 under the nondiscrimination board policy. Non-school
22 district activities don't.

23 Q. So did you support Principal Espiritu's
24 decision to derecognize FCA?

25 A. So, my, my guidance was not specific to this

1 club. It was specific to any school activity needs to
2 adhere to the nondiscrimination policy. Groups that are
3 unable to adhere to it are protected under the Equal
4 Access Act, and, as the principal, he needs to make sure
5 to have a safe place to meet, that school activities are
6 not disrupted, and that the students are afforded their
7 opportunity to express their views, without it being a
8 San Jose Unified activity.

9 Q. So, you didn't take a position on whether
10 FCA's leadership requirement was in fact in violation of
11 the school's nondiscrimination policy?

12 A. I did review the leadership requirements, and
13 assessed them against the existing district policies.

14 Q. And what was your assessment?

15 A. That the oath requires students to disavow
16 their sexual identity, which would violate the
17 nondiscrimination policy.

18 Q. How did the oath require students to disavow
19 their sexual identity?

20 A. Our assessment was that if a student was
21 homosexual, they would have to swear an oath that they
22 weren't, to become an officer.

23 Q. And what language in the policy said that?
24 Sorry, let me rephrase that.

25 What language in the statement of faith of FCA

1 that you reviewed said that a student would have to
2 disavow their homosexual identity?

3 MS. LEVINE: Vague.

4 THE WITNESS: I have to see the specific --

5 MS. LEVINE: I'm sorry --

6 THE WITNESS: -- language.

7 MS. LEVINE: -- it's vague, overbroad, calls for
8 speculation. Go ahead.

9 THE WITNESS: So, I'd have to see the specific
10 language. There were multiple versions over the course
11 of time. Disavow, I do not recall as being in the oath,
12 but our assessment was clear that officers, being
13 homosexual and being an officer of FCA were mutually
14 exclusive.

15 BY MR. BLOMBERG:

16 Q. And your assessment was based on your reading
17 of the statement of faith?

18 A. We also consulted with legal counsel.

19 Q. And did you independently arrive at the
20 conclusion that the statement of faith was in violation
21 of the nondiscrimination policy?

22 A. No.

23 Q. So, when you read it yourself, you didn't
24 think that it was in violation of the nondiscrimination
25 policy?

1 MS. LEVINE: Misstates the testimony.

2 THE WITNESS: My job isn't to make --

3 My job is the board policies, so we consulted
4 with legal counsel and other staff members to make sure
5 we were interpreting the board policy correctly and
6 applying it consistently.

7 BY MR. BLOMBERG:

8 Q. Uh-huh, but you independently read the
9 statement of faith, correct?

10 A. Did I individually read it? Yes.

11 Q. And did you, in your assessment, determine
12 that it was in violation of the nondiscrimination
13 policy?

14 A. In my role as the deputy superintendent, there
15 was concurrence that what students were being asked to
16 do to serve as officers violated the nondiscrimination
17 policy.

18 Q. So, you concurred that the statement of faith
19 violated the nondiscrimination policy?

20 A. Let me try to rephrase that.

21 The conclusion was, a student could not be an
22 officer of this club, if they were homosexual, which is
23 discriminatory.

24 Q. And that was something that you communicated
25 to Principal Espiritu?

1 A. In that exact language, I'm, there was a
2 communication to Principal Espiritu that specified the
3 distinction between the nondiscrimination policy and
4 recognized school district activities and the Equal
5 Access Act, so my guidance to the principal was clear
6 that if a group has a discriminatory policy, the San
7 Jose Unified School District cannot support that group.
8 Student groups can have discriminatory policies, but
9 then they fall under the provisions of the Equal Access
10 Act.

11 Q. In your review of the FCA statement of faith,
12 you concurred in the conclusion that it was in violation
13 of the nondiscrimination policy?

14 A. I'm unclear if you are asking me for my, my
15 job responsibilities. So, as a deputy superintendent,
16 it was clear to the group that reviewed the situation
17 that students were prohibited from being officers if
18 they were homosexual, which is in direct violation of
19 the nondiscrimination policy.

20 Q. And were you a part of the group?

21 A. Yes.

22 Q. And so was it clear to you it was in violation
23 of the nondiscrimination policy?

24 MS. LEVINE: Calls for a legal conclusion.

25 THE WITNESS: We made the best recommendation to

1 the school, based on the facts we had.

2 BY MR. BLOMBERG:

3 Q. What was that recommendation that you made to
4 the school?

5 A. That any group that discriminates cannot be a
6 recognized San Jose Unified activity. Groups that do
7 discriminate fall under the Equal Access Act, with the
8 other piece of guidance being, in all cases, safety is a
9 priority, student well-being's a priority, you know,
10 nothing should disrupt school activities.

11 Q. So, that articulation there doesn't say
12 anything specific to FCA. My understanding earlier is
13 that the determination by the group that you were a part
14 of was that FCA was in clear violation of the
15 nondiscrimination policy.

16 Is that understanding correct?

17 MS. LEVINE: Asked and answered.

18 THE WITNESS: The situation we were reviewing was
19 specific to FCA. The guidance was clear that the policy
20 applies to any case, this specific one, and anything
21 else related, so the board policy is not specific to
22 FCA.

23 BY MR. BLOMBERG:

24 Q. Uh-huh.

25 MS. LEVINE: Is there a question pending?

1 BY MR. BLOMBERG:

2 Q. So, I'm asking you about the specific
3 circumstance of FCA's derecognition. I understand what
4 you're saying about your view on the board policy.

5 I'm asking about what guidance was provided
6 specific to FCA, to Principal Espiritu, from the group
7 that you were a part of.

8 MS. LEVINE: Asked and answered.

9 THE WITNESS: Any club that has a discriminatory
10 policy can't be recognized by the school district. If
11 you find a discriminatory policy, it falls under the
12 Equal Access Act, and, again, that third prong of, for
13 all cases, you need to make sure all students are in a
14 safe environment, and school activities are not
15 disrupted.

16 BY MR. BLOMBERG:

17 Q. And did your group say to Principal Espiritu
18 that FCA's statement of faith was not discriminatory?

19 MS. LEVINE: Asked and answered.

20 THE WITNESS: Can you repeat the question.

21 BY MR. BLOMBERG:

22 Q. Yeah, certainly. So, did the group that you
23 were a part of that was reviewing the specific FCA
24 situation provide guidance to Principal Espiritu that
25 FCA's statement of faith was not in violation of the

1 nondiscrimination policy?

2 A. No.

3 Q. Did you encourage Principal Espiritu not to
4 derecognize FCA?

5 A. The guidance to Principal Espiritu was, any
6 club that has a discriminatory policy can't be a school
7 activity. And to have a discriminatory --

8 Q. Sorry, let me pause right there. That's what
9 I'm trying to understand.

10 Did you take a position on whether FCA had a
11 discriminatory policy?

12 A. So, we were reviewing the specifics of FCA.
13 It served as the case to provide the reminder to the
14 school, Pioneer, specifically, that they can't have any
15 student group that discriminates fall under school
16 activities. So, I understand, I think I understand what
17 you're asking. This specific case led to a reminder of
18 what the board policy is, and guidance to apply it
19 universally.

20 Q. And was there any guidance regarding the
21 application of the policy to this specific case?

22 MS. LEVINE: It's been asked and answered.
23 Badgering the witness.

24 THE WITNESS: So, in our work here at the district
25 office, we weren't distinguishing the specific case from

1 the board policy. We were applying the board policy to
2 the FCA circumstances.

3 BY MR. BLOMBERG:

4 Q. Uh-huh. And so were you agnostic as to
5 whether FCA violated the nondiscrimination policy?

6 MS. LEVINE: Same objection.

7 THE WITNESS: Our conclusion was a student was
8 prohibited from being an officer if they're homosexual,
9 which is in violation of the nondiscrimination policy,
10 which prompted us to remind the school of the
11 nondiscrimination policy and how to apply it to all
12 student groups.

13 BY MR. BLOMBERG:

14 Q. And then how was the nondiscrimination policy
15 applied to FCA?

16 A. My understanding is that ASB removed them as a
17 recognized student activity, and then the school
18 supported them continuing to meet through the Equal
19 Access Act.

20 Q. And was that result consistent with the
21 guidance that you provided?

22 A. I don't know the details of what transpired at
23 the school level, but, if a club has a discriminatory
24 policy, they should not be a student activity, a school
25 district activity, and they should move to the Equal

1 Access Act.

2 So, the details at the school level, I don't
3 know. The guidance to all principals is to be
4 thoughtful and make sure they're aware that we can't
5 have non, we can't have a discriminatory policy in any
6 school district activity.

7 Q. And you didn't contact Principal Espiritu and
8 say, no, no, no, make sure you recognize FCA, that's
9 what our guidance was? You didn't say anything like
10 that to him?

11 MS. LEVINE: Asked and answered.

12 THE WITNESS: No.

13 BY MR. BLOMBERG:

14 Q. But you were aware that FCA was derecognized.

15 A. Yes.

16 Q. And you didn't say anything to encourage FCA
17 to be rerecognized.

18 A. There was an effort to clarify with FCA what
19 was required of students. And, as soon as the
20 discriminatory requirements were removed, it would be
21 back to the school to make the determination on whether
22 they're a club or not.

23 Q. I understand that. That came later in time,
24 correct, that conversation with FCA?

25 A. Specific to me, or at the school level?

1 Q. Specific to you.

2 A. Yeah, I don't have a timeline with me, but my
3 recollection was the club was derecognized. I did have
4 a conversation with FCA representatives on how could
5 they get rerecognized.

6 Q. And at the time of their derecognition by
7 Principal Espiritu, neither you nor anyone else in the
8 district that you know of reached out to him and said,
9 no, you need to rerecognize FCA.

10 A. I can speak to my guidance as a deputy
11 superintendent. It was, consistently, if any group has
12 a discriminatory policy, they can't be a San Jose
13 Unified activity. They have a right to meet through the
14 Equal Access Act, but we cannot use district resources
15 for a club with a discriminatory policy.

16 Q. Uh-huh. But you didn't specifically say to
17 Principal Espiritu, FCA should be recognized, and
18 countermand his decision to derecognize FCA.

19 A. My communications to Principal Espiritu were,
20 if a club has a discriminatory policy, they can't be a
21 San Jose Unified activity. They can meet under the
22 Equal Access Act, and you need to ensure that they have
23 the opportunity to meet safely and express their views.
24 In both cases, can't disrupt school activities.

25 Q. Okay, and so what I hear you saying when you

1 tell me that is that you did not contact Principal
2 Espiritu and tell him to rerecognize FCA; is that
3 correct?

4 MS. LEVINE: Vague as to time.

5 THE WITNESS: So, I'm trying to be precise, and I
6 never told Principal Espiritu to recognize or
7 derecognize a club. The guidance was on San Jose
8 Unified's nondiscrimination policy, the Equal Access
9 Act, and understanding where groups fall with, under
10 those two, and ensuring that all groups can meet safely,
11 and that the school can carry on its functions without
12 disruption.

13 BY MR. BLOMBERG:

14 Q. Did you work with Jennifer Thomas on the FCA
15 situation?

16 MS. LEVINE: Vague as to --

17 THE WITNESS: Yes.

18 MS. LEVINE: -- time.

19 THE WITNESS: I'm sorry, Amy.

20 BY MR. BLOMBERG:

21 Q. In what ways did you work with Jennifer Thomas
22 on the FCA situation?

23 MS. LEVINE: So, to the --

24 THE WITNESS: So, Jen has been --

25 MS. LEVINE: I'm just going to object on the basis

1 of privilege, and instruct you not to answer to the
2 extent it involves any attorney-client privileged
3 communications.

4 THE WITNESS: In Jen's current role, she handles
5 cases through risk management, so my work with Jen is
6 how is this case proceeding with legal counsel.

7 BY MR. BLOMBERG:

8 Q. And did Jen get assigned to this after the
9 litigation started?

10 A. There was no assignment. The risk management
11 department works with our insurance carriers. When
12 there's a case that requires the insurance carrier's
13 involvement, working with multiple legal entities, it
14 already is in risk management. Jen was never assigned
15 to it. It's existing work.

16 Q. And, so, Jen has been working on the FCA
17 situation for how long?

18 A. That, I could not answer that specifically.

19 Q. Did your interactions with her on the FCA
20 situation predate the filing of this lawsuit?

21 A. I would have to review the timeline.

22 Q. You don't have any recollection of
23 communications with her about this before the lawsuit
24 was filed?

25 A. Again, I'd have to review -- I'm not trying to

1 be difficult. The last 18 months, it is much harder to
2 pinpoint dates and times and sequence of events. This
3 meeting's going to be harder for me to recall. It's all
4 in two dimensions. So, I, again, given what the school
5 district went through the last 18 months, I would want
6 to review the specific sequence before answering.

7 Q. Do you recall whether Jen was a part of the
8 group that was evaluating the FCA derecognition
9 decision?

10 A. In the initial phases, I do not believe she
11 was part of that group.

12 Q. And do you have a recollection of her later
13 being involved?

14 A. Can you clarify. Involved in which aspect?

15 Q. So, well, here's one example. You mentioned
16 that after FCA was derecognized, there were some
17 communications that you had with FCA regarding their
18 attempts to be recognized.

19 Was she involved at all in those
20 communications?

21 MS. LEVINE: Vague as to involved.

22 THE WITNESS: So, my role as a deputy
23 superintendent was in the initial review and the
24 guidance to the school regarding the nondiscrimination
25 policy and the Equal Access Act.

1 Subsequent to that, I believe there's been a
2 lot of activity to ensure all ASBs across the six high
3 schools are clear on these policies, and are
4 implementing them consistently. Jen's work on that, I'm
5 not privy to on a day to day or school level basis.

6 BY MR. BLOMBERG:

7 Q. When you said that she's working on the case,
8 what does that mean?

9 A. I would --

10 MS. LEVINE: Calls for attorney-client privilege.

11 THE WITNESS: I would repeat Amy's answer that
12 that's privileged. She works with legal counsel on
13 behalf of the San Jose Unified School District.

14 BY MR. BLOMBERG:

15 *DI Q. So, communication that she has with counsel
16 would be privileged. I'm asking you about what you know
17 of, in your personal knowledge, of her responsibility in
18 handling the case.

19 MS. LEVINE: I'm going to object on the basis of
20 attorney-client privilege and work product. To the
21 extent it's communicated via Jen Thomas to Stephen
22 McMahon about communications with counsel, then I think
23 it's still within the privilege.

24 THE WITNESS: And my understanding --

25 MS. LEVINE: So, I'm going to instruct you not to

1 answer that question.

2 And you can narrow what you're trying to get
3 at, Daniel.

4 BY MR. BLOMBERG:

5 Q. Other than communications that Jen Thomas has
6 had with counsel, and communications she's relayed to
7 you from counsel, what is your understanding of her
8 responsibilities or role in the case?

9 A. My understanding is that she is working
10 directly with legal counsel.

11 *DI Q. To do what?

12 MS. LEVINE: Calls for attorney-client privilege.

13 Don't answer that.

14 BY MR. BLOMBERG:

15 Q. You have no independent knowledge of what Jen
16 Thomas's responsibilities are in managing a situation at
17 the school?

18 A. Jen Thomas doesn't have --

19 MS. LEVINE: Sorry. Assumes facts not in evidence.

20 Go ahead.

21 THE WITNESS: Jen Thomas doesn't have
22 responsibilities on managing individual situations at
23 the schools. As the manager of risk management, she's
24 working on this case with legal counsel.

25 BY MR. BLOMBERG:

1 Q. And that's all she does, just work on the case
2 with legal counsel?

3 A. That's too broad for me to answer directly. I
4 don't, I'm sure Jen does lots of things. Everyone's
5 busy. My knowledge is that she's working with legal
6 counsel on this case.

7 Q. And when you say, this case, you're referring
8 only to the litigation, or are you referring to the
9 entire interaction between FCA and the school regarding
10 FCA's derecognition?

11 A. Similar response as to earlier. The case is a
12 specific example of how the district needs to apply the
13 nondiscrimination policy and the Equal Access Act.

14 So, as all staff members work on their San
15 Jose Unified responsibilities, they need to apply the
16 nondiscrimination act to all activities, and they need
17 to be aware of the Equal Access Act in the cases where
18 there are potentially discriminatory practices, or it's
19 determined there are discriminatory practices.

20 So, is Jen's work limited to FCA only? No,
21 because the board policies apply to all San Jose Unified
22 activities.

23 Q. And so Jen's role on the FCA matter has been
24 to ensure compliance with board policies?

25 A. Jen's role, as all staff members' role, is to

1 make sure we're doing the work of the school district,
2 which includes implementing the board policies.

3 Q. What is the nature of your work with Dane
4 Caldwell-Holden?

5 A. So, Dane is the director of student services,
6 very similar to the other instructional directors. It
7 would be rare that I would have interactions with Dane,
8 unless there was an issue that crossed over into the
9 operations side. So, Dane is one of the instructional
10 directors.

11 Q. And have you had communications with him
12 regarding the FCA situation?

13 A. I do not recall speaking with Dane on this
14 matter.

15 Q. Have you ever sent any e-mails to Dane
16 regarding FCA?

17 A. I'd have to look.

18 Q. As you sit here today, you don't recall ever
19 having spoken with Dane regarding the FCA situation?

20 A. I do not. And on the e-mail question, just,
21 aware that with carbon copies, and the ability of e-mail
22 to move quickly, I don't recall writing any e-mails to
23 Dane directly, or any direct communication with Dane on
24 this matter.

25 Q. Do you recall receiving anything from him

1 regarding FCA?

2 A. No.

3 Q. Would he have had any responsibility for
4 working on the FCA situation in his role?

5 MS. LEVINE: Calls for speculation.

6 THE WITNESS: Similar to Jen. Not specific to FCA.
7 But, if something arose that was directly related to
8 student services, those would be Dane's
9 responsibilities.

10 BY MR. BLOMBERG:

11 Q. And what would be a way that student services
12 would be involved in a ASB recognition matter?

13 MS. LEVINE: Calls for speculation.

14 THE WITNESS: Dane --

15 MS. LEVINE: Sorry. Calls for speculation, and
16 it's vague and overbroad. You can answer.

17 THE WITNESS: Dane deals with student supports,
18 counseling services, crises, so, Dane's office, if there
19 was a student well-being concern, would handle that.

20 BY MR. BLOMBERG:

21 Q. So it would handle a complaint of bullying?

22 A. Yes.

23 Q. Complaint of discrimination?

24 A. Yes.

25 Q. Were there any complaints of bullying or

1 discrimination associated with the FCA situation?

2 MS. LEVINE: Vague. Calls for speculation.

3 THE WITNESS: My understanding is the lawsuit
4 alleges that. Outside of the lawsuit, I'm not aware of
5 any events.

6 BY MR. BLOMBERG:

7 Q. You're not copied on any communications or
8 you're not recipient of any letters indicating that the
9 FCA students had been bullied or discriminated against?

10 A. It's possible that I was. I was not aware. I
11 was not directly aware of a complaint. The uniform
12 complaint procedure specifies that these complaints go
13 in writing to the director of student services.

14 Q. And so that's how he would have been involved
15 if those complaints had been made?

16 A. If a student has a complaint, there's a board
17 policy on how to file that, and it is specific to the
18 director of student services.

19 Q. And you weren't consulted at all regarding any
20 complaints of bullying or discrimination on the FCA
21 matter?

22 A. No.

23 Q. You didn't provide any guidance on that issue?

24 A. The guidance to Principal Espiritu was, all
25 students need to feel safe and welcome at school, and

1 any event, activity, gathering needs to not disrupt
2 school activities, and be done safely.

3 Q. Does the board have policy regarding staff
4 responsibilities of reporting complaints of
5 discrimination or bullying?

6 A. Yes.

7 Q. And what do those policies state?

8 MS. LEVINE: Document speaks for itself.

9 THE WITNESS: Without looking at the specific
10 policy, I would just summarize, staff has an obligation
11 to support students and report instances of harassment
12 or bullying.

13 BY MR. BLOMBERG:

14 Q. What is your role in setting or reviewing
15 district policies?

16 MS. LEVINE: Vague. Compound.

17 THE WITNESS: The superintendent works with the
18 president of the board of education to set the agendas
19 for each board meeting. A board policy would go through
20 a board meeting, so the vehicle for board policies is
21 the board of education.

22 As a deputy superintendent, I support the
23 superintendent in preparing and finalizing board items.

24 BY MR. BLOMBERG:

25 Q. If members of the public wanted to review

1 board policies, where should they go? Where can they
2 see those policies?

3 A. San Jose Unified has a website with a board of
4 education page, and there's a link to the policies, and
5 all the policies are hosted online.

6 Q. Is that the GAMUT Online web hosting service?

7 A. Yes, which is under the California School
8 Boards Association.

9 Q. So, all current board policies are located in
10 that repository?

11 A. That is a complicated answer. That would need
12 several minutes to -- I'm happy to go through the
13 technical challenges, if you want.

14 Q. So, for someone trying to understand what
15 board policy is, and how it applies to protect their
16 civil rights, what would be the best place for them to
17 go to find those board policies, best reliable place?

18 A. The GAMUT platform, and what's happening is,
19 CSBA is switching platforms, and, during the transition,
20 we're having to make sure the policies in the current
21 online platform map to the new online platform, so
22 that's why I was saying there's a technical piece where
23 we have a staff member right now making sure that when
24 we launch the new platform, everything transitioned
25 over, because it's a completely new hosting system.

1 That's not to say that if a member of the
2 public right now logged in public San Jose, it opens up
3 the gateway to CSBA.org, and it lists all of the current
4 San Jose Unified board policies, and administrative
5 regulations, and then there's some exhibits.

6 Q. So, the policies, administrative regulations,
7 and exhibits that are available on GAMUT would be
8 current and accurate board policies?

9 A. There are a very limited number of exceptions
10 due to the transition of the platforms. If a board
11 policy was recently amended, it's sitting in the new
12 platform, which is scheduled to launch on July 1.

13 So, on the whole, the vast majority, probably,
14 98 percent, are on the existing GAMUT platform. It's
15 only ones that had amendments within the last few months
16 are awaiting a transition to the new platform. GAMUT
17 was unable to adjust language in the current platform
18 prior to the transition to the new platform.

19 So, I know I'm being overly precise.

20 Are 100 percent of the board policies on
21 GAMUT? No. The vast majority are. My understanding is
22 all of the ones regarding nondiscrimination, bullying,
23 harassment, are current.

24 Q. And as of July 1, all of the policies will be
25 on the new platform?

1 A. Absent yet another technical glitch, yes.

2 Q. Once it's on the new platform, all of the
3 policies will be there?

4 A. Yes.

5 Q. And so the only ones that might not be on the
6 GAMUT platform would be ones that have been amended in
7 the last few months?

8 A. Yes. There's a small number that are in,
9 they're caught in the transition.

10 Q. And if they were amended in the last few
11 months, would the old ones still be on GAMUT, or would
12 just the amended policy be gone, it would be removed, so
13 you couldn't find it on GAMUT?

14 A. My understanding is that the old one would
15 still be there, and you would need to go to the board of
16 education agenda to capture the most current version.

17 Q. And do you know what policies have been
18 changed in the last few months that would fall into that
19 narrow window of the 2 percent that you were talking
20 about?

21 A. I'd have to review the list. We made a change
22 to the grading policy. We're changing a policy on home
23 schooling. But, again, I'd have to review the list to
24 see all of the, San Jose Unified has a position that
25 directly supports the GAMUT platforms. That staff

1 member would have a list of the ones in the transition.

2 Q. Who provides guidance to district employees
3 regarding how board policy should be interpreted and
4 applied?

5 MS. LEVINE: Vague and overbroad. Calls for
6 speculation.

7 THE WITNESS: If the board policy is clear on its
8 face, staff implements it. If it's necessitating
9 further review, legal counsel.

10 BY MR. BLOMBERG:

11 Q. Are there anyone within, at the district
12 level, is there anyone at the district level who is
13 responsible for interpreting and applying the
14 nondiscrimination provisions of the board policy?

15 MS. LEVINE: Vague. Overbroad. Calls for
16 speculation.

17 THE WITNESS: All employees are responsible for all
18 policies. There are some policies that specifically say
19 the superintendent or designee shall. But, as an
20 employee of the San Jose Unified School District,
21 everyone needs to follow the board policies.

22 BY MR. BLOMBERG:

23 Q. And so the only time that an employee of the
24 district would ask for guidance would be when it's not
25 clear on its face, and, in those circumstances, they

1 would ask legal counsel?

2 MS. LEVINE: Misstates the testimony. Calls for
3 speculation.

4 THE WITNESS: Most of the school district's work is
5 clearly defined. Individual employees, their levels of
6 it's clear on its face will vary, so there's no way to
7 say, employee 1, employee 2, employee 3 would ask a
8 supervisor in this case or not.

9 Our job is to make sure we do the work of the
10 school district. When an issue arises, we review the
11 policies, and apply them consistently.

12 BY MR. BLOMBERG:

13 Q. And you were consulted on the interpretation
14 and application of the nondiscrimination policy in the
15 FCA matter?

16 A. Yes.

17 Q. Who else was in the group that was consulted
18 on that, from the district level?

19 A. Superintendent legal counsel.

20 Q. Is that it?

21 A. You have to specify at which point in time.

22 Q. At the time of the May 2019 derecognition
23 decision, who all was in the group that was interpreting
24 and applying the nondiscrimination policy?

25 A. And, to clarify, the district administrative

1 team did not derecognize the club. We repeated the
2 policies and their application to Principal Espiritu.
3 My recollection is the superintendent, with legal
4 counsel, reviewed the policies and their appropriate
5 application.

6 Q. Was Jodi Lax involved with the group?

7 A. As a member of the superintendent's counsel,
8 it's likely she was involved in a discussion. I can't
9 speak to the specifics, whether the superintendent
10 consulted her or not.

11 Q. And Dane Caldwell-Holden?

12 A. Again, I don't know the specifics of if the
13 superintendent -- so, let me try to, there's a group
14 called the superintendent's counsel, which is the four
15 people who have superintendent in their title. That
16 group was likely aware in the initial phases. What
17 those individuals consulted with their directors, I
18 don't know.

19 Q. Did they provide any input on the proper
20 interpretation and application of the nondiscrimination
21 policy?

22 MS. LEVINE: Vague.

23 THE WITNESS: Not to my recollection. The
24 discussion really was limited to student activities,
25 must be open to all students. When they're not, they

1 fall under the Equal Access Act. Let's make sure that
2 guidance is clear to Principal Espiritu.

3 BY MR. BLOMBERG:

4 Q. And that guidance, who was a part of the group
5 that gave that guidance?

6 MS. LEVINE: Asked and answered.

7 THE WITNESS: I wrote that guidance in an e-mail to
8 Principal Espiritu, and that was in consultation with
9 legal counsel and the superintendent.

10 BY MR. BLOMBERG:

11 Q. And the superintendent's counsel that you were
12 referring to?

13 A. The superintendent's counsel has daily
14 interactions. I can't specify at the time the e-mail
15 was sent to Principal Espiritu what conversations had or
16 had not happened.

17 Q. Which specific individuals are on the
18 superintendent's counsel?

19 A. Nancy Albarran is superintendent; me, as
20 deputy superintendent; Jodi Lax, as associate
21 superintendent; and Jay Dominic Bejarano, as assistant
22 superintendent.

23 Q. Anyone else?

24 A. On the superintendent's counsel? No.

25 Q. I'd like to ask you some questions about

1 student groups. Just so we understand each other, when
2 I say, student groups, I'm talking about all student
3 organizations that are allowed to meet on district
4 campuses, and that includes but isn't limited to ASB
5 recognized student clubs, student interest groups,
6 sports clubs, athletic teams.

7 Do you understand that characterization?

8 A. I believe so. So, limited, are we talking
9 high school specifically, or any grade level?

10 Q. High school, specifically.

11 A. Yes.

12 Q. Other than the ASB recognized student clubs,
13 the student interest groups, the sports clubs, and the
14 athletic teams, are there any other types of groups that
15 meet at district secondary schools. I'm sorry, let me
16 clarify that. Any other types of student groups.

17 MS. LEVINE: Calls for speculation. Vague as to
18 time.

19 THE WITNESS: The school district is a very public
20 system, and there is overlap across groups. So, Boy
21 Scouts regularly use facilities, which are often
22 students. Non-school district sports teams use the
23 facilities, and are largely students.

24 So, there are many groups using San Jose
25 Unified facilities that include students that are not

1 school district activities.

2 BY MR. BLOMBERG:

3 Q. Setting aside outside group --

4 A. That's a very, it's a very broad group of
5 users. I couldn't say specifically, I couldn't speak to
6 the specifics of any one of those users.

7 Q. Setting aside outside groups, like the Boy
8 Scouts, or outside sports teams, can you think of any
9 other types of groups, student groups, other than ASB
10 recognized student clubs, student interest groups,
11 sports clubs, and athletic teams, that meet on district
12 campuses?

13 A. If we agree that student interest groups is
14 broad enough for things like drama, choir, movies,
15 Pokemon, I, student interest groups, to me, covers
16 students agreeing to an interest, and wanting to meet
17 about it. If it's that broad, then I can't think of any
18 other category.

19 But I would move, for our definitions, sports
20 and athletics to a student interest group, if it's not
21 the school district sports teams. It's just a different
22 form of group.

23 Q. Sorry, say that again.

24 A. So, San Jose Unified has sports teams. If a
25 group of students was interested in athletics, to me,

1 that's still a student interest group. It's not a
2 separate classification.

3 Q. Do they have to, so, you have a group of
4 students that want to play a sports team or play a
5 sport. Do they have to go through any sort of process
6 to be able to do that on campus?

7 A. There would be two opportunities for that. If
8 you wanted to be a recognized club through ASB, if you
9 just wanted to meet and use the facilities through the
10 Equal Access Act.

11 Q. So, those would be the two -- I'm sorry, go
12 ahead.

13 A. If you were a student group, those would be
14 the two pathways. If it was an outside group, there's
15 the Civic Center Act.

16 Q. What would be the distinction between a group
17 of students that want to get together and play Ultimate
18 Frisbee and an outside group?

19 MS. LEVINE: Vague. Overbroad. Calls for
20 speculation.

21 THE WITNESS: In the first example, they would be
22 students at the school. In the second example, there
23 may be students at the school, but not necessarily
24 exclusively at the school. And in the first example,
25 the activity would be requested during the school day,

1 or before or after.

2 BY MR. BLOMBERG:

3 Q. Sorry, I'm just trying to understand the time
4 that you just gave for the first example. So, for the
5 frisbee team that's wholly made up of students, were
6 they meeting about, meeting during the school day, or
7 before, or after?

8 A. So, student groups have access to the school
9 facilities as part of going to school. If a student
10 group wanted to use the school facilities in the middle
11 of the summer, they would need an organization to get
12 the facility use permit.

13 Q. And then during -- go ahead.

14 A. A classroom isn't available to the students
15 during the summer.

16 Q. Okay.

17 A. When school's closed.

18 Q. And during the school year, an outside group,
19 which would be a group that's not composed solely of
20 students, would not be able to apply to use the facility
21 during instructional time?

22 A. They can apply through the Civic Center Act,
23 and it's up to the school to determine if the facilities
24 are available.

25 Q. How often do you interact with student groups

1 in your current role?

2 A. Almost never.

3 Q. When's the last time that you did?

4 A. The interactions are indirect and limited to
5 what's called the Intradistrict Leadership Council.
6 Each one of the high schools has a representative that
7 serves on the ILC.

8 In addition, the school board has a student
9 board member. My interactions are with the student
10 board member, as part of the board of education
11 meetings, and the ILC, on the rare occasion we're
12 consulting with student representatives on a
13 district-wide issue.

14 Q. What would be an example of the kind of
15 district-wide issue that you would be consulting on?

16 A. In response to the pandemic, we were unable to
17 host graduations in June of 2020, so, Associate
18 Superintendent Lax and I had a call with the ILC for
19 ideas on what could be an alternative way to recognize
20 graduating seniors, given we could not have a ceremony
21 that year.

22 So, that was a decision that would apply to
23 all six high schools. That's why we worked with the
24 ILC, because they have representatives from all the
25 schools.

1 Q. Does anyone at the district level have
2 specific responsibility with regard to managing or
3 recognizing student groups?

4 A. The district staff is making, is responsible
5 for making sure the school staff know the policies. I
6 am unaware of anyone here that is involved at the school
7 level club decision-making process.

8 Q. But who would be the primary point of contact
9 for a principal seeking input on one of these decisions?

10 A. If a principal had a question on an ASB
11 matter, they would likely go to Shannon McGee, who is
12 the director of educational equity.

13 Q. And that would be for all ASB recognition
14 matters, or just ones that relate to nondiscrimination
15 issues?

16 A. I was answering the question in the much more
17 broad, if a school leader had a question regarding ASB,
18 their likely first point of contact would be Shannon
19 McGee.

20 Q. And is that because she's primarily
21 responsible for those issues?

22 A. No. It's because she is in the position that
23 supports the principals, and the running of their
24 schools.

25 Q. And so, just, she's kind of the general go-to

1 person on pedagogical matters?

2 A. Not pedagogical matters. So, there's a
3 director of elementary education. That would be the
4 point of contact for an elementary educational issue.
5 There's a director of secondary education. That would
6 be the point of contact for a secondary instructional
7 issue. The director of equity would be the point of
8 contact for issues that are not directly instructional.

9 Q. Was Shannon McGee involved with the FCA
10 matter?

11 MS. LEVINE: Vague and overbroad. Don't answer to
12 the extent it calls for communications with district
13 counsel. You can answer, otherwise.

14 THE WITNESS: You'd have to specify, again, at
15 which point in time.

16 BY MR. BLOMBERG:

17 Q. Do you have any recollection of Shannon McGee
18 having any involvement with the FCA matter?

19 MS. LEVINE: Same objections.

20 THE WITNESS: Her work is similar to Jen's. I
21 understand she's working with legal counsel.

22 BY MR. BLOMBERG:

23 Q. On the FCA matter?

24 A. My understanding is it's not specific to the
25 FCA matter. It's making sure the schools are clear on

1 the nondiscrimination policy and the Equal Access Act.

2 Q. And was she involved on the nondiscrimination
3 policy and the Equal Access Act because of the FCA
4 matter?

5 A. The FCA matter was the starting point for
6 ensuring that we had the right guidance to all the
7 schools, and reminded them of the existing board
8 policies.

9 Q. Was she involved at that point?

10 MS. LEVINE: Vague.

11 THE WITNESS: I can't speak specifically whether a
12 principal discussed it with her or not. I don't know.

13 BY MR. BLOMBERG:

14 Q. You don't know if Principal Espiritu contacted
15 her as a part of seeking guidance on ASB matters at his
16 school?

17 A. I do not have firsthand knowledge of whether
18 they communicated or not.

19 Q. But that would be the normal course, if a
20 principal has questions regarding an ASB matter at his
21 school, to go speak with Shannon McGee?

22 A. It would depend on the ASB matter. If it was
23 regarding ASB processes, Shannon would be a resource.
24 If it involved the ASB budget, that would go to fiscal
25 services.

1 Q. Anyone else besides Shannon or fiscal
2 services?

3 A. The director of secondary education, Deepa
4 Mukherjee, may also be consulted, given she supports the
5 high schools instructionally.

6 Q. And the financial services director, who would
7 that be?

8 A. Arthur Cuffy.

9 Q. So, generally speaking, it would be one of
10 those three who would be consulted on an ASB matter,
11 coming from a principal?

12 MS. LEVINE: Calls for speculation.

13 THE WITNESS: And, potentially, Dane
14 Caldwell-Holden, as the director of student services.
15 BY MR. BLOMBERG:

16 Q. And you don't know who Principal Espiritu
17 contacted first, regarding the FCA matter?

18 A. I do not.

19 Q. And as of the, between those four and the
20 issue that was presented in the FCA matter, do you have
21 any thoughts on which one would be the most natural fit
22 for getting guidance?

23 MS. LEVINE: Vague.

24 THE WITNESS: Specific to the FCA matter?

25 MS. LEVINE: Can you repeat the question.

1 BY MR. BLOMBERG:

2 Q. Do you understand the question, Stephen?

3 A. If a similar event occurred, who would be the
4 most likely of the four for the principal to contact?

5 Q. Uh-huh, yes.

6 A. Each one of the schools is unique enough and
7 has a variant enough relationship with their directors.
8 They would likely contact the one they felt the most
9 comfortable with, but I would naturally have it be
10 Shannon. Given the way she supports the schools, if a
11 situation like this arose again, Shannon would be the
12 most likely to be consulted.

13 Q. What are the board policies --

14 Sorry, go ahead.

15 A. And, just to be clear, I was speaking to the
16 initial phase of the question about recognition. If it
17 moved to different pieces of the matter, it would switch
18 directors. Again, if it was fiscal, Mr. Cuffy. Student
19 well-being, Caldwell-Holden. But, the very initial
20 question, Shannon would be the most natural respondent.

21 Q. What specific board policies apply to the
22 decisions regarding whether to approve student groups
23 that meet at district schools for ASB status?

24 A. There are several, all of which touch upon
25 components of this. There's a policy on ASB funds.

1 There's a policy on student activities. There's a
2 handful of policies that all speak to San Jose Unified
3 activities and the Equal Access Act.

4 Q. Is there any written guidance that's provided
5 for applying those policies regarding the recognition of
6 an ASB group?

7 A. The board policies specify San Jose Unified's
8 responsibilities. The specific process sits at the
9 school level.

10 Q. Is there any written guidance on, say, the
11 application of the nondiscrimination policy in ASB
12 approval?

13 MS. LEVINE: Calls for speculation.

14 THE WITNESS: The policy itself. No San Jose
15 Unified activity can discriminate.

16 BY MR. BLOMBERG:

17 Q. Are you aware of any other written guidance,
18 besides the policies themselves?

19 A. There are variations of the policies in
20 multiple forms. The student parent handbook reiterates
21 San Jose Unified's nondiscrimination policy.

22 Q. Any other places that you're aware of?

23 A. Our HR processes have disclosures that we're
24 an equal opportunity employer, and don't discriminate.
25 There are going to be examples throughout the district

1 that reiterate our nondiscrimination commitment.

2 Q. And so the same, what you're saying, then, is
3 the same nondiscrimination policy that applies to the
4 student groups applies in the employment context and
5 other contexts throughout the school?

6 A. The policy is to all San Jose Unified
7 programs, activities, yes. It's a comprehensive,
8 district-wide policy.

9 Q. So, does the nondiscrimination policy apply in
10 the same way to student groups and other district
11 programs?

12 MS. LEVINE: Vague. Calls for a legal conclusion.

13 THE WITNESS: There's the broad nondiscrimination
14 policy. Specific to student groups, there's recognition
15 of the Equal Access Act in the existing policies. When
16 a student group is unable to adhere to the
17 nondiscrimination policy, they have that vehicle in the
18 existing policies.

19 BY MR. BLOMBERG:

20 Q. So, for an ASB student group, the requirement
21 of not discriminating on the basis of, say, race and
22 sex, is the same as the nondiscrimination policies
23 requirement that other district programs also do not
24 discriminate on the basis of race and sex; is that
25 right?

1 MS. LEVINE: Calls for speculation. Vague.
2 Overbroad. Calls for a legal conclusion.

3 THE WITNESS: Without reviewing the specifics in
4 words, there's only one distinction I can think of,
5 which is age. As an employer, we're not allowed to
6 discriminate based on age, but, at the student level,
7 activities are segregated by age by the nature of grade
8 levels.

9 BY MR. BLOMBERG:

10 Q. Does every district school have a climate
11 committee?

12 A. I don't know.

13 Q. What district schools are you aware of that do
14 have climate committees, secondary schools?

15 A. I'm not, I'm not specifically aware of what a
16 climate committee would be at a school.

17 Q. Are you aware that Pioneer has a climate
18 committee?

19 MS. LEVINE: I'm going to instruct the witness not
20 to answer to the extent his knowledge is on the basis of
21 communications with counsel. If you have some
22 independent knowledge of that, then you can answer.

23 THE WITNESS: Outside of this case, I have no
24 knowledge of specific committees, school by school.

25 BY MR. BLOMBERG:

1 Q. And your, other than communication from
2 counsel, you've never seen anything that says that
3 Pioneer has a climate committee?

4 A. I have not. And, to be precise with the
5 answer, the collective bargaining agreement with the
6 teachers association has stipends for lead teachers, and
7 my understanding is those are always grade level leads,
8 department chairs, very traditional formal structures.
9 I'm unaware of any climate committees or nontraditional
10 committee at the school level.

11 Q. What is your understanding of what it means
12 for a student group to be ASB approved?

13 MS. LEVINE: Vague as to what school site and what
14 time.

15 THE WITNESS: Generally, that at some point in
16 time, the ASB officers, at a minimum, if not the entire
17 representative student body, approved the club
18 application.

19 BY MR. BLOMBERG:

20 Q. And is the ASB student body ultimately
21 responsible for approval?

22 A. Process-wise? The elected officers of ASB
23 need to be running the activities within ASB, with their
24 faculty advisor.

25 Q. If the students approve a group that is in

1 violation of the nondiscrimination policy, is there any
2 district employee who has authority to countermand that?

3 A. As the staff supporting the students, all, all
4 staff members would need to advise the ASB of the
5 policies, and make sure they adhere to them.

6 Q. So, any staff member that was aware of a
7 student group being in violation of the policy would
8 have a responsibility to advise the ASB of that?

9 MS. LEVINE: Misstates the testimony.

10 THE WITNESS: I would characterize that as too
11 broad. A custodian would be unlikely to interact with a
12 student group, but, teachers, teachers and above would
13 have a responsibility to implement the board policies,
14 specific to students. I'm trying to draw the
15 distinction. Our custodians also follow the board
16 policies, but their interactions with students are of a
17 very different course of work.

18 BY MR. BLOMBERG:

19 Q. So, if the faculty advisor for a particular
20 proposed student group was aware the student group
21 discriminated on the basis of sex, for instance, would
22 they have responsibility to let the ASB know that?

23 MS. LEVINE: Calls for speculation. Calls for a
24 legal conclusion.

25 THE WITNESS: My guidance to all certificated staff

1 members, teachers, administrators, they are responsible
2 for ensuring that all students get the full board
3 policies. If they become aware of a violation of a
4 board policy, they have a responsibility to correct it.

5 BY MR. BLOMBERG:

6 Q. Do the principals and student activities
7 director have a role in ASB approval?

8 A. My understanding is that principal involvement
9 would be rare. The teacher or teachers assigned to the
10 ASB group would support the students during the process.

11 Q. Would you know whether the student activities
12 director would be the one who would sign an application,
13 either approving or disapproving a application for ASB
14 approval?

15 A. I don't have direct knowledge of that, but the
16 principal or the certificated staff member supporting
17 the group would be appropriate signers.

18 Q. What does it mean when a group is derecognized
19 from its ASB status?

20 A. We would then apply the Equal Access Act, as
21 they continued.

22 Q. And what would be the change, the practical
23 change for the student group, if it was no longer ASB
24 approved?

25 MS. LEVINE: Vague, overbroad. Calls for

1 speculation.

2 THE WITNESS: They would switch from being a San
3 Jose Unified sponsored group to an independent group
4 meeting through the Equal Access Act.

5 BY MR. BLOMBERG:

6 Q. Would they have access to an ASB account?

7 A. No.

8 Q. Are there any other benefits they would no
9 longer have access to?

10 MS. LEVINE: Vague, calls for speculation,
11 overbroad.

12 THE WITNESS: Under the ASB structure, clubs
13 receive a variety of supports that have nothing to do
14 with meeting or expressing their views. They're usually
15 financial and governance supports.

16 BY MR. BLOMBERG:

17 Q. What would be an example of the financial
18 supports?

19 A. If a newly formed club had been unable to
20 fundraise, they could ask for a loan or a grant from the
21 general ASB account.

22 Q. Are there any other examples of financial
23 supports that ASB groups have unique access to?

24 A. Other than the holdings of the ASB accounts,
25 which are district funds, not that I'm aware of.

1 Q. Where do the holdings of the ASB accounts come
2 from?

3 A. ASB fundraising.

4 Q. What kind of fundraising is that?

5 A. Student initiated fundraising that complies
6 with district policies and a host of other applicable
7 laws. I'm only laughing because car washing was a, car
8 washing was a traditional fundraiser that the City of
9 San Jose shut down, because we were putting soap in the
10 sewers. So, there's a range of fundraising activities
11 that student groups perform. They need to all conform
12 with the law.

13 Q. And so ASB approved groups can engage in
14 permissible forms of fundraising?

15 A. Yes.

16 Q. And then the funds they raise will go into the
17 ASB accounts?

18 A. Yes. And there's two types of ASB accounts.
19 There's the general -- actually, there's three types.
20 There's the ASB as a large entity, there's usually
21 something called the class account, class of 2022, class
22 of 2023, each class has an account, and then individual
23 clubs recognized by ASB often have their own accounts,
24 but not always.

25 Q. Okay. So, the funding for the individual

1 clubs, does that come from their own fundraising
2 efforts? So, say they held a bake sale, and they
3 derived funding from that, does that go into the ASB
4 account at that point?

5 A. That's one way to fund an individual club.

6 Q. What would be another way?

7 A. The senior class decides that 20 percent of
8 the revenue from ticket sales to the senior ball get
9 distributed to clubs.

10 Any ASB fundraising activity, the ASB can
11 determine how to distribute the funds.

12 Q. And how is an ASB fundraising activity
13 distinct from a specific ASB group's fundraising
14 activity?

15 A. The nature of the fundraiser. So, senior ball
16 would be overseen and run by the senior class. A bake
17 sale, which is likely not permissible, because it
18 violates the student nutrition policies, probably is
19 just a single club. Yearbook would probably be the
20 whole school, because all grade levels can buy the
21 yearbook, so there may be a portion of the yearbook
22 revenue that goes into ASB accounts school wide. A
23 class dance is limited to that class; a specific club
24 fundraiser, for that club.

25 Q. So, the nature of the fundraiser itself will

1 kind of identify whether it's going to go into one of
2 those three ASB fundraising buckets that you identified?

3 A. Yes. If the processes are being followed
4 properly before the fundraiser starts, all of that
5 should be clear. No ASB should be raising funds without
6 a clear purpose and a designated rationale for the use
7 of the funds.

8 Q. Okay. So, just to make sure I'm
9 understanding, the ASB body itself could do some sort of
10 fundraiser, and the funds from that would go to the ASB
11 body; a specific class could do some sort of fundraiser,
12 and that would go to the ASB account for that class; or
13 a specific group could do a fundraiser, and the funds
14 would go to that ASB approved group; is that right?

15 A. Yes, with ASB maintaining the authority to
16 move the money.

17 Q. So, the ASB body could make the choice to move
18 class funds to a specific group?

19 A. The most basic example is when the senior
20 class graduates, they usually have an account balance.
21 They would vote on how to distribute that account
22 balance, because they're no longer there once they
23 graduate.

24 Sometimes, they give it as a school gift.
25 Sometimes, they distribute it to the junior class, to

1 support them as seniors. But they have the authority to
2 rededicate the funds through ASB.

3 So, and, again, this is, ASB, the ASB entity,
4 they're district funds governed by the students. We
5 ensure they follow the applicable laws and policies,
6 but, when they're governed by the students, they retain
7 a lot of authority to use the funds for the benefit of
8 students.

9 Q. And in what way are they district funds, if
10 the students are doing the fundraising?

11 A. They are within San Jose Unified accounts, and
12 we are the ultimate legal authority for the funds.

13 Q. And are all of the funds raised via student
14 initiatives, or is the district supporting a lot of
15 that?

16 A. We do not deposit into the ASB accounts. We
17 indirectly support that account by paying for the ASB
18 clerk. So, we provide --

19 Q. Otherwise -- sorry, go ahead.

20 A. -- staff time. We provide staff time.

21 Q. Okay. So, the funds themselves are all
22 derived from the ASB fundraisers that we've just been
23 discussing?

24 A. They should be. The other may be parent
25 donations. There should be no non-ASB funds going into

1 an ASB account.

2 Q. And so the --

3 A. Sorry. I should clarify. I think there was
4 one example where there was embezzlement at a school --
5 this is before my time -- and the district backfilled
6 the loss. But, other than an extreme event like that,
7 no San Jose Unified non-ASB funds should commingle with
8 ASB funds.

9 The school district is not allowed to borrow
10 from ASB. The school district is not allowed to deposit
11 into ASB. There should be no commingling of those
12 account flows.

13 Q. And access to those ASB funds is one of the
14 benefits of being an ASB recognized student group?

15 A. I'm sure the students would characterize it as
16 a benefit. My understanding is many of the clubs don't
17 need a financial account, so the benefit is limited.

18 Q. So, setting aside whether they want it or not,
19 if they want access to it, they have to do it as an ASB
20 recognized student club?

21 A. To access the school district's software, bank
22 accounts, and ASB clerk, you need to be a recognized
23 club, because those are district resources running that
24 system.

25 Q. And what, when you say, software, what does

1 that mean?

2 A. There's a program that handles the ASB
3 transactions.

4 Q. So, to be able to use that program, you need
5 to be an ASB approved club?

6 A. The individual students don't use it. The ASB
7 clerk uses it in support of the students. It's a San
8 Jose Unified employee.

9 Q. What are the governance aspects that you
10 mentioned regarding ASB recognition?

11 A. There's a lot of resources through what's
12 known as ASB statewide, so, bylaws, the election of
13 officers, processes and procedures for making sure you
14 have a very democratic club. Those type of governance
15 supports would come through the ASB class.

16 MS. LEVINE: Daniel, can we take a break soon.

17 MR. BLOMBERG: Yeah, that would be fine.

18 Let's go ahead and go off the record.

19 (Recess: 11:00 a.m. to 11:11 a.m.)

20 BY MR. BLOMBERG:

21 Q. Back on the record. Why does the district
22 have student groups on campus?

23 A. I'm not so sure that it's the school district
24 that has student groups on campus. It's the right of
25 the students to form groups on campus.

1 Q. Do the students have a right to form ASB
2 approved student groups?

3 MS. LEVINE: Misstates the testimony.

4 THE WITNESS: As long as they adhere to the
5 policies applicable to ASB groups.

6 BY MR. BLOMBERG:

7 Q. What is the basis of the students' right to
8 form groups on campus?

9 MS. LEVINE: Calls for a legal conclusion. Calls
10 for speculation.

11 THE WITNESS: The policies of the school district,
12 the laws of the State of California, and the laws of the
13 federal government.

14 BY MR. BLOMBERG:

15 Q. Why did the district create the ASB approval
16 program?

17 MS. LEVINE: Calls for speculation.

18 BY MR. BLOMBERG:

19 Q. Let me ask that differently. Why does the
20 district continue to have the ASB approval program?

21 A. One of -- strike that. The most important
22 responsibility that I oversee is the financial health of
23 the district. ASB accounts are a long-term concern,
24 given their unique nature, so, FCMAT, which is the
25 oversight body for financial concerns in the State of

1 California and school districts, has a whole manual on
2 ASB governance.

3 So, the school district has a strong interest
4 in ASB activities, because the funds are one of the few,
5 if not only, that are under the district's legal
6 responsibilities, but governed by minors, so, the school
7 district, because of the financial relationship, has a
8 strong interest in all ASB activities.

9 Q. Is there any other reason why the ASB program
10 exists, other than the funds that are already there?

11 A. Given the other vehicles available to
12 students, students could effectively do the same
13 activities without an ASB account through other means,
14 so it is that financial relationship that is the
15 district's main interest, distinguishing ASB from other
16 student activities.

17 Q. It's not at all related to increasing
18 community spirit, or involvement with the campus, or
19 anything like that?

20 A. Having a positive school climate is a school
21 level concern. I was speaking to San Jose Unified's as
22 a district, and my role as the chief business officer,
23 my focus is on the funds. So, the ability to hold the
24 senior ball is a very complex event, if the students did
25 not have ASB.

1 Q. When you were leading the leadership program
2 at Pioneer, did you tell the students there that the
3 primary reason why the ASB program existed was because
4 of the financial relationship between the district and
5 ASB funding?

6 A. I don't recall a statement like that, and I
7 doubt I would have said that at the school level.

8 Q. And why would it have been different at the
9 school level?

10 A. To an individual group of students, ASB is
11 their opportunity to participate in the democratic
12 process, elections, governance, having a stake in their
13 individual school's functioning.

14 Q. So, the ASB program provides those
15 opportunities?

16 A. Yes. Being the ASB president, or the senior
17 class president, is an entry into how many of our
18 systems of government work when the students leave
19 school.

20 Q. Does the student or does the district have any
21 other interest than the operation of these ASB student
22 groups, other than their, the financial considerations
23 and the ASB governance consideration you just
24 identified?

25 MS. LEVINE: Vague.

1 THE WITNESS: Yeah, that they adhere --

2 MS. LEVINE: Go ahead.

3 THE WITNESS: That they adhere to the board
4 policies, and any other applicable laws and regulations.
5 BY MR. BLOMBERG:

6 Q. And why do you want them to adhere to the
7 board policies?

8 A. We have to. It's our responsibility as a
9 public institution.

10 Q. There's not any other reason? It doesn't
11 serve any other purpose?

12 A. I don't understand the question.

13 Q. Yeah, so, for instance, you're having the
14 groups observe the nondiscrimination policy solely
15 because it's a board policy, not because it has any
16 other value or purpose for the school?

17 A. As a public institution, the policies are set
18 at open meetings. The trustees are charged with acting
19 on behalf of the communities they represent. It's not
20 our job to put value judgments on the policies that have
21 been adopted by the board.

22 Q. Has the board articulated any reason for these
23 policies?

24 MS. LEVINE: Objection. Vague, overbroad.

25 Are you asking about what has been written?

1 Because we're not talking about anything in closed
2 session or conversations --

3 MR. BLOMBERG: The articulated basis for the
4 program.

5 BY MR. BLOMBERG:

6 Q. Has the board identified why it, why it has
7 these student organizations?

8 A. Most policies transcend any individual board
9 member or collection of five board members. It's common
10 that the board policies themselves have a opening that
11 says something such as the San Jose Unified School
12 District believes, or the board of education desires, so
13 the belief is expressed in the policy itself.

14 Q. And so a board policy 6145.5 said that the
15 purpose for the program is to give students practice in
16 self-governance, and provide social and recreational
17 activities, to honor outstanding student achievement, to
18 enhance school spirit and student sense of belonging,
19 you wouldn't have any reason to think any of those
20 things are inaccurate?

21 A. If the board specified those, I'm not looking
22 at the policy itself, if the board adopted that policy,
23 that is the policy of the San Jose Unified School
24 District.

25 Q. And those would be the purposes of the policy,

1 then?

2 MS. LEVINE: Calls for speculation.

3 THE WITNESS: Without looking at the policy itself,
4 and whatever other language may be in it, I can't
5 answer.

6 BY MR. BLOMBERG:

7 Q. From your time, from your time working, and
8 the leadership program, for years, you don't know one
9 way or the other about the purposes of the program?

10 MS. LEVINE: Argumentative.

11 THE WITNESS: Do I understand the purposes of the
12 ASB program?

13 BY MR. BLOMBERG:

14 Q. Yeah. Do you understand any other reasons,
15 other than the ones you've articulated, for the ASB
16 program?

17 A. At the school level, ASB serves a function for
18 the students in the school. In my responsibilities as
19 deputy superintendent, slash, chief business officer,
20 the school district has another set of responsibilities
21 that support that school level implementation. There's
22 not a single board policy specific to any aspect of the
23 district.

24 Q. I'm sorry, say that again. There's not a
25 single board policy that's not specific to any aspect of

1 the district? What does that mean?

2 A. When staff is reviewing board policies,
3 there's often multiple policies that apply to any
4 specific situation.

5 Q. So, the best place to go to understand what
6 the purpose of the ASB program would be would be the
7 board policies?

8 A. Yes. And at the school level, there should be
9 an ASB constitution that would list the purposes, so the
10 ASB constitution should have a specific purpose section.

11 Q. So, each school has its own ASB constitution
12 identifying the purposes of the program, in addition to
13 the board policy's purposes?

14 A. The school should have an ASB constitution
15 designating the purpose, the officers, the roles and
16 responsibilities of those officers, and the process for
17 electing those officers.

18 Q. Are you referring to the specific clubs that
19 have these ASB constitutions, or are you referring to
20 the ASB student governance at each school?

21 A. The latter.

22 Q. Prior to 2019, had you had any interaction
23 with FCA, the student group, at Pioneer?

24 A. Not that I'm aware of.

25 Q. Were you aware of the existence of the FCA

1 student group at Pioneer?

2 A. Not in any specific manner.

3 Q. So, you didn't have any interactions with an
4 FCA student group at Pioneer, prior to 2019?

5 A. Not that I can recall.

6 Q. Did you have interactions with any other FCA
7 student groups?

8 A. So, I want to clarify. I don't think I've had
9 any interactions with FCA student groups prior to 2019
10 or after 2019. I've had interactions with FCA, but my
11 understanding is they were not at the student level.

12 Q. So, just to make sure I understand, you don't
13 recall any interaction with any FCA student group at any
14 time.

15 A. With the definition of student group being
16 students, no.

17 Q. Okay. And then you mentioned that you've had
18 interaction with FCA.

19 What interactions have those been?

20 A. This matter.

21 Q. So, before the start of this matter in 2019,
22 you had no interaction with FCA, either as a national
23 organization, or any student group?

24 A. I don't recall any, any instance with FCA at
25 all.

1 Q. Did you have any awareness that there was a
2 Fellowship of Christian Athletes organization?

3 A. Not top of mind. If prior to 2019 you had
4 asked me what is FCA, I would have done an Internet
5 search, because I would have not had direct awareness.

6 Q. When were you first made aware in 2019 of the
7 situation at Pioneer FCA -- I'm sorry -- the situation
8 with Pioneer FCA?

9 A. When, being a date?

10 Q. Roughly, yeah.

11 A. I have to look at the e-mail I sent to
12 Principal Espiritu, and then rewind maybe two weeks
13 before that.

14 Q. And what was, what's the e-mail you're
15 referring to?

16 A. Providing the guidance on San Jose Unified
17 nondiscrimination policy and the Equal Access Act.

18 Q. So, that's what we were talking about earlier,
19 the kind of the three things, the guidance that you
20 provided to Principal Espiritu?

21 A. Yes.

22 Q. And who was the first person that contacted
23 you about the, the situation with Pioneer FCA?

24 A. My recollection is that my initial
25 conversations and communications and conversation,

1 including e-mail, were with Principal Espiritu.

2 Q. So, the interactions you can recall in your,
3 when you were learning about the Pioneer FCA situation
4 was with Principal Espiritu?

5 A. Yes.

6 Q. Okay. I'd like to introduce Exhibit 59. This
7 is an exhibit that's been previously introduced. It
8 will pop up in the marked exhibits folder in just a bit.
9 It should be up there now.

10 Can you let me know when you see it.

11 A. Yeah, I'm refreshing the page. I see it.

12 Do you want me to open it?

13 Q. Yes, please. One thing I found that helps, if
14 you click on the folder itself, it often just refreshes
15 that folder, instead of the entire page, and it often
16 cycles a little quicker.

17 A. Got it.

18 Q. Do you have the document up?

19 A. Yes.

20 Q. Do you recognize the document?

21 A. Can you be more specific. I recognize it as
22 an e-mail from Principal Espiritu to me.

23 Q. So, have you seen it before?

24 A. I'm not recalling this one specifically, but,
25 clearly, I received it. That's my e-mail address.

1 Q. Do you recall if this is the first mention
2 that you received of the situation with Pioneer FCA?

3 A. I would want to look at the date I sent the
4 guidance e-mail to Principal Espiritu, and the date on
5 this e-mail. My recollection is the guidance e-mail I
6 sent was shortly after becoming first aware of the
7 issue.

8 Q. Can you scroll down to the second page of the
9 document. You see that where it says FCA statement of
10 faith, there's one header, and there's another one that
11 says FCA sexual purity statement?

12 A. Yes.

13 Q. Do you recognize that part of the document?

14 A. In relationship to this e-mail? No. If this
15 was attached to the e-mail, I didn't open it.

16 Q. Do you remember how earlier you said that you
17 reviewed FCA's statement of faith?

18 A. Yes.

19 Q. Do you recall if this is the statement of
20 faith that you reviewed, or if it was something
21 different?

22 A. I'm reading.

23 Q. Take your time.

24 A. The second half, the sexual purity statement
25 appears to be very similar to what I reviewed, in

1 relationship to the nondiscrimination policy.

2 Q. Do you have any reason to think it's not the
3 same?

4 A. I don't recall it being on the same page as
5 the statement of faith.

6 Q. The substance of the sexual purity statement,
7 does anything about that seem different from what you
8 reviewed?

9 A. Given this was multiple years ago, what I was
10 able to review, there were different versions. This
11 appears to be similar, because it includes the agreement
12 that if a student engage in a homosexual act, they could
13 not be an officer.

14 Q. And that would be the basis for your earlier
15 statements saying that this is discriminatory?

16 A. When we reviewed the nondiscrimination policy,
17 it's clear that if a student is a homosexual, they
18 cannot be precluded from a San Jose Unified activity.

19 Q. But you don't recall right now whether this is
20 the, the statement that you reviewed?

21 A. I'm probably being overprecise. In this exact
22 form, I don't know if the footer is captioned for
23 recording the document related to the case. If it was
24 directly attached to this e-mail, I don't believe I read
25 it, given it came from a, given the distribution list.

1 My conversations were directly with Principal Espiritu,
2 and didn't include others.

3 Q. What conversations did you have with Principal
4 Espiritu that weren't in writing?

5 A. We had a phone call where I was updating him
6 that we were reviewing it, and we'd get him the
7 guidance, and there were some subsequent phone calls
8 specific to the Equal Access Act.

9 Q. And you said you were reviewing it.
10 What were you reviewing?

11 A. Consulting with legal counsel.

12 Q. Other than talking to legal counsel, what were
13 you reviewing?

14 A. Whether FCA was prohibiting some students from
15 being members of the club, or serving as officers.

16 Q. What were you looking at to make that
17 determination?

18 A. FCA documents.

19 Q. Were you looking at any other FCA documents
20 besides the statement of faith and the sexual purity
21 statement?

22 A. I recall attempting to find on the Internet
23 what is FCA's policies, to be sure that they were
24 consistent, and this was not just a school issue.

25 Q. And what did you find?

1 A. Inconsistencies.

2 Q. What inconsistencies?

3 A. I recall multiple forms of these statements or
4 oaths.

5 Q. When you were reviewing the situation, did you
6 confirm that this document was the one that the Pioneer
7 FCA leadership was required to fill out?

8 A. So, the guidance to Principal Espiritu was, if
9 a club violates the nondiscrimination policies, they
10 can't be a recognized San Jose Unified activity. You
11 need to move them to the Equal Access Act. The
12 determination stayed at the school level.

13 Q. And did you identify any other statement that
14 the students were actually required to sign?

15 A. Again, at the individual school level, my
16 responsibility was to provide the guidance, and make
17 sure that ASB adhered to the district policies.

18 Q. And you said earlier that the group you were a
19 part of reviewed the policy and determined that, FCA's
20 statement of faith, and determined that it was clearly
21 discriminatory.

22 Is this exhibit that we've got up now the
23 language that you reviewed to make the determination, or
24 did you find something else?

25 A. I've accidentally scrolled to page 3. Sorry.

1 Q. That's fine. The whole document is there for
2 you.

3 A. So, the sexual purity statement is a different
4 document. Our conclusion was that if a student is
5 required to disavow their sexual identity, or they are
6 otherwise prohibited from being a leader in the student
7 organization, that's discriminatory.

8 My understanding was that it was a requirement
9 that if a student was a homosexual, they would have to
10 disavow that in order to be an officer.

11 Q. Your understanding based on what?

12 A. That's consistent with the last paragraph on
13 page 2.

14 Q. Your understanding was based on what?

15 A. That the students are asked to sign a document
16 saying they will not engage in homosexual activity.

17 Q. So, the students were asked to sign this
18 document; is that the basis of your understanding?

19 A. Again --

20 MS. LEVINE: Asked and answered.

21 THE WITNESS: -- I'd have to go back. My
22 understanding is that the students were being asked to
23 sign an oath. I do recall there being the word, oath,
24 in one of the documents I reviewed. The language
25 appears very similar, that a barrier to entry was

1 signing no homosexual activity in order to be an
2 officer.

3 That's protected under the nondiscrimination
4 policy of the school district, which resulted in the
5 guidance to Principal Espiritu. ASB organizations can't
6 discriminate.

7 (Exhibit 88 was marked for identification by
8 counsel.)

9 BY MR. BLOMBERG:

10 Q. Let's, you can close out of this document and
11 click on the, the marked exhibits folder, and you should
12 see an Exhibit 88. Can you open that up for me.

13 A. Got it.

14 Q. Just let me know when you have it up.

15 A. Yes.

16 Q. All right. Do you recognize that document?

17 A. Yes.

18 Q. What is it?

19 A. Yes. My declaration.

20 Q. And can you just for the record explain what
21 you mean by your declaration.

22 A. So, specific to this case, I was declaring
23 what I believe to be true, at the time I signed this.

24 Q. Can you go to the second page of the document,
25 the last paragraph, marked number 13, and you see where

1 it says, attached hereto as Exhibit B is a true and
2 correct copy of Fellowship of Christian Athletes FCA
3 student leader application in effect during the 2018,
4 2019 school year, which includes FCA's statement of
5 faith and statement of sexual purity.

6 A. Yes.

7 Q. And if you scroll down to Exhibit B, do you
8 see that document?

9 A. Yes. 8 of 9 and 9 of 9.

10 Q. Uh-huh, exactly. And then looking at 9 of 9,
11 do you see the FCA's statement of faith and FCA sexual
12 purity statement?

13 A. Yes.

14 Q. So, would this be the document that you
15 reviewed in making your determination that FCA's
16 statement of faith violated the school's
17 nondiscrimination policy?

18 A. As I mentioned before, it's more the second
19 half, the sexual purity statement.

20 Q. But this would be the document that you were
21 telling the federal court was the operative one that was
22 in effect from 2018 to 2019, for the student group?

23 A. Yes, and I don't know if we can go back to the
24 earlier exhibit. I don't think the 4 and 5 were on the
25 earlier one, at the top of the page.

1 Q. But that's, just setting aside the 4 and 5
2 piece, I think you're right. I don't think that was on
3 the other one.

4 But, you were telling the federal court that
5 this is what you reviewed, and this is what the school
6 made its determination based on?

7 A. I signed this declaration. This is the
8 attachment.

9 Q. And, so, and you were saying with the
10 declaration that this is the operative policy that FCA
11 had that the school reviewed and made its determination
12 based on?

13 MS. LEVINE: Calls for a legal conclusion.
14 Misstates the evidence.

15 THE WITNESS: Yes.

16 BY MR. BLOMBERG:

17 Q. What about this purity statement violates the
18 nondiscrimination policy?

19 MS. LEVINE: Calls for a legal conclusion.

20 THE WITNESS: So, the highlighted paragraph
21 regarding homosexual acts, the requirement that if you
22 were engaged in a homosexual act, you could not be an
23 officer, is prohibiting a group of students from
24 leadership in this club.

25 BY MR. BLOMBERG:

1 Q. And that would be the violation of the
2 nondiscrimination policy?

3 MS. LEVINE: Calls for a legal conclusion.

4 THE WITNESS: My understanding of the
5 nondiscrimination policy is, every student has the right
6 to access. The San Jose Unified School District can't
7 support activities that preclude subsets of students
8 from participating, and, subset's defined in the policy.
9 BY MR. BLOMBERG:

10 Q. So, what do you mean by, subset's defined in
11 the policy?

12 A. There's a list of groups in the
13 nondiscrimination policy where we are not allowed to
14 discriminate on those characteristics.

15 Q. So, the nondiscrimination policy, for
16 instance, would forbid discrimination on the basis of
17 sex?

18 A. What do you mean by -- having sex, or sexual
19 orientation?

20 Q. Sorry, let me clarify. On the basis of race.
21 Let me say on the basis of race. I'm trying to identify
22 a category that would be in the category.

23 A. Race is a category in the policy.

24 Q. So, are there, can student groups make
25 decisions about their leadership or membership, other

1 than those categories that are specifically identified
2 in the policy?

3 MS. LEVINE: Vague, overbroad. Calls for
4 speculation.

5 THE WITNESS: I think the easiest example is could
6 the senior class, could the senior class president be in
7 8th grade. The policy would allow the senior class to
8 prohibit an 8th grader from being president, because age
9 is not protected under this policy.

10 Could the black student union refuse a
11 Caucasian student to be president? No, because that
12 would be discriminating on race.

13 BY MR. BLOMBERG:

14 Q. What about can the senior club or senior class
15 prohibit a junior from being president?

16 A. Age is not listed in the policy.

17 Q. So, it violates the nondiscrimination policy
18 if it discriminates on the basis of one of the
19 categories listed in the policy?

20 MS. LEVINE: Calls for a legal conclusion.

21 THE WITNESS: My job is to implement the policy.
22 The board adopted this language. We apply it to the
23 workings of the school district.

24 BY MR. BLOMBERG:

25 Q. So, in your application, the senior class

1 could decline to have a junior be their president, but
2 they couldn't decline to have a student be their
3 president on the basis of that student's race.

4 A. Yes, or gender, or anything on the list. So,
5 if the senior class said, only males can be president,
6 that would violate the nondiscrimination policy for
7 student activities.

8 Q. Okay. What about if it said to be president
9 of the senior class, you have to have at least a 3.0
10 GPA; would that violate the nondiscrimination policy?

11 MS. LEVINE: Calls for speculation. Calls for a
12 legal conclusion.

13 THE WITNESS: I'd want to take a close look at the
14 policy. I do not believe academic achievement is in the
15 nondiscrimination policy. There are other governing
16 rules on academic standing that may apply in that case.
17 Athletics is an example, where there's a academic
18 standing requirement to participate on the sports team.

19 BY MR. BLOMBERG:

20 Q. What is the academic standing requirement to
21 participate on the sports team?

22 A. Again, it's separate from nondiscrimination.
23 My understanding is, currently, it is a 2.0 GPA or
24 above.

25 Q. So, to be a member of a sports team, or the

1 team captain, you'd have to have at least a 2.0 GPA?

2 MS. LEVINE: Misstates testimony. Calls for
3 speculation.

4 THE WITNESS: My understanding, my understanding is
5 you can be a member of the team, but you cannot
6 participate in the competitions until you satisfy the
7 academic requirement.

8 BY MR. BLOMBERG:

9 Q. What about the captain of the team?

10 MS. LEVINE: Same objection. Go ahead.

11 THE WITNESS: Like an injury, you could be the
12 captain and not play because you're injured. You could
13 be, and, again, I'm not working directly with any
14 individual sport at this time, but you could be the
15 captain and not play because you're ineligible for
16 competition due to the grade requirement.

17 BY MR. BLOMBERG:

18 Q. Looking at the sexual purity statement, it
19 also says that heterosexual conduct is not permissible.

20 Is a student group allowed to have a
21 prohibition on their students' student leadership
22 engaging in heterosexual conduct?

23 MS. LEVINE: Calls for speculation. Calls for a
24 legal conclusion. Incomplete hypothetical.

25 THE WITNESS: That's why I was asking earlier to

1 clarify the distinction between having sex, and sexual
2 orientation.

3 BY MR. BLOMBERG:

4 Q. So, would a blanket prohibition on unmarried
5 students having sex violate the nondiscrimination
6 policy?

7 MS. LEVINE: Calls for speculation. Calls for a
8 legal conclusion. Incomplete hypothetical.

9 THE WITNESS: My understanding of the policy is,
10 pregnancy, parental, and marriage status are part of the
11 nondiscrimination policies, largely applied because of
12 we do have students who become pregnant, and we are not
13 allowed to exclude them from school activities, based on
14 their being a parent, or being pregnant.

15 BY MR. BLOMBERG:

16 Q. And did the school derecognize FCA because of
17 the heterosexual component of this policy, or the
18 homosexual act component?

19 A. As my role as deputy superintendent, I was
20 unaware of the sexual activity of the students. I did
21 become aware that homosexual activity, as a blanket
22 prohibition, was in the purity statement, and that
23 violates the nondiscrimination policy.

24 Q. A student can be homosexual and not be engaged
25 in homosexual conduct?

1 MS. LEVINE: Calls for speculation. Argumentative.
2 Go ahead.

3 THE WITNESS: A student who is homosexual being
4 prohibited from serving in a club capacity violates the
5 nondiscrimination policy.

6 BY MR. BLOMBERG:

7 Q. But that's not what the policy says, right?
8 It says that you can't engage in the conduct, so there's
9 nothing in the policy that says that FCA won't allow a
10 gay student to be a leader, just that a student would
11 have to agree not to be engaged in homosexual conduct,
12 correct?

13 MS. LEVINE: It's argumentative. The policy speaks
14 for itself. Calls for speculation. Calls for a legal
15 conclusion. Incomplete hypothetical.

16 THE WITNESS: And it goes back to the distinction
17 between having sex and sexual orientation.

18 BY MR. BLOMBERG:

19 Q. Did you contact FCA and ask them if they would
20 accept students who identify as gay, before making the
21 recommendation that the FCA group be derecognized
22 because of violation of the nondiscrimination policy?

23 A. It would be inappropriate of me to inquire
24 about the individual sexual activities of a student.

25 Q. Sorry. Just to clarify, I'm not asking about

1 the sexual activities of the students. I'm asking about
2 the standard for which FCA was derecognized.

3 Did you contact FCA to see if they would allow
4 a gay student to be a leader, as long as the gay student
5 agreed not to engage in homosexual conduct outside of
6 marriage?

7 A. My recollection of the conversation I had with
8 FCA, and, again, my conversation was not with the
9 student group, that was representatives of FCA on a
10 larger basis, I recall them representing as homosexual
11 activity, period, thoughts, beliefs, support would
12 violate their standards of membership. And their
13 argument was, as a religious organization, they can do
14 that.

15 Q. So, did you have that conversation before FCA
16 was derecognized on May 2, 2019?

17 A. No.

18 Q. So, did you speak to anyone at FCA regarding
19 whether this policy would prohibit a gay student from
20 being a leader of the organization?

21 A. No.

22 Q. Are you aware of anyone at the district who
23 spoke to FCA before they were derecognized to determine
24 whether this policy would prevent a gay student from
25 being a leader of the organization?

1 MS. LEVINE: Objection. Vague.

2 THE WITNESS: At the school level, I don't know
3 what conversations they had with FCA leadership.

4 BY MR. BLOMBERG:

5 Q. But as you sit here today, you're not aware of
6 anyone who had that conversation.

7 MS. LEVINE: Misstates the testimony. It's vague.

8 THE WITNESS: I don't know at the school level what
9 conversations happened with the site leadership, the
10 students, and FCA.

11 BY MR. BLOMBERG:

12 Q. And do you know at the district level if any
13 of those conversations took place where someone actually
14 reached out to FCA to ask them about what this policy
15 meant?

16 A. I know in response to your previous questions
17 that I did not, prior to the derecognition.

18 Q. And do you know that anybody else did?

19 A. I don't know whether they did or did not.

20 Q. Did you direct anyone to have a conversation
21 like that?

22 A. The direction to Principal Espiritu was, if an
23 organization recognized by the school district
24 discriminates, they cannot be a recognized student
25 activity. They need to move to the Equal Access Act.

1 Q. Understood. But in the investigation leading
2 up to the determination, did you direct anyone to look
3 into this question and to determine what FCA's religious
4 beliefs actually meant?

5 A. I believe my direction to Principal Espiritu
6 was to work with the club and ensure that they don't
7 violate the nondiscrimination policy.

8 Q. And did you tell him to confirm that the
9 policy actually does require or forbid gay students from
10 serving in a leadership role?

11 A. I don't recall saying it with that level of
12 specificity, because the guidance was broader than any
13 one club. And I did not talk in detail with Principal
14 Espiritu about how many clubs he has, which clubs have
15 statements that are like this. The guidance was more
16 broad regarding the nondiscrimination policy and the
17 Equal Access Act, and the third prong of, we've got to
18 keep everybody safe and not disrupt school activities.

19 Q. Did you highlight this document?

20 When I say, this document, the statement of
21 faith that we've been looking at, the last several
22 paragraphs have some highlighting on them.

23 Were you the one who highlighted this
24 document?

25 A. So, my recollection of the declaration is

1 that -- I'm going to scroll back up to the -- that it
2 was an assembled PDF that I dated and signed, with the
3 attachment already highlighted.

4 Q. And do you know why those specific paragraphs
5 are highlighted?

6 A. They are specific to the nondiscrimination
7 policy.

8 Q. Do you see further up on the statement of
9 faith, so, just above the sexual purity statement, there
10 are eight bullet points of religious belief, or, sorry,
11 seven bullet points, and there are eight kind of
12 agreement statement.

13 A. Yes. Seven. Seven statements. Number 8 is,
14 do you agree or not.

15 Q. Okay. If FCA had removed the highlighted
16 paragraphs, would they have been derecognized?

17 MS. LEVINE: Calls for --

18 BY MR. BLOMBERG:

19 Q. Let me ask that again.

20 If FCA had removed the highlighted paragraphs,
21 would they have been in violation of the
22 nondiscrimination policy?

23 MS. LEVINE: Calls for speculation. I'm going to
24 instruct the witness not to speculate.

25 THE WITNESS: The guidance to Principal Espiritu

1 was --

2 MS. LEVINE: I think there was an instruction,
3 so --

4 MR. BLOMBERG: He's not speculating. He's
5 answering the question.

6 MS. LEVINE: If you can answer it without
7 speculating, then you can go ahead.

8 THE WITNESS: Independent of FCA, a recognized San
9 Jose Unified activity needs to be open to all students
10 in a manner that doesn't violate the nondiscrimination
11 policy.

12 BY MR. BLOMBERG:

13 Q. And your testimony earlier was that what made
14 this policy violate the nondiscrimination policy was
15 that it had a blanket prohibition on homosexual conduct;
16 is that correct?

17 MS. LEVINE: Misstates the testimony.

18 THE WITNESS: I recall that FCA had a requirement
19 that a student would need to disavow being homosexual in
20 order to be an officer, which violates San Jose
21 Unified's nondiscrimination policy.

22 BY MR. BLOMBERG:

23 Q. Just to clarify, there's, there's nothing on
24 here that says that a homosexual student has to disavow
25 being homosexual, correct? There's no language on here

1 that says that; is that right?

2 MS. LEVINE: Document speaks for itself. Calls for
3 expert opinion. Argumentative.

4 THE WITNESS: Again, I was trying to recall. I
5 believe, my earlier testimony, I think I said I don't
6 think disavow was in the statement. That was the word I
7 had used to describe what students were being asked to
8 do.

9 BY MR. BLOMBERG:

10 Q. Okay, I understand, then. So, you're saying
11 that that sentence, neither heterosexual sex outside of
12 marriage nor any homosexual act constitutes, constitute
13 an alternative lifestyle acceptable to God, and then the
14 agreement to abide by that statement of belief, that's
15 the thing that you found objectionable under the
16 nondiscrimination policy?

17 MS. LEVINE: Misstates the testimony. Asked and
18 answered. Go ahead.

19 THE WITNESS: When I read the last paragraph, the
20 fact that a student would have to step down also means
21 that they could have never been an officer in the first
22 place, which is discriminating before they even become
23 an officer.

24 BY MR. BLOMBERG:

25 Q. On what basis?

1 A. A student who engaged in homosexual activity
2 shouldn't sign this, and, therefore, could not be an
3 officer.

4 Q. And that's why it violated the
5 nondiscrimination policy?

6 MS. LEVINE: Asked and answered. Badgering the
7 witness. Argumentative. Calls for a legal conclusion.
8 Calls for speculation. He's answered this question,
9 like, 20 times.

10 BY MR. BLOMBERG:

11 Q. Did you identify any other basis for its
12 violating the nondiscrimination policy in your
13 communications with Principal Espiritu or anyone else
14 within the district?

15 A. Any other basis -- I mean, again, the guidance
16 to Principal Espiritu wasn't derecognize FCA. It was,
17 all San Jose Unified activities have to adhere to the
18 nondiscrimination policy. If they don't, we still
19 support the students and their views through the Equal
20 Access Act, and, in both cases, make sure you provide a
21 safe venue that doesn't disrupt school activities.

22 Q. And you said, though, that the group that you
23 were working with determined that this policy clearly
24 violated the nondiscrimination policy.

25 And did you identify any other basis for its

1 violation of the nondiscrimination policy, other than
2 discrimination on the basis of sexual orientation?

3 A. So, speaking individually, my interpretation
4 was that drug use, alcohol use, and tobacco use are not
5 covered by the nondiscrimination policy. They're
6 covered by other disciplinary policies for San Jose
7 Unified.

8 The discrimination on sexual orientation is
9 covered by the nondiscrimination policy, and, therefore,
10 student activity at San Jose Unified activity can't
11 discriminate based on sexual orientation.

12 Q. And so when you said it's clearly
13 discriminated, you were referring to discrimination on
14 the basis of sexual orientation?

15 A. When I read what a student is asked to be --
16 when I read what a student was asked to sign, I believe
17 that a reasonable teenager, who had engaged in
18 homosexual acts, or was homosexual, should not sign
19 this, unless they were being dishonest with FCA.

20 For a student to say they would quit as an
21 officer on its face means they should have never been an
22 officer in the first place, if they had come to the club
23 with a homosexual lifestyle. And, again, FCA chose to
24 use lifestyle, which is why I've struggled with the
25 question about having sex, or sexual orientation, as

1 distinct things.

2 Q. Is number 8 highlighted, above the FCA sexual
3 purity statement?

4 A. In the document you're having me review?

5 Q. Yes, sir.

6 A. No.

7 Q. You see where it says in number 3 that we
8 believe in the deity of Christ?

9 A. Yes.

10 Q. And then number 8, it says, do you agree with
11 FCA's statement of faith, yes or no?

12 A. Yes.

13 Q. And that's not highlighted in this document?

14 A. It is not.

15 Q. Is that in violation of the nondiscrimination
16 policy?

17 MS. LEVINE: Calls for a legal conclusion.

18 THE WITNESS: Statements of belief are distinct
19 from prohibitions to participation. The highlighted
20 sections require a student to not participate.

21 BY MR. BLOMBERG:

22 Q. So, if a student has to sign the statement of
23 faith that they believe in the deity of Jesus Christ,
24 then that's not a violation of the nondiscrimination
25 policy?

1 A. Is a student who doesn't believe allowed to
2 join the club?

3 Q. Is there anything on here that suggests that
4 membership is contingent on signing this statement?

5 MS. LEVINE: Argumentative. Document speaks for
6 itself.

7 THE WITNESS: So, reading this document, the
8 signature is specific to the sexual purity statement.
9 BY MR. BLOMBERG:

10 Q. And that was your conclusion when you reviewed
11 the document in making your determination during the
12 process of derecognition?

13 A. My determination was San Jose Unified has a
14 policy that prohibits discrimination in district
15 activities. At the school level, no school has the
16 authority to allow discriminatory activities. They do
17 have to maintain the right of the students to express
18 their beliefs, and meet, use the Equal Access Act.

19 Q. And when you were reviewing this statement of
20 faith, did you arrive at the conclusion that the
21 signature only applies to the sexual purity statement?
22 Is that what your understanding was when you were
23 reviewing it?

24 A. So, again, many months ago, I'm reading it
25 now, the plain language of the document speaks for

1 itself.

2 Q. So, scrolling up to the top of the document,
3 it says, the FCA student leader application.

4 Is that right, page 8?

5 A. Yes.

6 Q. So, is this a membership application?

7 MS. LEVINE: Calls for speculation.

8 THE WITNESS: And given I'm not involved at the
9 school level with this club, I don't know their
10 definition of FCA leadership team member.

11 BY MR. BLOMBERG:

12 Q. And you didn't look into that question at all
13 when you were reviewing the document?

14 A. No.

15 Q. And if you look at the whole document, which
16 requires them to put in their name, the church they
17 attended, their FCA experience, the statement of faith,
18 which is on the next page, including the agreement with
19 the statement of faith, and the signature, do you still
20 think the signature only applies to the sexual purity
21 statement?

22 A. Given the construction of the document, and
23 that students are asked at different points to agree or
24 disagree by indicating yes or no, I do interpret the
25 signature as a direct measure of accountability to the

1 statement, as an officer, I will be accountable to FCA's
2 sexual purity statement.

3 Q. If the FCA didn't have the sexual purity
4 statement at all, it just had the number 8, 1 Timothy
5 4:12, in the signature block, would this violate the
6 nondiscrimination policy?

7 MS. LEVINE: Calls for speculation. Calls for a
8 legal conclusion. I instruct the witness not to
9 speculate.

10 THE WITNESS: The application of the
11 nondiscrimination policy in this particular case would
12 be, can a homosexual student be a member of FCA, and an
13 officer.

14 BY MR. BLOMBERG:

15 Q. So my question was, does signing this,
16 agreeing to this statement of faith violate the
17 nondiscrimination policy. Is religion one of the
18 criteria in the nondiscrimination policy?

19 MS. LEVINE: Compound.

20 THE WITNESS: I would want to review it again
21 against the nondiscrimination policy. To me, there's a
22 distinction between belief statements and, on its face,
23 barring entry.

24 BY MR. BLOMBERG:

25 *DI Q. Could a Muslim sign a statement that they

1 believe that Jesus Christ is the son of God?

2 MS. LEVINE: Calls for speculation. Lacks
3 foundation. Incomplete hypothetical. Calls for a legal
4 conclusion.

5 Don't answer.

6 I'm going to instruct the witness not to
7 answer hypothetical questions that have no basis for his
8 involvement in this case, and his basis of knowledge.
9 He's not here as an expert witness to just speculate.

10 MR. BLOMBERG: He's here as a defendant in the case
11 and as a witness, a fact witness in the case. And your
12 speaking objections are improper. You can instruct him
13 not to answer based on privilege. If you have a
14 privilege objection, you may make it.

15 MS. LEVINE: He's not a defendant, and --

16 MR. BLOMBERG: Do you want to reopen this
17 deposition if he is?

18 MS. LEVINE: Huh?

19 MR. BLOMBERG: Do you want to reopen this
20 deposition if he becomes one?

21 MS. LEVINE: No, that's not my point. I'm just
22 correcting your misstatement.

23 I can instruct, the purpose of the deposition
24 is to get information based on the witness's personal
25 knowledge. You're asking him to speculate.

1 MR. BLOMBERG: I'm not asking him to speculate.

2 MS. LEVINE: It's not proper for him to answer

3 hypothetical questions. That is testimony that an

4 expert witness could answer. It is complete and utter

5 speculation to put something before him about some

6 hypothetical Muslim student wanting to do whatever.

7 That's got nothing to do with the facts of this case, or

8 this witness's personal knowledge.

9 So, we're not going to engage in a, he's not

10 going to answer questions that are really legal

11 argument.

12 MR. BLOMBERG: If you instruct him not to answer my

13 questions about the application of the policy based on

14 his personal knowledge, we will keep the deposition

15 open, we'll talk to the magistrate, and then we'll

16 resume the deposition so he can answer the questions.

17 MS. LEVINE: Okay, if it's based on his personal

18 knowledge, but, again, my instruction is based on a

19 hypothetical that he has no prior experience with; that

20 was what my objection was about.

21 So, if you want to ask him if he has personal

22 knowledge, go ahead.

23 BY MR. BLOMBERG:

24 Q. So, Stephen, you advised ASB student group

25 leadership for years; is that correct?

1 A. When I was a teacher at Pioneer.

2 Q. And you have been identified in the
3 interrogatories in this case as a person responsible for
4 enforcing this policy, the nondiscrimination policy, on
5 behalf of the district; is that correct?

6 MS. LEVINE: Calls for speculation.

7 If you know, you can answer.

8 THE WITNESS: I understand that I'm involved in
9 this deposition in the case because of my role as the
10 deputy superintendent in the application of the
11 nondiscrimination policy.

12 BY MR. BLOMBERG:

13 Q. And so in your understanding of the
14 nondiscrimination policy, based on your personal
15 experience and knowledge, and your responsibility in
16 enforcing the policy, does the policy prevent a student
17 group from requiring its leaders to agree with their
18 religious beliefs?

19 A. Can we get more precise. A student group, or
20 a recognized ASB group?

21 Q. An ASB-recognized student group, the one to
22 which the nondiscrimination policy applies, based on
23 your testimony.

24 A. So, individually, the assessment we made on
25 can all students participate in the group in a

1 democratic way. So, should every, should everyone be
2 president of a certain club? No. The president of the
3 club should represent the club's purpose. To be
4 president, you should be elected by the members of the
5 club, which should ensure you represent the viewpoints
6 of the club.

7 My assessment in cases like this would be, is
8 everyone eligible to participate in that process. If
9 there's a barrier to entry that's directly codified in
10 the nondiscrimination policy, that's where San Jose
11 Unified would say this is impermissible.

12 When it comes to is the individual the best
13 representative of the club's belief? As long as
14 everyone has an opportunity to be a part of that
15 process, I would not flag it as violating the
16 nondiscrimination policy.

17 Q. So, the student member voters may consider
18 whether the prospective candidate agrees with their
19 religious beliefs; is that correct?

20 A. When electing their president, as an example?
21 Yes. I, I believe that that is the proper ASB process.

22 Using an example, if the black student union
23 exists to promote the rights of African-Americans, and a
24 candidate runs for president that says, I disagree, and
25 we need to go back to segregation, it is completely

1 appropriate to not elect that individual as the
2 president.

3 To me, individually, that's substantially
4 different than the segregationist can't even run for
5 office.

6 Q. Is there anything in the nondiscrimination
7 policy that says student groups cannot prohibit
8 segregationists from running for office?

9 A. I was trying to pick an example that was less
10 directly applicable. I don't believe there's anything
11 in the nondiscrimination policy. It would depend on how
12 you define race.

13 I think someone could make an argument that a
14 white supremacist, a club based on white supremacy was
15 discriminating on race if they only allowed white
16 members.

17 Q. But in terms of your, the black student union,
18 could the black student union say, any people of any
19 race can run for office, but only people who agree with
20 our position against segregation?

21 A. I was attempting to nuance that by saying, it
22 would be irrational to me that they would elect someone
23 that runs against the club's purpose, not that they can
24 bar that student.

25 Q. So, the black student union could not have a

1 policy that said, you have to agree with our policy
2 against segregationism to be eligible to run for
3 president?

4 MS. LEVINE: Speculative. Incomplete hypothetical.

5 THE WITNESS: If the black student union had a
6 policy that says you must be African-American to be
7 president, that would violate the nondiscrimination
8 policy. If the black student union said our president
9 should promote the rights of African-Americans, that
10 does not violate the nondiscrimination policy.

11 In both cases, the president should be elected
12 by the members of the club. If the members of the club
13 feel that their representatives no longer value the
14 purpose, their recourse would be to form another club,
15 which is why the school district is so permissive in the
16 rights of students to form groups promoting their
17 interests.

18 BY MR. BLOMBERG:

19 Q. Could they remove a leader who ran on a
20 platform against segregation, but then became in favor
21 of segregation, as their president?

22 MS. LEVINE: Incomplete hypothetical. Calls for
23 speculation. Calls for a legal conclusion.

24 Go ahead.

25 THE WITNESS: To answer that question, I would need

1 to see the bylaws of the group, and what is their
2 process for electing officers, and reviewing them.

3 BY MR. BLOMBERG:

4 Q. But, setting aside the process, I understand
5 that, is there any district policy that would prevent
6 them from removing a leader who came out in favor of
7 segregation?

8 MS. LEVINE: Same objections.

9 THE WITNESS: The school district's responsibility
10 is not to determine the value of student perspectives.
11 It's to enforce the policies we have, with a very
12 important one being student activity cannot
13 discriminate, given the specifications in the policy.

14 BY MR. BLOMBERG:

15 Q. When you say, given the specifications in the
16 policy, you mean those specific categories you
17 identified earlier, like race, and sex, and sexual
18 orientation, and things like that?

19 A. Yes.

20 Q. Are there any specific subcategories in the
21 policy that forbid holding a pro segregation viewpoint?

22 MS. LEVINE: Calls for a legal conclusion.

23 THE WITNESS: I thought for sure you'd say
24 speculation, because race is a protected category, and
25 the segregation example would be dependent on what

1 exactly was happening, and its relationship to
2 discriminating on race.

3 BY MR. BLOMBERG:

4 Q. Well, and then so the pro segregation could be
5 a problem. How about anti-segregation? You have to
6 agree with our policy against racial discrimination to
7 be a president of the black student union?

8 MS. LEVINE: Calls for a legal conclusion. Calls
9 for speculation. I think, again, we're getting into a
10 completely speculative hypothetical situation that we've
11 got a lay witness that you're throwing questions at him
12 that are not grounded in any facts of this case.

13 So, I'm going to instruct him not to answer,
14 not to speculate about things that he's never
15 experienced before, or he has no personal knowledge of.

16 THE WITNESS: I can describe what I would deploy,
17 the process in San Jose Unified. We have policies
18 adopted by the board of education. When the staff
19 becomes aware of a concern regarding the implementation
20 of those policies, we review it and apply the policy.

21 In this particular case, the determination
22 was, any club that bars participation in violation of
23 the nondiscrimination policy can continue, but without
24 being a San Jose Unified recognized program or activity.
25 Use the Equal Access Act.

1 That sequence of logic, that application would
2 apply in any example you're going to ask me about until
3 we conclude.

4 BY MR. BLOMBERG:

5 Q. The nondiscrimination policy forbids
6 discrimination on the basis of race; is that correct?

7 A. Again, I don't have the document in front of
8 me, but, yes, I think it uses just the word, race,
9 particular to that criteria.

10 Q. Would it violate the nondiscrimination policy
11 for a student group to require their leaders to agree
12 not to discriminate on the basis of race?

13 MS. LEVINE: Calls for speculation. Calls for a
14 legal conclusion. Document speaks for itself.

15 Go ahead.

16 THE WITNESS: I'm trying to parse through the way
17 you phrased it. Could the KKK club require you to be
18 white to be a member.

19 BY MR. BLOMBERG:

20 Q. No, that's not what I asked. No.

21 My question is, can a student group, the black
22 student union, require its leaders not to engage in
23 racial discrimination.

24 MS. LEVINE: Calls for speculation. I think that's
25 a completely speculative question.

1 THE WITNESS: And the challenge for my answering
2 is, again, it's similar to the sexual activity versus
3 sexual orientation distinction. So, what an individual
4 student does outside of the school umbrella is a
5 completely different assessment than is a student on his
6 or her face prohibited from participation.

7 BY MR. BLOMBERG:

8 Q. So, to be a recognized student group with the
9 ASB program, the student group has to agree to abide by
10 the nondiscrimination policy, correct?

11 MS. LEVINE: Vague.

12 THE WITNESS: In addition to all applicable board
13 policies, state law, federal law.

14 BY MR. BLOMBERG:

15 Q. Sorry, was that a yes?

16 A. If the question is do they only have to follow
17 the nondiscrimination policy, no.

18 Q. That wasn't my question. My question is, to
19 be eligible to be an ASB approved student group, do they
20 have to agree to follow the nondiscrimination policy.

21 A. They have to follow it. They don't have the
22 option of agreement or disagreement. They have to
23 follow it.

24 Q. Okay. And then can they require their leaders
25 to agree to follow the nondiscrimination policy?

1 MS. LEVINE: Vague.

2 THE WITNESS: So, if a club were seeking
3 recognition, would they need a statement saying, you
4 must follow the nondiscrimination policy? Not
5 necessarily. But, in order to maintain that
6 recognition, they can't violate it.

7 BY MR. BLOMBERG:

8 Q. My question is, can a student group, a
9 scrupulous student group say the only leaders who can
10 lead our group are people who agree to follow the
11 nondiscrimination policy.

12 Is that a violation of any district policy for
13 them to require that agreement of their leaders?

14 MS. LEVINE: Calls for a legal conclusion. Calls
15 for speculation.

16 THE WITNESS: I would want to think deeply about
17 this philosophical question. Because they're required
18 to follow it, as a student club, to reiterate that you
19 are required to follow it, I'd like to think through the
20 implications of that. Because it's a board policy, it's
21 not discretionary at the student level.

22 So, it would be odd for me for students to
23 require an affirmation to follow something that's
24 nondiscretionary. It is our responsibility to inform
25 the students that if they want to be an ASB club, they

1 can't discriminate, on the basis of the
2 nondiscrimination policy.

3 BY MR. BLOMBERG:

4 Q. Are you aware of any district policy that
5 would forbid them from requiring their leaders to make
6 that affirmation?

7 A. I would want to review the board policies, as
8 I would in any novel case, before making a final
9 determination.

10 Q. As you sit here right now, can you identify
11 any specific ones that would be violated?

12 A. Am I allowed to look?

13 Q. Sure. Which policies do you want to look at?

14 A. Going to the board policy portal.

15 Q. So, let's do it this way. Can you identify
16 any sections of the policy that would be implicated,
17 because, I think, you know, we want to keep things
18 moving. We don't want to lose time. So, can you
19 identify any section of the policy? We can go look at
20 specific language that you want to review.

21 A. My normal process for this would be, to start
22 searching, I would start with student clubs. There are
23 likely to be many tangential policies related to that.

24 We would want to put all those together and
25 review, if a student club requires an affirmation, is it

1 permissible or not, and there would be several things
2 we'd test against. The nondiscrimination policy would
3 be one.

4 There are likely, there are likely many
5 others. I mean, we're a public school system. We're
6 probably one of the most regulated sectors of the state.
7 I'm very cautious in matters like this, because it's
8 rare that one policy answers the question. It's more
9 common to find the policy you violated, than the many
10 possible policies that permit it.

11 So, if you're asking me is this an overt
12 violation, I'd have to look at several policies. I'm,
13 off the top of my head, at this time of day, I don't
14 know of a policy that would prohibit a student from
15 saying, I won't discriminate.

16 Q. Let's do this. Let's look at Exhibit 11. So,
17 you want to go back to, you can go ahead and close out
18 of the Internet and just go back to the marked exhibits
19 folder, and, in just a minute, we'll have Exhibit 11 pop
20 up. This is one that's been previously introduced.

21 A. Got it.

22 Q. Let me know once you have it up and you can
23 see it.

24 A. Yes.

25 Q. Can you take a minute and look at it and let

1 me know if you recognize what this document is.

2 A. Do you want me to read the whole thing, or
3 just answer on an overview?

4 Q. You don't have to read it out loud. Just read
5 it to yourself and let me know, once you have, if you
6 recognize what it is.

7 A. With a cursory look, I don't recognize it.
8 The three, the three points in the body are likely copy
9 and pasted from the language I sent Principal Espiritu.

10 Q. And who is, who is this e-mail from?

11 A. Principal Espiritu, based on the top line.

12 Q. And then is it to the student officers of the
13 FCA chapter at Pioneer?

14 MS. LEVINE: Calls for speculation.

15 THE WITNESS: Again, since I'm not involved at the
16 school level, I don't know who Charlotte, Elizabeth,
17 Rigo, the last name is. Independent of the matter, I do
18 recognize Sinclair, from the case. But, outside of the
19 lead proceedings, I don't know who they are.

20 BY MR. BLOMBERG:

21 Q. Do you know from your knowledge of the case
22 that Charlotte Klarke is one of the plaintiffs in the
23 case?

24 A. I would not want to -- I believed her to be.
25 If I toggle back from Exhibit 11, I think it says the

1 names on the file.

2 Q. So, on, then, the date that's marked on this
3 e-mail is Thursday, May 2, 2019; is that right?

4 A. Yes.

5 Q. And so the three bullet points, can you tell
6 me what those are again.

7 A. Those appear to be the exact language I sent
8 to Principal Espiritu.

9 Q. And did you draft that language?

10 MS. LEVINE: Calls for attorney-client privileged
11 information, work product.

12 BY MR. BLOMBERG:

13 Q. Without telling me who contributed, did anyone
14 besides you draft it?

15 A. I was the author of this e-mail. Sorry. Not
16 this particular e-mail. I was the author of those three
17 sections to Principal Espiritu. I would want to compare
18 them to the original. I don't know if anything's
19 changed from this e-mail compared to the one I sent him.

20 Q. And outside of counsel, did you seek any
21 feedback on this language, in your drafting process?

22 A. Superintendent. Do you want to specify
23 drafting, word for word review, or the content of the
24 message in its guidance to the principal, in
25 conversation with the superintendent?

1 Q. So, just to make sure, what I'm talking about,
2 the three bullet points, which you say you drafted, did
3 you, other than showing it to counsel, did you show it
4 to anyone else to ask for their feedback before you sent
5 it to Principal Espiritu?

6 A. Can you say it again, please.

7 Q. Certainly. Other than showing those three
8 bullet points to counsel, did you show it to anyone
9 else, like superintendent, to ask for feedback on the
10 content of the three bullet points?

11 A. My recollection is that the superintendent and
12 the superintendent's counsel, that group of four, had a
13 shared understanding of how to apply the Equal Access
14 Act, the board policy on nondiscrimination, and the
15 situation with FCA.

16 I do not believe they reviewed it word for
17 word, but there was consultation and discussion on the
18 main points, including the one I've been, making sure
19 whatever event is happening at the school level,
20 students are safe, and we're not disrupting the school's
21 functioning.

22 Q. Were you aware at the time that you drafted
23 this and provided it to Principal Espiritu that FCA
24 allows and welcomes everyone to be a member?

25 MS. LEVINE: Assumes facts not in evidence.

1 THE WITNESS: The information I had was that FCA
2 does not allow everyone to be a member.

3 BY MR. BLOMBERG:

4 Q. And did you investigate that one way or the
5 other?

6 MS. LEVINE: Asked and answered.

7 THE WITNESS: At the school level, no.

8 BY MR. BLOMBERG:

9 Q. Where did you get the information? Sorry. Go
10 ahead.

11 A. With the documents I was aware of, it was
12 clear that students engaged in homosexual lifestyle
13 cannot be in the group.

14 Q. And what, what document are you referring to
15 that says that you can't be in the group if you engage
16 in homosexual conduct?

17 A. This is one of the challenges of assessments
18 like this. The distinction between officer and member,
19 to me, are not that different in the sense that FCA has
20 a barrier that was in writing at the time I reviewed it
21 that students could not be leaders, which means they're
22 not in the group either.

23 I don't understand how FCA would have
24 implemented a policy where someone removes themselves as
25 an officer, but stays in the group.

1 Q. And you didn't investigate that to determine
2 if FCA allowed everyone to be a member?

3 A. That was done at the school level, through
4 Principal Espiritu and his team.

5 Q. So that --

6 A. If that investigation happened, it would have
7 been specific to the club there.

8 Q. On the three bullet points here, do the words,
9 all comers, show up anywhere?

10 MS. LEVINE: Document speaks for itself.

11 THE WITNESS: I'm still reading it. I do not see
12 them.

13 BY MR. BLOMBERG:

14 Q. Do you recall adding the words, all comers,
15 when you drafted the document?

16 A. Which document?

17 Q. Sorry. The three bullet points.

18 A. These three, so I'm looking at Exhibit 11.
19 These three bullet points appear to be the ones I
20 drafted, and they do not include, all comers, and I did
21 not, I do not recall including that in my original
22 message, either.

23 (Exhibit 89 was marked for identification by
24 counsel.)

25 BY MR. BLOMBERG:

1 Q. Let's take a look at the next exhibit, which
2 will be an e-mail about the statement of faith, which is
3 labeled SJUSD 11920. It should come up in just a
4 minute.

5 A. Okay. 89.

6 Q. Yeah. You're actually ahead of me on that
7 one. There we go. It just popped up for me.

8 Can you scroll down to the fourth page.
9 There's an e-mail at the bottom of that page. Just let
10 me know when you get there and you've had a chance to
11 take a look at it.

12 A. Page 4.

13 Q. Yes. The bottom corner says 11923.

14 A. Okay. The header is re FCA followup?

15 Q. Yes, exactly, and it's from Katie Chang.

16 Do you recognize the names on the to and cc
17 line?

18 A. From, yeah. The bottom of this page, from
19 Katie Chang to Jennifer Thomas, Friday, January 31.

20 Q. Yeah, that's the one.

21 A. Yes.

22 Q. You see you are copied on that e-mail?

23 A. Yes.

24 Q. You see how Katie Chang says that the attached
25 language differs from what I understood students were

1 asked to pledge. And then she provides language below.
2 Then she says, is what she understood the leaders were
3 pledging?

4 A. I see that.

5 Q. The date on this e-mail was January 31, 2020?

6 A. Yes.

7 Q. So, does it appear that the language that the
8 school considered in its derecognition decision was
9 different from the actual leadership application that
10 FCA used?

11 MS. LEVINE: Calls for speculation.

12 THE WITNESS: That, that's not my understanding of
13 the sequence.

14 BY MR. BLOMBERG:

15 Q. What's your understanding?

16 A. That Principal Espiritu, at the school level,
17 the club was requiring the oath, or affirmation, that
18 that subsequently changed after the club was
19 derecognized by FCA.

20 Q. And what's the basis for your understanding of
21 that?

22 A. The information I received subsequent to the
23 initial situation. I later learned FCA was at other
24 high schools. FCA was instructed, my understanding was
25 FCA was instructed to resubmit to ASB, with the new

1 documents. Unfortunately, we were in the pandemic, and
2 there were no students on campus, but that once the
3 change was made, FCA was going to resubmit and be
4 reconsidered.

5 Q. What was that understanding based on? Who
6 told you that?

7 A. My understanding is all of those conversations
8 involved legal counsel.

9 Q. Did Principal Espiritu tell you about the
10 sequence that you just described?

11 A. I recall having this conversation with,
12 conversation with legal counsel, and legal counsel was
13 updating us that --

14 MS. LEVINE: I'm going to instruct you not to
15 answer if it's based on communications with the district
16 attorneys.

17 BY MR. BLOMBERG:

18 Q. So, yes, please, don't tell me anything your
19 counsel told you.

20 But did you, were you told that sequence from
21 anyone other than counsel?

22 A. My best recollection is that that update
23 included counsel and staff simultaneously.

24 Q. Would it change your conclusions if in fact
25 the policy that you reviewed and determined was

1 discriminatory was not, is not the statement of faith
2 that FCA used?

3 MS. LEVINE: Calls for speculation.

4 THE WITNESS: If Principal Espiritu came to me for
5 guidance, with different facts, my application of the
6 nondiscrimination policy would be exactly the same. The
7 end result at the school level may be different, but my
8 responsibilities as the deputy superintendent don't
9 change. The school still needs to follow the
10 nondiscrimination policy.

11 In the one call I had with the FCA
12 representatives, that was the meat of the conversation,
13 is -- and, Amy, I don't, you can stop me.

14 MS. LEVINE: If you think you're going to get into
15 privileged information, then we should probably talk
16 about that before you get into that. So, if it's based
17 on privilege, if it's based on communication with
18 counsel, then, don't answer that, or if it's based on
19 your knowledge that only comes from counsel.

20 THE WITNESS: Can I take a quick break to consult
21 with counsel, Daniel?

22 BY MR. BLOMBERG:

23 Q. Yeah, let's do that, but, before we do, let's
24 not, let's just set that aside, because I definitely
25 don't want to hear anything that's privileged, so, let's

1 set that part of it aside, there's a couple more kind of
2 related documents I want to take a quick look at, and
3 then we can actually take a lunch break, and go from
4 there.

5 While we are getting the other exhibit set up,
6 can you take a look at the very first page of
7 Exhibit 89, where it says, FCA student leader
8 application.

9 A. Yes.

10 Q. Have you reviewed that document before? And
11 take a minute to look it through. It's about three
12 pages long.

13 A. Okay.

14 Q. So, does this document look familiar?

15 A. Yes.

16 Q. When do you recall seeing it previously?

17 A. My recollection right now is in relationship
18 to this case, or at least a variation of this document.

19 Q. And do you recall if you saw this document
20 before or after the FCA was derecognized?

21 A. My recollection would be after.

22 Q. And why were you looking at it afterwards?
23 What was the reason that it came to your attention?

24 A. Discrepancies, and multiple documents.
25 Answering this question is directly related to what I

1 wanted to consult with counsel on.

2 Q. Okay, let's pause it, then. I think we can go
3 to Exhibit 90 should be up now.

4 (Exhibit 90 was marked for identification by
5 counsel.)

6 BY MR. BLOMBERG:

7 Q. Let me know when you have it up, please.

8 A. I have it up.

9 Q. Great. Scroll down to the second-to-last
10 page, it's 11902.

11 A. Yes.

12 Q. You see the --

13 A. I got it.

14 Q. -- the letter that's addressed to you on
15 January 31, 2020?

16 A. Yes.

17 Q. Do you see the second paragraph where it says
18 that the, the document that the school and district had
19 previously viewed was incorrect?

20 A. This is all going to be related. It's all the
21 same. I just need to get advice from legal counsel
22 specific to all of these questions, because they involve
23 the call with FCA.

24 Q. So, but, setting aside the call with FCA, did
25 you receive this letter on January 30, 2020?

1 A. I recall this letter.

2 Q. And do you see where it says in that second
3 paragraph that the document that the school and the
4 district reviewed was incorrect, was not the leadership
5 application that FCA Pioneer was using?

6 A. I see that they wrote that.

7 *DI Q. And did you investigate to determine whether
8 the previous document was incorrect?

9 MS. LEVINE: Calls for attorney-client privileged
10 communication. Don't answer.

11 BY MR. BLOMBERG:

12 Q. Setting aside any communications you had with
13 your counsel, did you personally do anything to
14 investigate whether that previous document that you'd
15 looked at was the right document?

16 MS. LEVINE: I'm going to still instruct him not to
17 answer to the extent that it was based on communications
18 with counsel, or would reflect counsel's work product.

19 THE WITNESS: And I do feel that, again, I need to
20 get advice from counsel related to this call.

21 MR. BLOMBERG: Okay, let's go ahead and take a
22 break. About how much time would you like for lunch?
23 I'm good any time after 30 minutes.

24 What's good for you?

25 MS. LEVINE: I think we'd like at least 45 minutes,

1 if that works for you.

2 MR. BLOMBERG: That's fine. Stephen, that work for
3 you?

4 THE WITNESS: Yeah. 1:45.

5 MR. BLOMBERG: That sounds great.

6 (Luncheon recess: 1:01 p.m.)

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1 A F T E R N O O N S E S S I O N

2 (1:48 p.m.)

3

4 STEPHEN McMAHON,

5 having previously stated to tell the truth under penalty
6 of perjury, was examined and testified further as
7 follows:

8

9 EXAMINATION (Cont'd)

10 BY MR. BLOMBERG:

11 Q. So, Stephen, I think we were on Exhibit 90.
12 On the fourth, the second-to-last page, and talking
13 about that second paragraph there.

14 Do you recall that conversation?

15 A. Yes.

16 Q. And you recall that the, that second paragraph
17 says that the policy that or the statement of faith that
18 the district and Pioneer had looked at earlier was not
19 the actual policy that FCA used for their student
20 leadership?

21 MS. LEVINE: Document speaks for itself.

22 THE WITNESS: Yes, I see that they wrote that.

23 BY MR. BLOMBERG:

24 Q. Did you personally investigate to see whether
25 that was true or false?

1 A. So, I appreciate the patience on this one.
2 The call referenced on January 27, we agreed that we
3 would attempt to resolve this, and, as we did, we would
4 not use it if it went to legal proceeding.

5 So, I was hesitant before, because we agreed
6 on that call that we would both make an effort to
7 resolve the matter, and, if we couldn't, whatever we did
8 on the call would not be used later.

9 I did consult with legal counsel. I'll answer
10 the questions today, and then you, as attorneys, can
11 hash it out over whether it becomes admissible in the
12 future.

13 But, on the call, it was clear from the FCA
14 representatives they didn't know what the local club was
15 doing, nor did I. Principal Espiritu was responsible
16 for making sure he had what the actual students were
17 being asked to do.

18 I informed the FCA representatives on this
19 call that if it's true that the kids don't have to sign
20 anything, or take an oath, just submit that to ASB, and
21 have them review the club's application.

22 They were insistent that there was no document
23 that needed to be signed.

24 I said, I've already seen it.

25 Neither of us seemed to know what actually

1 happens at the club level.

2 Just run it back through ASB with the most
3 current documentation and let ASB assess it.

4 Q. So you're saying that's your recollection of
5 the call from January 27, 2020?

6 A. Yes, that the FCA representatives were
7 insistent that there was no document besides that
8 application.

9 Q. And is that the application that I showed you
10 earlier, the one that we were talking about that's at
11 the top, the previous exhibit that we looked at, the
12 different leadership application language?

13 A. The ones with the, yes/noes only.

14 Q. Let's see. Let's just go back and look at it.
15 It was Exhibit 89, in the very top of that one.

16 Is that the document that you were just
17 talking about with the FCA leadership?

18 A. Yes.

19 Q. Okay. And so they were insistent this was the
20 actual application policy that the students were
21 expected, the student leaders were expected to fill out?

22 A. They shared with me that this was the only
23 thing that FCA clubs had.

24 I shared, there's other documentations that
25 the school has. Advise your clients to submit what is

1 the current documentation through ASB.

2 Q. But they represented to you on that call that
3 the application form, the FCA student leader application
4 form that's at the top of Exhibit 89 is the actual
5 application form that was required for FCA leaders to
6 fill out as a part of becoming eligible for leadership?

7 A. They represented that at the high level. They
8 would not at the Pioneer level.

9 Q. Sorry, I didn't understand that.

10 A. The discussion was more FCA broadly, than the
11 school specifics. It was clear from the call that they
12 knew nothing about the specifics of the school
13 situation.

14 Q. And that, your understanding, did they tell
15 you the words they said were, we don't know anything
16 about the specifics of the school situation, or is that
17 your understanding of how the conversation went?

18 A. Based on the conversation, based on the
19 conversation, it was my understanding that they were not
20 aware of what the individual club at Pioneer was doing,
21 and what the students were asked to sign or not sign,
22 which was why the call ended with, finalize the package
23 and turn it into ASB, so both parties know what we're
24 working with.

25 Q. And at that point, did you go back and/or have

1 anyone go back to determine what the actual application
2 policy was?

3 A. My recollection is at this point, I had stayed
4 out of, I would say, all of this, other than this phone
5 call, and, subsequent to this phone call, also had no
6 involvement, at the school level. I mean, everything
7 after this phone call I recall being related to the
8 legal proceedings.

9 Q. So, when they told you that the statement of
10 faith that you had previously reviewed and used as part
11 of writing up your three point statement, and they told
12 you that that statement of faith was not actually the
13 one they used, did you go and try to determine
14 independently whether that was correct?

15 MS. LEVINE: Asked and answered.

16 THE WITNESS: Given my role at the district level,
17 I told them to advise their clients to submit the proper
18 documentation to the ASB at Pioneer.

19 BY MR. BLOMBERG:

20 Q. That's not what I asked you. I didn't ask you
21 what you told them. I asked you what you did.

22 Did you independently investigate whether the
23 document that you'd previously reviewed was actually a
24 correct document?

25 MS. LEVINE: Asked and answered.

1 THE WITNESS: Subsequent to the January call, no.

2 BY MR. BLOMBERG:

3 Q. Did you try to determine before the January
4 call whether it was a correct document?

5 MS. LEVINE: Asked and answered.

6 THE WITNESS: I relied on the information shared
7 with me from the school level.

8 BY MR. BLOMBERG:

9 Q. Okay. If you scroll down in the same
10 Exhibit 89 that we're looking at to the third page, that
11 e-mail from Katie Chang that you were copied on, where
12 she said, this differs from the language that we were
13 looking at, this is not the same language that we had
14 previously reviewed?

15 A. Yes.

16 Q. At that point, did that encourage you to try
17 to change or assign anyone to investigate what the
18 correct statement of faith was?

19 A. My recollection is Katie received the same
20 response that FCA did, whatever the proper
21 documentation, submitted to the school.

22 Q. So, going back to Exhibit 88, can you take a
23 quick look at that with me.

24 A. Yes.

25 Q. So, when you declared under penalty of perjury

1 that the Fellowship of Christian Athletes student leader
2 application in effect during the 2018-2019 school year
3 was attached as Exhibit B, you hadn't actually
4 independently confirmed that was the case?

5 A. I believed that to be what the students at
6 Pioneer completed for that school year.

7 Q. Do you see the date on your signature there,
8 it says, August 6, 2020?

9 A. Yes.

10 Q. So this was over six months after the
11 conversation where both Katie Chang and Reed Smith had
12 indicated that was not the same policy?

13 A. My recollection of the call is their asserting
14 different documents, my asserting that's not what I saw,
15 please, have them resubmit what is the accurate
16 document. The document I had was the one in Exhibit B.

17 Q. Sorry. Exhibit 11?

18 A. Exhibit 88, Exhibit B.

19 Q. Okay, thank you. Thank you. But you had
20 been, you had been told by this point that the document
21 you had was incorrect.

22 A. Representatives at FCA had shared their
23 opinion. I received no confirmation from them that the
24 students were not signing what is in Exhibit B of
25 Exhibit 88.

1 Q. Do you see the, go back to Exhibit 90, please,
2 the letter that we looked at together. It's the
3 second-to-last page, second paragraph.

4 A. Yes.

5 Q. It says, no student in the district signs any
6 other document in connection with becoming a student
7 leader, end of that paragraph; is that correct?

8 A. That's what they wrote.

9 Q. Now, and so setting aside whether they were,
10 or the statement they made here was accurate, they were
11 telling you that the only student leadership application
12 was the one they were providing to you, the only one
13 that was being used at Pioneer was the one they were
14 providing to you; is that correct?

15 MS. LEVINE: Document speaks for itself.

16 THE WITNESS: I also, based on my recollection of
17 the call, they were not asserting on behalf of Pioneer,
18 it was a general -- hold on. Not COVID. Don't worry.

19 BY MR. BLOMBERG:

20 Q. Great thing about Zoom, right?

21 A. Right. Don't everyone have to get all
22 worried. Just got something caught in my throat.

23 Q. No, I understand. It's a lot of talking.

24 Sorry, you were saying --

25 A. I recall, I recall their assertion being this

1 is what FCA does globally, not specific to Pioneer.

2 Q. But when you look at this letter, which is
3 dated January 31, 2020, it specifically says in the
4 first paragraph, it defines district as the San Jose
5 Unified School District, and the second paragraph, it
6 says, no student in the district signs any other
7 document, other than the student leadership application
8 they're providing you here; is that right?

9 A. And I responded on the phone call that that's
10 not what the school has provided. We can't go back and
11 determine. Have them resubmit the proper documentation
12 so we can resolve this. If FCA's request was to be
13 reinstated, just give to ASB what the kids need to do.

14 That was my request on the phone call.

15 Q. I understand that, so, but, what I'm asking
16 is, so, that phone call was January 27, right?

17 A. Yes.

18 Q. And this letter is January 31, so it's four
19 days later, and they're at least clearly taking the
20 position that the attached student leadership
21 application is the only one that any district student
22 has ever been asked to sign in connection with becoming
23 a student leader.

24 MS. LEVINE: What's the question?

25 THE WITNESS: And San Jose Unified disagreed.

1 BY MR. BLOMBERG:

2 Q. So, you're saying there's a disagreement about
3 what the proper document was?

4 A. Yes.

5 Q. Okay. Looking at the, let's see, Exhibit 89,
6 so, this is the one that has the other student leader
7 application at the very top. Let me know when you're
8 there.

9 A. Yes.

10 Q. On the third page of the document, near the
11 top, it has a underlined, bolded set of words. It says,
12 distinctly Christian activities.

13 Do you see that?

14 A. Yes.

15 Q. Do you see how it's stating here that the FCA
16 representative that's signing the form is going to be,
17 is agreeing to be ready, willing, and able to
18 participate and contribute to distinctly Christian
19 activities, such as worship and prayer services?

20 A. Yes.

21 Q. Do you have any reason to think that wasn't
22 true of how FCA operated, that their student leaders
23 were expected to participate and contribute in worship
24 and prayer services?

25 MS. LEVINE: Calls for speculation.

1 THE WITNESS: My understanding is that these are
2 expectations that are consistent for FCA.

3 BY MR. BLOMBERG:

4 Q. And was, did the, did you or anyone else in
5 the district that you're aware of investigate to
6 determine that in fact FCA doesn't have prayer and
7 worship in its meetings?

8 MS. LEVINE: Calls for speculation.

9 THE WITNESS: The difference to me between this
10 form and the version from the initial conversations, the
11 initial form overtly says, you're out as a member or
12 leader. This one just asks you the questions.

13 I don't know what FCA does, based on these
14 answers.

15 Can a student answer the question, have you or
16 will you commit to a drug, alcohol, and tobacco-free
17 life. If a student says, no, I don't know if they're
18 barred from leadership.

19 BY MR. BLOMBERG:

20 Q. Yeah, sorry, I'm not asking about, let me
21 clarify, I'm not asking about the leadership
22 requirement, as such. I'm just asking about whether FCA
23 indicates here that its leadership is expected, student
24 leadership is expected to help contribute to prayer and
25 worship.

1 MS. LEVINE: Document speaks for itself.

2 THE WITNESS: Yes.

3 BY MR. BLOMBERG:

4 Q. And then, and you didn't personally
5 investigate, nor are you aware of anybody who
6 investigated whether that wasn't true, whether FCA
7 actually doesn't have prayer and worship in its
8 meetings?

9 A. It wasn't relevant to me, because it didn't,
10 they weren't barring members.

11 Q. Do you think it would make sense for a
12 religious student group to want a person who leads their
13 prayers to believe in the beliefs of the group?

14 A. Yes.

15 Q. Do you think that a religious student group
16 has an interest in being able to have leaders who can
17 lead their prayers?

18 MS. LEVINE: Calls for speculation. Calls for an
19 opinion.

20 THE WITNESS: Yes.

21 BY MR. BLOMBERG:

22 *DI Q. How would a leader lead a prayer to a God that
23 he doesn't believe in?

24 MS. LEVINE: Calls for speculation. That's, I
25 think that this is just a speculative hypothetical.

1 Instruct the witness not to answer.

2 BY MR. BLOMBERG:

3 *DI Q. Stephen, you were talking earlier about the,
4 how student groups should be able to have leaders that
5 support their purpose and move their, are trying to
6 advance their purpose.

7 If the document here tells us that part of the
8 purpose is to have prayer, how can they have a leader
9 who advances that purpose if they don't believe in their
10 God?

11 MS. LEVINE: The same objections. And I think it
12 calls for speculation, it's argumentative, it's an
13 incomplete hypothetical, calls for an opinion, and I'm
14 going to instruct him not to answer, because I think he
15 would only be guessing.

16 THE WITNESS: The manner, the manner in which
17 students express themselves --

18 MS. LEVINE: I'm sorry. I --

19 THE WITNESS: -- is not the --

20 MS. LEVINE: I'm sorry, I instructed you not to
21 answer, but you can answer. You can disobey my
22 instruction, if you want to.

23 BY MR. BLOMBERG:

24 Q. I didn't hear what you said.

25 A. The manner in which students express

1 themselves is not a board of education policy.

2 *DI Q. I guess what I'm trying to understand is, if
3 part of the purpose of the group is to pray, how do they
4 do that if their leaders don't share their beliefs.

5 MS. LEVINE: Same objections, same instruction.

6 Counsel, can you move on.

7 BY MR. BLOMBERG:

8 Q. Sorry, Stephen, were you going to answer my
9 question?

10 A. No.

11 Q. So, are you going to not answer my question
12 because of instruction from your counsel?

13 A. At the advice of legal counsel, can we move
14 on.

15 Q. Did you testify earlier that student groups
16 should select leaders that advance their purposes?

17 A. I don't recall if those were the exact words.
18 I think I referenced that there should be a democratic
19 process for electing the leadership. It would make
20 sense for the leadership to fit the club's purpose. If
21 a group of students felt that the purpose and their
22 wants were no longer aligned, we maintain a very open
23 policy to start a new club.

24 Where my role as a deputy superintendent comes
25 in is making sure that all students have the opportunity

1 to start that club, and that membership doesn't have any
2 discriminatory practices.

3 Q. And you're not going to answer my question
4 regarding whether a religious group can legitimately ask
5 its leaders to share its beliefs so that they can pray.

6 MS. LEVINE: We've already been through this. He's
7 already refused to answer based on the advice of
8 counsel, so, at this point, you're badgering the
9 witness.

10 MR. BLOMBERG: So, Amy, what I'm doing is I'm
11 making my record for that when we go to the magistrate
12 for your improper objections and instructions to the
13 client not to answer, your client not to answer, we'll
14 be able to reopen this deposition because of your
15 improper instructions and your improper speaking
16 objections.

17 BY MR. BLOMBERG:

18 Q. Stephen, were you not going to answer the
19 question I just asked?

20 A. When it comes to the individual clubs, we want
21 to make sure that membership is open in accordance with
22 the nondiscrimination policy. The district's interest
23 in the activities of the clubs is to ensure that they
24 are a safe and welcoming space for all students, and
25 they don't disrupt school activities. The particulars

1 of any clubs views, expressions, interactions, that is
2 at the level of the students themselves in their club.

3 The district's responsibility is to make sure
4 they have that opportunity in a safe way that doesn't
5 disrupt the school activities, and adheres to the
6 applicable board policies and any other applicable law.

7 Q. We will go to Exhibit 52, so, give us a
8 second, and we'll load that up for you. It will
9 probably come up, it's not going to be at the bottom of
10 your list, in the marked exhibits folder.

11 A. 52?

12 Q. It's not there yet. There we go. It should
13 be in there now.

14 A. Yes.

15 Q. Can you let me know when you have it open.

16 A. Open.

17 Q. This is a document we received from your
18 counsel entitled Defendants' Amended Responses to
19 Plaintiffs' First Set of Interrogatories.

20 Do you see how it says that in the first page?

21 A. Yes.

22 Q. Can you please go to the bottom of page 16.

23 A. Okay.

24 Q. And it describes interrogatory 8 there as
25 referring to any, quote, demonstration, protest, or

1 picketing regarding the student group FCA or the FCA
2 student group at Pioneer.

3 Do you see that?

4 A. Yes.

5 Q. And then if you could please go to page 19.
6 Of course, after we get there, I'll show you what we're
7 talking about. Feel free to go back and look at
8 anything you'd like to, but, on page 19, where the
9 district responds that on or about September 16, 2019,
10 quote, Espiritu also consulted with Deputy
11 Superintendant McMahon.

12 Do you see that?

13 A. Yes. Page 20 of the interrogatory, line 8?
14 Yeah.

15 Q. Yes. There you go. Thank you.

16 And then it says, input in a safety plan in
17 place to ensure that any demonstrations were peaceful,
18 nondisruptive, and protected the rights of all students
19 involved.

20 Do you see that language?

21 A. Yes.

22 Q. Does that accurately describe your memory of
23 the events surrounding the student protests of FCA at
24 Pioneer in September of 2019?

25 A. Can you restate the question.

1 Q. Yeah. This description about what the
2 consultation with you, from Espiritu, and then putting
3 in the safety plan in place, does that fit your
4 recollection of the protests that were taking place at
5 Pioneer of FCA meetings in September 2019?

6 A. I did not have --

7 MS. LEVINE: I'm sorry. Misstates the evidence and
8 calls for speculation.

9 THE WITNESS: I don't have firsthand knowledge of
10 what happened at Pioneer. This does capture my guidance
11 to Principal Espiritu that any student has a right to
12 express their viewpoint. You, as the site principal,
13 are responsible for making sure it's safe, and that
14 everyone's rights are respected.

15 BY MR. BLOMBERG:

16 Q. What were the relevant rights at play here, in
17 this protest?

18 A. Expressions of differing views, and that no
19 perspective should be prioritized over another, and that
20 the students have the right to meet and discuss their
21 interests.

22 Q. And did other students have a right to protest
23 their meeting?

24 A. I didn't, I don't recall making a distinction
25 between protesting and meeting. The students have a

1 right to gather and express their viewpoints.

2 My guidance to Principal Espiritu really
3 focused on you need to let the students express
4 themselves until you determine there's a safety concern.
5 Unless there's a safety concern or disruption of school
6 activities, let the students express themselves.

7 Q. What would a safety concern have been?

8 A. These are large campuses, with hundreds of
9 teenagers on them, and limited adults. There have been
10 instances where the students stop following the
11 direction of the administrative team, and, once the
12 administrative team has, in essence, lost control of the
13 student body, that becomes a potential emergency, where
14 they would need to disperse the group of students and
15 potentially stop the activity.

16 Q. And what would be those, I think you said
17 safety and disruption.

18 What would be disruption?

19 A. They bar the entrances to the classrooms, and
20 class can no longer take place, as scheduled. That
21 would be a disruption of a school activity.

22 Q. Would entering the student group event during
23 their meeting, a protester entering the student group
24 event, would that be disruptive?

25 MS. LEVINE: Calls for speculation. Incomplete

1 hypothetical.

2 THE WITNESS: The meetings of student groups should
3 be open. Someone with a different opinion entering, I
4 would not consider to be a safety violation, or a safety
5 concern.

6 BY MR. BLOMBERG:

7 Q. What about a disruption concern?

8 A. I'd have to know the specifics of the
9 disruption. As I previously answered, students being
10 unable to attend class, or the district's normal
11 instructional responsibilities, or safety
12 responsibilities being compromised, the administration
13 would need to intervene, so that students can continue
14 with the school functions.

15 Q. What if the students, the student group was
16 feeling intimidated by protesters who were entering
17 their meeting?

18 MS. LEVINE: Incomplete hypothetical. Calls for
19 speculation.

20 THE WITNESS: And the remedy for a feeling of that
21 would be a different process. The students should go to
22 the administration and work on that. That would be
23 different than disrupting school activities.

24 BY MR. BLOMBERG:

25 Q. So, the disruption you have in mind is not

1 disruption of the student group event. It's disruption
2 of the school itself.

3 A. The administration's ability to maintain a
4 safe instructional environment is paramount. If a
5 student activity stops the school from functioning, the
6 administration needs to intervene.

7 Individual student groups that have different
8 opinions is a completely different matter. That would
9 be prioritized for safety concerns. Every student needs
10 to be in a safe environment throughout the school day,
11 whether it's a meeting, or an instructional activity, or
12 an extracurricular activity.

13 Q. And if a student said that they weren't
14 feeling safe because protesters were entering their
15 meetings, what would you do about that?

16 MS. LEVINE: Calls for speculation. Incomplete
17 hypothetical.

18 THE WITNESS: As a deputy superintendent, refer
19 them, ensure that the site administration work with the
20 students. I would not have involvement on feelings of
21 safety or not at a individual school level meeting.

22 BY MR. BLOMBERG:

23 Q. What consultation did you do with Principal
24 Espiritu regarding the safety plan?

25 A. In brief, what I've just described. Students

1 need a safe place to meet. As long as they're not
2 interfering with the activities of the school, or your
3 leadership to ensure that all students are safe, let
4 them carry on.

5 Q. How did you engage in that consultation? Was
6 it via written communication, or on the phone?

7 A. Phone.

8 Q. How many phone calls did you have with
9 Principal Espiritu on this issue?

10 A. My recollection would be two.

11 Q. About how long were they?

12 A. 10 minutes, roughly.

13 Q. Did you ever consider prohibiting the protest?

14 A. The discussions never, I don't recall
15 discussions ever being on the merits of the protests.
16 It was on his job as the principal to ensure student
17 safety, that all students have the opportunity to
18 express their views, and that he maintains his ability
19 to run the school.

20 Q. And did you discuss any specific safety
21 measures to accomplish those objectives?

22 A. My recollection would be the most specific
23 thing is make sure the teachers and the administrators
24 know all of the students have the opportunity to express
25 themselves, keep things supportive, don't take

1 positions, and make sure you feel that everyone's got a
2 right to be in a safe place.

3 Q. Did your plan allow protesters to enter the
4 FCA meeting?

5 MS. LEVINE: Calls for speculation.

6 THE WITNESS: I recall reminding Principal Espiritu
7 that these meetings are intended to be open to the
8 student body, and that if a student wants to observe a
9 meeting, or listen to a meeting, they should be welcome
10 to do that.

11 BY MR. BLOMBERG:

12 Q. Did you ever receive a text from Principal
13 Espiritu stating that he was concerned about the
14 protests, and concerned about letting the protests into
15 the same room for the FCA?

16 A. I don't recall him mentioning concerns about
17 the same room. My recollection is that Principal
18 Espiritu was committed to having this done the best it
19 could be. He knew he had different opinions on his
20 school site, with a lot of energy behind each of those
21 opinions, and he was doing his best to make sure all
22 students had a right to express their opinions. While
23 maintaining a safe school environment.

24 Q. Were you aware of FCA students
25 counter-protesting the protest?

1 A. The details of what actually took place, I
2 can't speak to. I wasn't at the school. I did not
3 consult with Principal Espiritu each time FCA met.

4 My guidance was really at the policy level,
5 that the school district and its employees don't have a
6 role in which opinions get expressed. We have to make
7 sure that all students are in a safe space, and able to
8 express themselves appropriately, which, by,
9 appropriately, I mean no property damage, no insult to
10 other students, no disruption of school activities.

11 Q. And that conversation was in September of
12 2019; is that right?

13 A. I'd have to, again, go through the timeline
14 and make sure I have all of the dates right. My
15 recollection is, FCA, after losing ASB status, was
16 having greater attendance at their meetings than before.
17 Principal Espiritu was trying to make sure that those
18 meetings continued to be held without incident, and that
19 other viewpoints also had the opportunity to be
20 expressed.

21 Q. You see in Exhibit 52, which we were looking
22 at earlier, page 20, on line 8, sorry, yeah, at line 8,
23 where it said the consultation with you occurred at
24 around this time?

25 A. Yes, on or around September 16, 2019.

1 Q. Uh-huh, yeah. So, would the consultation and
2 the two phone calls you referenced have happened around
3 that general time frame?

4 A. My recollection is that my conversations with
5 Principal Espiritu preceded a large meeting of FCA,
6 relatively early in that school year, so this time frame
7 seems to be consistent.

8 Q. You don't have any reason to think that your
9 attorney's response on this is incorrect?

10 A. I do not.

11 (Exhibit 92 was marked for identification by
12 counsel.)

13 BY MR. BLOMBERG:

14 Q. Okay. If you could go to, cycle out of this
15 one and go to Exhibit 92. Just let me know once you
16 have that up.

17 A. Got it.

18 Q. This is a text from Principal Espiritu. The
19 first, the left-hand column, the third or fourth
20 paragraph down says, I know all students have rights to
21 enter the meeting, but I'm a little concerned about
22 letting protesters in.

23 Do you see that language?

24 A. Yes.

25 Q. Do you see the date? It's a little difficult

1 to see, but it's right over on the next column. It
2 looks like it says December 5, 2019.

3 A. Yes.

4 Q. And it looks like superintendent responds,
5 thanks for the heads-up; is that right?

6 A. Yes.

7 Q. Are you the SM that's copied on this, at the
8 top of the page?

9 A. Most likely, if it's the superintendent, it
10 would be a surprise if there was another SM.

11 Q. Do you recall seeing this text?

12 A. Not specifically.

13 Q. Did you call Principal Espiritu or text him in
14 response, after he told you that he was a little
15 concerned about letting protesters in?

16 A. I don't recall if I did or didn't, if I did or
17 didn't. He is confirming the guidance he already got in
18 the text.

19 Q. Do you see where just above that, he says,
20 Rick and I believe that their intent was to disrupt the
21 meeting?

22 A. Where, what do you mean by --

23 Q. Sorry, yeah. That left column again, the kind
24 of the second bubble, it says, I'll keep this brief, and
25 in the next paragraph down, the last sentence in that

1 next paragraph down, it says, Rick and I believe their
2 intent was to disrupt the meeting, and the, their, in
3 that paragraph is a reference to the Gay Straight
4 Alliance Club.

5 Do you see that paragraph?

6 A. Yes.

7 Q. So, did this raise concerns in your mind that
8 disruption was occurring -- let me rephrase that.

9 Did this raise concern in your mind that the
10 disruption could be occurring as a result of these
11 protests?

12 A. As the deputy superintendent, I'm always
13 concerned about student safety, which is why the
14 principals get constant reminders to prepare and plan
15 ahead.

16 Q. And so he says here, my question is, and then
17 he poses the question about what to do if a protester
18 requests to want to go in the room, and then he asks for
19 your thoughts on this.

20 Did you provide him any thoughts in response
21 to this?

22 A. I don't recall doing so. And, knowing the way
23 I generally work, he's answered his own question, and
24 clearly knows the guidance for this situation. You
25 can't preemptively conclude there's going to be a

1 disruption. You have to let the students express
2 themselves. Once it becomes disruptive, you have to
3 respond, which he appears, reading this text, to know.

4 Q. But you don't recall speaking to him about it
5 and addressing his question?

6 A. I can't specifically recall that.

7 Q. Do you recall --

8 A. Can I clarify.

9 Q. Of course.

10 A. I can't specifically recall that conversation
11 in December, but it's not different than the
12 conversation in September. All students have the
13 opportunity to express themselves. As the
14 administrator, you need to make sure it's done safely,
15 and not disrupt school activities.

16 Q. And do you know if superintendent responded to
17 this, this question with a call, or a text, or an
18 e-mail?

19 A. Based solely on my interactions with her, that
20 it's unlikely there was a response beyond that text.

21 Q. Are you aware of anybody else who responded to
22 Principal Espiritu on this?

23 A. To this specific text, or the concern in
24 December?

25 Q. The concern raised in this specific text in

1 December.

2 A. I do not know if Principal Espiritu had
3 consultations with student services or any other of the
4 group that was supporting him during this time.

5 Q. And you didn't confirm that he had, or that
6 anyone had reached out to him?

7 A. No.

8 Q. Does allowing a protest to take place convey
9 that the district agrees with the protest's message?

10 A. No.

11 Q. Does recognizing a club convey that the
12 district agrees with the club's message?

13 A. No.

14 Q. Would you pursue disciplinary action against a
15 student who was videotaped verbally abusing other
16 students on campus?

17 A. I, or San Jose Unified?

18 Q. You, initially.

19 MS. LEVINE: Calls for speculation. Incomplete
20 hypothetical.

21 THE WITNESS: In my current job capacity, I don't
22 participate in individual student discipline.

23 BY MR. BLOMBERG:

24 Q. Did you ever counsel Principal Espiritu to
25 take individual disciplinary action against student

1 protesters if they were disruptive at the FCA protest?

2 A. I don't recall talking about any specific
3 student, or specific protester, or meeting participant.

4 Q. Were you ever made aware that a Pioneer
5 newspaper staff member verbally abused an FCA student at
6 a school protest?

7 A. I am aware of an incident; not to the specific
8 level of abuse, or what transpired. I wasn't there, nor
9 was I involved after the fact. I'm aware of the
10 incident, generally.

11 Q. What awareness do you have?

12 A. A student with special needs has an
13 individualized education plan. As soon as I heard that,
14 it went to the special education department.

15 Q. Sorry, that was, who was it that, the student
16 with special needs? Was it the individual who had been
17 abused, or the one who was doing the abusing?

18 A. The only incident I know of is that there was
19 a claim that a student behaved inappropriately. I
20 became aware that that student had an IEP,
21 individualized education plan.

22 When a student has an IEP, discipline is
23 handled very differently, under federal law. The
24 special education department worked with the family and
25 the student. I have no involvement.

1 (Exhibit 93 was marked for identification by
2 counsel.)

3 BY MR. BLOMBERG:

4 Q. Can you please look at Exhibit 93 for me. It
5 should be up in your folder.

6 A. You don't need to write this down, Chris, but
7 I always enjoy, because of the double exclamation points
8 in the marked exhibit, it feels like super exciting, so,
9 like, each time I get to go back to the screen, I feel
10 like something really good's coming next.

11 Q. I'm glad it's not boring.

12 A. Well, you've got to have, like, after this
13 many hours, you've got to have something to look forward
14 to.

15 Q. So true. So true. All right, let me know
16 when you have it up, please.

17 A. Ready.

18 Q. So you see this e-mail from Jason
19 Goldman-Hall, on Monday, February 10, 2020?

20 A. Yes.

21 Q. Do you see how about midway through that
22 paragraph, he says, our objectivity as a newspaper has
23 been irreparably compromised on this topic. FCA has a
24 video of one of our writers verbally abusing their
25 members, and, as such, they have no reason to expect

1 fairness or objectivity from our newspaper.

2 Do you see that statement by Jason
3 Goldman-Hall?

4 A. Yes.

5 Q. Did you ever have any awareness of the
6 situation that he's referring to there?

7 A. The awareness I have is limited to what I
8 already shared. The student had an individualized
9 education plan. The special education department worked
10 with the student and the family regarding this matter.

11 Q. Are you certain that it's the same incident?

12 A. No.

13 MS. LEVINE: Calls for speculation.

14 BY MR. BLOMBERG:

15 Q. Is it possible that it wasn't the same
16 student?

17 MS. LEVINE: Calls for speculation.

18 THE WITNESS: I can only speak to what I know. I
19 know of the student I've mentioned. You're now showing
20 me this e-mail. I don't know of any other students, or
21 the specifics that may have happened in an FCA meeting.

22 BY MR. BLOMBERG:

23 Q. Okay, but this e-mail was never brought to
24 your attention?

25 A. The e-mail itself? I don't recall ever seeing

1 this before.

2 Q. Did Principal Espiritu ever talk with you
3 about taking disciplinary action against any FCA members
4 for their actions during the protests?

5 A. I don't recall discipline conversations with
6 Principal Espiritu regarding any student.

7 (Exhibit 94 was marked for identification by
8 counsel.)

9 BY MR. BLOMBERG:

10 Q. All right, we'll go back to your favorite
11 folder, and, in a minute, we should have Exhibit 94 pop
12 up.

13 A. I jinxed it. It's not as happy with me
14 anymore. I'm clicking it, and -- got it.

15 Q. There you go. As soon as you apologized.

16 A. Okay.

17 Q. Do you see the top of the policy, it says, San
18 Jose USD AR 5131.2?

19 A. Yes.

20 Q. Does that look familiar to you?

21 A. Familiar in the sense that it's an
22 administrative regulation, it will be in GAMUT Online,
23 yes.

24 Q. Do you know who this policy applies to?

25 MS. LEVINE: Vague.

1 THE WITNESS: I would want to look at BP 5131.2.
2 The school district has multiple policies on bullying
3 and harassment that apply sometimes universally,
4 sometimes to specific groups.

5 BY MR. BLOMBERG:

6 Q. Have you had any incident to apply AR 5131.2
7 before?

8 MS. LEVINE: Vague.

9 THE WITNESS: In my role as CBO, slash, deputy
10 superintendent, these will go to the director of student
11 services, not my area.

12 BY MR. BLOMBERG:

13 Q. And you haven't had any opportunity during
14 your work for the district to address a situation that
15 falls under this policy?

16 A. Instructionally, we're fairly collaborative.
17 Have I been in discussions regarding cyberbullying,
18 bullying? Yes. Have I been the point person on
19 specific student responses to that? No.

20 Q. About halfway down the page, where it says,
21 verbal bullying, and it defines it as an act that
22 includes saying or writing hurtful things, such as
23 teasing, name calling, inappropriate sexual comments,
24 taunting, or threats to cause harm.

25 Do you see that language?

1 A. Yes.

2 Q. If a teacher was disparaging a group of
3 students because of their sexual orientation in front of
4 other students, could that constitute verbal bullying?

5 MS. LEVINE: Objection. Calls for speculation.
6 Calls for a legal conclusion.

7 THE WITNESS: Likely would, with a student
8 situation, we'd want to see exactly what's happening,
9 and then assess it against this policy, but it's
10 important to make sure we know the specifics.

11 BY MR. BLOMBERG:

12 Q. If the teacher was disparaging students
13 because of their sexual orientation, in front of other
14 kids, would that be enough to at least raise the
15 question that it could be verbal bullying?

16 MS. LEVINE: Same objections.

17 THE WITNESS: Broadly, teachers should not
18 disparage students, period. I'll even amend that.
19 Teachers should not, as an employee of the San Jose
20 Unified School District, disparage students in any way.

21 BY MR. BLOMBERG:

22 Q. Does it raise a heightened concern when the
23 disparagement is on the basis of a protected category
24 under the nondiscrimination policy?

25 MS. LEVINE: Calls for speculation. Incomplete

1 hypothetical. Calls for a legal conclusion.

2 THE WITNESS: Given my responsibilities with human
3 resources, teachers disparaging students for any reason
4 would be of concern.

5 BY MR. BLOMBERG:

6 Q. Have you had situations that you personally
7 have been involved with in the past where a teacher has
8 disparaged a student? Please, don't give me any
9 specifics about the specific teacher. I'm just asking
10 for your familiarity with this type of situation.

11 A. My experiences tend to be on more serious --
12 not to diminish disparagement -- but I have many
13 examples of inappropriate physical behavior, social
14 media behavior, so I'm aware of when teachers behave
15 inappropriately, and the district's necessary response.

16 Q. Do district employees have an obligation to
17 report bullying that they personally observe?

18 A. Without looking at the specific board policy,
19 there is, again, there are multiple policies on
20 harassment and bullying, but there is an obligation of
21 the staff to report concerns they have when it comes to
22 student well-being or other employee well-being.

23 Q. And who do they report the bullying to?

24 A. If it's students, should be the site
25 administration, as a starting point. If it was an

1 employee, a supervisor or human resources.

2 Q. Does someone in the superintendent's office
3 get notified when a complaint of bullying is filed
4 against a teacher?

5 A. Not necessarily.

6 Q. Who would be notified if it did get to the
7 district level?

8 A. The director of student services, if, if at
9 the site level it determined the veracity and
10 seriousness, the director of student services would be
11 the lead on supporting the school in resolving it, if
12 the school was unable to resolve it on its own.

13 Q. And if it comes to the director of student
14 services, what is his responsibility at that point?

15 A. Follow the policies on complaints.

16 Q. Which policies would those be?

17 A. There are a couple of complaint procedures.
18 Uniform complaints would probably be the one that would
19 pick this up, and there's a process in the district's
20 policies on what the director of student services does
21 when he's received a written, he or she has received a
22 written complaint.

23 Q. Is that done under the uniform complaint
24 procedure?

25 A. Is what done?

1 Q. The process you're describing, is that how
2 it's managed under the uniform complaint procedure?

3 MS. LEVINE: Vague.

4 THE WITNESS: Unfortunately, given there's multiple
5 complaint procedures, there's Williams complaints,
6 uniform complaints, complaints against employees,
7 parents or staff members don't always know the right
8 channel when they initially file the complaint, but,
9 harassment and bullying should be under the uniform
10 complaint process.

11 The director usually routes it to the right
12 process, if it was not filed correctly, initially, but
13 it should start at the school site, in the sense that we
14 have a global approach to solving problems at the lowest
15 level possible, and then going up, in the event people
16 need to appeal the decision, or seek additional
17 recourse.

18 BY MR. BLOMBERG:

19 Q. Under the uniform complaint procedure for
20 bullying type situations, is there a particular form
21 that has to be used?

22 A. Without looking at the specific policy, my
23 recollection is that the complaint has to be submitted
24 to the director of student services in writing.

25 Q. Are there any specific words that need to go

1 to the director of student services?

2 A. I would want to look at the policy for its
3 level of specificity.

4 Q. Does the policy require that the complaint be
5 made by a specific person, or it could be made by
6 anyone?

7 A. I would also want to review that, depending on
8 the policy and the nature of the complaint, there are
9 some complaints that can be made anonymously. Others
10 need to name the complainant.

11 Q. Is the director of student services the one
12 responsible for determining whether the process has been
13 properly followed?

14 A. It depends on which point in time you are in
15 the process.

16 Q. What's the distinction?

17 A. Complaint initially comes in. School should
18 be working to resolve it, or, if it was filed directly
19 to the director of student services, they need to
20 resolve it.

21 If at the end of the director of student
22 services process, the complainant can appeal, that would
23 go up. You can continue all the way to the department
24 of education, so, there's, another level that could
25 review whether the process was done correctly or not,

1 but it needs to start in student services.

2 Q. Do you know if a complaint was made under the
3 uniform complaint procedure in, regarding the student
4 protests and FCA?

5 MS. LEVINE: Objection.

6 THE WITNESS: The director of student services, I
7 do not.

8 BY MR. BLOMBERG:

9 Q. Are you aware of any complaints arising from
10 the Pioneer FCA situation that were filed under the
11 uniform complaint procedure?

12 A. Nothing outside of discussions with counsel.

13 MS. LEVINE: Vague.

14 BY MR. BLOMBERG:

15 Q. You don't have any independent knowledge of
16 any complaints that were filed under the UCP?

17 A. Specific to FCA?

18 Q. Yes, from this specific situation.

19 A. Independent of counsel, no.

20 Q. If you could go back to the exhibit folder and
21 look for Exhibit 42.

22 A. Got it.

23 Q. Just let me know once you have it up.

24 A. Open.

25 Q. Great, thank you. Can you tell me, describe

1 for me what this is.

2 A. Board policy 0410.

3 Q. What is that policy?

4 A. Nondiscrimination in district programs and
5 activities.

6 Q. Does this include the categories that you were
7 talking about earlier, the subcategories of protected
8 classifications?

9 A. Yes.

10 Q. Are you familiar with this policy?

11 A. Yes.

12 Q. Have you had to interpret or apply it in a
13 particular situation before?

14 A. Yes.

15 Q. What does it apply to?

16 MS. LEVINE: Vague. Calls for a legal conclusion.

17 THE WITNESS: District programs and activities.

18 BY MR. BLOMBERG:

19 Q. Would it apply to student clubs?

20 A. Yes, in addition to other policies.

21 Q. Does it apply to classroom instruction?

22 A. Yes.

23 Q. Are you aware of any district programs or
24 activities or practices to which it does not apply?

25 MS. LEVINE: Calls for a legal conclusion.

1 THE WITNESS: If I was aware of a district program
2 or activity violating this policy, we would take
3 corrective action.

4 BY MR. BLOMBERG:

5 Q. Is that consistent with the second paragraph
6 from the top, where it says, any school employee who
7 observes an incident of discrimination, harassment,
8 intimidation, or bullying, or to whom such an incident
9 is reported, shall report the incident to the
10 coordinator or principal, whether or not the victim
11 files a complaint?

12 A. Are you asking me are employees expected to do
13 this?

14 Q. Sorry. I think what you had said, what I was
15 responding to, was that if you saw an instance of a
16 violation of the policy, that you would address it, and
17 I was just asking if your response there was reflective
18 of this second paragraph.

19 A. Yes.

20 MS. LEVINE: Vague.

21 THE WITNESS: Employees need to report when they
22 see violations of a policy.

23 BY MR. BLOMBERG:

24 Q. If we could go to what will be marked as
25 Exhibit 95. It's the athletic competition policy. It

1 will probably take a moment for it to pop up in our
2 folder. Just let me know when you see it, please.

3 MS. LEVINE: Counsel, what number are we on?

4 MR. BLOMBERG: It should be Exhibit 95. It's not
5 up just yet.

6 BY MR. BLOMBERG:

7 Q. Sorry. Exhibit 85. My apologies. I don't
8 see it just yet. There we go.

9 A. Got it.

10 (Exhibit 85 was marked for identification by
11 counsel.)

12 BY MR. BLOMBERG:

13 Q. Can you describe what this policy is, please.

14 A. Administrative regulation 6145.2, on athletic
15 competition.

16 Q. And what is the language under sportsmanship?

17 MS. LEVINE: Document speaks for itself.

18 BY MR. BLOMBERG:

19 Q. Is this a requirement that people involved,
20 students involved in athletic competition conduct
21 themselves with sportsmanship?

22 MS. LEVINE: Same objection.

23 THE WITNESS: Yes, and it defines, at least
24 partially, unacceptable behavior.

25 BY MR. BLOMBERG:

1 Q. Do you see, let's see, it's a little tricky to
2 find, a lot of these little parentheticals that set it
3 off, and the second set of parentheticals down the page,
4 there's one that says CF 1312.3, the uniform complaint
5 procedures, and then there's two paragraphs under that.

6 A. Yeah.

7 Q. Two paragraphs down, it says, the district may
8 provide. Do you see that?

9 A. Yes.

10 Q. Then it says, the district may provide single
11 gender teams where selection for teams is based on
12 competitive skills, do you see that language?

13 A. Yes.

14 Q. Is that accurate, that the district may
15 provide single gender teams?

16 A. Is it accurate that this is the policy?

17 Q. Yes. Does this accurately reflect current
18 policy and practice in the district?

19 A. Yes.

20 Q. And they are allowed to, the athletic teams
21 are allowed to select members based on competitive
22 skills?

23 A. Depends on the team.

24 Q. What teams are allowed to select based on
25 competitive skills?

1 MS. LEVINE: Calls for speculation.

2 THE WITNESS: In general, where student safety and
3 the ability to play the sport is important. Baseball is
4 an example where if you are not at a certain ability
5 level, it could be incredibly dangerous.

6 Badminton, all students usually are allowed to
7 participate, because the risk level is so low.

8 So, in general, the coaches are cognizant of
9 there are safety concerns, based on the skill level of
10 the athlete for some sports and not others, and they
11 won't let students who clearly could pose a risk to
12 themselves or others play in those sports.

13 BY MR. BLOMBERG:

14 Q. Do you know if basketball is one that allows
15 selection of competitive skill?

16 A. I'd have to talk to the coaches at the
17 individual schools. They play in different leagues, and
18 the assessment of does everyone who try out make the
19 team, or there's, like I said, concerns about the
20 well-being, slash, safety of the student if they're on
21 the team or not would depend on who tried out, and the
22 competition level of the team.

23 Q. So, is it more of a school level assessment,
24 where the coaches are given discretion to determine kind
25 of the safety considerations you were discussing?

1 A. Yes. Our sports teams are not in league of
2 themselves, at the high school level. They share the
3 league system with neighboring school districts, and
4 they are in different competitive tiers.

5 So, making the football team at school A is a
6 different experience than school B, because they play in
7 different leagues, and the level of competition of those
8 leagues is quite profound, in some cases. The A league
9 versus the C league is, is kind of the difference
10 between division 1 school and a high school.

11 Q. Uh-huh. What is the California
12 Interscholastic Federation?

13 A. The oversight body for high school sports in
14 California.

15 Q. Does that oversight body exercise any
16 authority over eligibility to play on teams?

17 A. Yes.

18 Q. What kind of, what kind of authority does it
19 have on that point?

20 A. I'm not a league commissioner or athletic
21 director, so, based on my understanding, their focus is
22 on fair play, so that student athletes do not switch
23 schools to stack the competition level at any given
24 team.

25 So, there are prohibitions on enrolling in

1 school A, playing football, enrolling in school B,
2 playing basketball in the same school year. So, CIF has
3 a lot of regulations on enrollment and making sure that
4 students play for the schools they attend.

5 Q. Is CIF eligibility requirements at all related
6 to the school policies that restrict eligibility based
7 on, for instance, the 2.0 GPA that I think you
8 referenced earlier?

9 MS. LEVINE: Vague. Calls for a legal conclusion.

10 THE WITNESS: And I would want to review. There's
11 CIF. Underneath is CCS, which is our regional oversight
12 body, Central Coast Section, and then underneath that is
13 the league. We're in the Blossom Valley Athletic
14 League.

15 BY MR. BLOMBERG:

16 Q. Do each of those --

17 Sorry, go ahead.

18 A. Without reviewing the specific policy, CIF is
19 likely to have an academic eligibility standard, CCS is
20 likely to clarify it, and then the individual leagues
21 finalize it.

22 Q. So, each of those bodies that you mentioned,
23 CIF, CCS, and the Blossom Valley League, those all have
24 influence on the final eligibility rules for a
25 particular school?

1 A. CIF is ensuring statewide consistency, all
2 teams in California. CCS is ensuring consistency in
3 just our region. So, there's things called the CCS
4 championships. You can be the champion of our region.

5 To be eligible for a CCS championship, you had
6 to follow all CCS regulations. You could be the league
7 title winner, and you would have needed to fulfill all
8 of the BVAL regulations. So, it's really based on the
9 level of competition.

10 In the individual league matches, BVAL
11 governs, when you're playing across schools in the
12 section, CCS governs, and then CIF governs for all
13 schools in the state.

14 So, I guess, another way to describe that,
15 it's levels of granularity. CIF has broad rules. BVAL
16 has very specific rules for its member schools.

17 (Exhibit 95 was marked for identification by
18 counsel.)

19 BY MR. BLOMBERG:

20 Q. Thank you. Could you go to the marked
21 exhibits folder and pull up Exhibit 95.

22 A. Okay.

23 Q. See in the top left-hand corner where it says,
24 this is board policy 5145.3.

25 A. Yes.

1 Q. It's the policy on nondiscrimination, slash,
2 harassment.

3 A. Yes.

4 Q. This is, does this include those same
5 subcategories that we talked about earlier, including
6 with the other policy, regarding discrimination on the
7 basis of various protected categories?

8 A. It does. Without having them side by side, I
9 won't say if they're an exact match. I mean, there's
10 definitely overlap, but I'd want to look to see if they
11 are an exact match.

12 Q. That's fair. But, for, if to the extent there
13 was any, you know, one policy covered creed, and the
14 other policy covered, you know, race, and they were
15 distinct, both types of discrimination would be
16 forbidden, one by one policy, one by the other?

17 MS. LEVINE: Objection. Vague. Calls for a legal
18 conclusion.

19 THE WITNESS: You're highlighting the challenges of
20 implementing such a highly regulated scope of work, but,
21 if policies are in conflict, the staff has to work on
22 the most appropriate application.

23 BY MR. BLOMBERG:

24 Q. Sorry, I apologize. I wasn't meaning to ask
25 you about a conflict, but just like where you were

1 saying there might not be a 100 percent match between
2 the two sets of categories, one might have a different
3 set, and I was just curious if they, they're both fully
4 protective of all the categories they mentioned.

5 A. Reading this paragraph, reading this policy,
6 the groups mentioned in this policy are protected from
7 nondiscrimination harassment.

8 Q. And that covers all district programs and
9 activities within a school?

10 MS. LEVINE: Calls for a legal conclusion.
11 Document speaks for itself.

12 THE WITNESS: What was the question, again?
13 BY MR. BLOMBERG:

14 Q. Sorry. I was just asking what the scope of
15 the policy. I read the first section to say that it
16 covers all district programs and activities within a
17 school under the jurisdiction of the superintendent of
18 the school.

19 Does that sound right to you?

20 A. It does, and I'm probably excessively
21 thorough. I'm pausing under the jurisdiction of the
22 superintendent.

23 The other policy, the other policy is more
24 broad in that it specifically says all district programs
25 and activities. So, this one is specific to a school.

1 Our other policy is all encompassing, all district, all
2 programs, all activities. This one has limitations on
3 within a school and under the superintendent.

4 Q. Do you see how on the second paragraph, the
5 seconds sentence, it says, eligibility for choral and
6 cheerleading groups shall be determined solely on the
7 basis of objective competencies?

8 A. Yes.

9 Q. Is that consistent with your understanding of
10 the practice in the district that choral and
11 cheerleading groups can select participants based on
12 objective competencies?

13 MS. LEVINE: Vague, calls for speculation.

14 THE WITNESS: Cheerleading, yes. High risk
15 competition sport. I'm thinking through the dangers of
16 choral, based on ability level. Damage to the
17 listener's ears?

18 Cheerleading, definitely, is a major safety
19 sport, given the routines the cheerleaders perform at
20 the competition level. I'd have to research why choral
21 is in there.

22 BY MR. BLOMBERG:

23 Q. Do you have any reason to think that the
24 policy doesn't apply for choral?

25 A. My only reason for that is, we normally don't,

1 I don't hear of choral at the high school level. Choir,
2 yes. I'm, I'd have to research whether those are
3 interchangeable, choral and choir, and how the schools
4 are implementing that day to day.

5 Q. Are you aware of choir groups that select
6 their members on the basis of their objective ability to
7 sing?

8 A. I don't have firsthand knowledge of the choral
9 selection process, or the choir selection process.

10 Q. So you just, you don't know one way or the
11 other on the choral, slash, choir issue.

12 A. Not at the school level.

13 Q. Or the district level?

14 A. The district doesn't have choral programs at
15 the district level. There's no district choir.

16 I'm trying to find a way to look less
17 menacing.

18 Q. Whenever you lean forward, you kind of become
19 clearer, but --

20 A. I know. I'm trying to get the camera to pick
21 up some more light, but --

22 Q. Yeah.

23 A. -- it's not working for me.

24 MR. BLOMBERG: All right, we've been going for a
25 little over an hour, hour and a half now. Let's take a

1 10-minute break and then come back at, let's see, it
2 would be 3:30 your time.

3 (Recess: 3:17 p.m. to 3:33 p.m.)

4 (Exhibit 96 was marked for identification by
5 counsel.)

6 BY MR. BLOMBERG:

7 Q. If we could go to Exhibit 96 in your marked
8 exhibits folder. Do you see at the top, where it says,
9 and it's a forward, and it says, San Jose Unified School
10 District's violations of the EAA and First Amendment?

11 A. Yes.

12 Q. And was this forwarded to you from a
13 Ms. Martinez?

14 A. Based on the information at the top, yes.

15 Q. Did you review the e-mail and the attachment
16 to it?

17 A. Not specifically.

18 Q. You don't recall having read the attachment?

19 A. I recall talking to the superintendent about
20 it, but not going through it detail by detail.

21 Q. Do you see the first sentence in the e-mail
22 from Reed Smith, it says, my colleagues and I have been
23 engaged by the Fellowship of Christian Athletes on
24 behalf of students in your district to investigate the
25 district's policies and practices regarding religious

1 student clubs?

2 A. Yes.

3 Q. Do you see that sentence?

4 A. Do you know if an investigation was performed
5 pursuant to this request?

6 MS. LEVINE: Vague.

7 THE WITNESS: Investigate. So, by January of 2020,
8 there had been multiple interactions regarding FCA.

9 BY MR. BLOMBERG:

10 Q. Uh-huh. Did you request that an investigation
11 be performed in response to receiving this letter?

12 A. At the time of this letter, multiple parties
13 were already working on the FCA issue at Pioneer.

14 Q. Do you recall requesting that an investigation
15 be performed after receiving this letter?

16 A. No.

17 Q. Are you aware of anyone else who requested
18 that an investigation be performed, in response to this
19 letter?

20 A. No.

21 Q. Do you know if anyone sent the letter to
22 student services?

23 A. Anyone sent a letter to student services?

24 Q. Do you know if anyone within the district sent
25 this letter to student services?

1 A. I do not, no.

2 Q. Do you see how the second sentence after the
3 one that I read earlier, it says, please, find attached
4 a letter documenting numerous violations of the Equal
5 Access Act and First Amendment?

6 A. Yes.

7 Q. Is there any reason why you wouldn't have
8 asked for an investigation to be performed, after being
9 told that numerous violations of law had occurred in
10 your district?

11 A. The response was already in process.

12 Q. Which response was that?

13 A. The work at the school level regarding the
14 club.

15 Q. So, you don't have any knowledge, though,
16 whether an investigation was performed under the UCP?

17 A. I do not, nor do I know if a UCP was ever sent
18 to the director of student services.

19 Q. Do you see, if you scroll down to what's
20 marked as page 4 of 9, I think it's about the fifth page
21 down, the top of the page has the superintendent's name,
22 and the date, and it says page 4 of 9.

23 Do you see that?

24 A. Yes.

25 Q. Do you see at the bottom where the statement

1 is made that FCA students are being stigmatized,
2 intimidated, harassed, and bullied for their religious
3 beliefs?

4 A. Where is that, again?

5 Q. Sorry. It's the very last sentence on that
6 page, the one that starts page 4 of 9. It says, the
7 first word in the line is, which, and it says, which FCA
8 students.

9 A. Got it.

10 Q. So, is this a report of harassment and
11 bullying taking place in the district?

12 A. The conversations regarding FCA meetings
13 occurred prior to this. It was already in process.

14 Q. But that process, you're not aware of
15 including a UCP investigation?

16 A. I don't know whether student services ever
17 received a uniform complaint.

18 Q. And if teachers receive or administrators
19 receive a report of harassment and bullying, do they
20 have a duty to investigate it and report it?

21 MS. LEVINE: Calls for a legal conclusion.

22 THE WITNESS: So, receiving a complaint? No.
23 Confirmation of harassment and bullying? Yes.

24 BY MR. BLOMBERG:

25 Q. What do you mean by, confirmation?

1 A. These are teenagers. Lots of things get said
2 over the course of a given school day. That's not
3 harassment or bullying.

4 Q. So, you investigated all of the alleged
5 statements by both teenagers and teachers, and
6 determined that there was no harrassment or bullying
7 occurring?

8 MS. LEVINE: Misstates testimony.

9 THE WITNESS: I did not.

10 BY MR. BLOMBERG:

11 Q. So, why did you just make the statement just
12 now that no harassment or bullying was occurring?

13 A. I didn't say that.

14 Q. I'm sorry, I understood you to say that these
15 are teenagers, and so this isn't harassment or bullying.

16 Were you trying to express something else?

17 MS. LEVINE: Misstates the testimony.

18 THE WITNESS: I understood the question to be do
19 teachers and other staff members have an obligation to
20 report harassment or bullying.

21 I responded with, when they know it's
22 harassment and bullying, yes.

23 There are lots of instances where things are
24 said that an adult can hear that would not constitute
25 harassment or bullying, so there's no obligation to

1 report those.

2 BY MR. BLOMBERG:

3 Q. Let's go back to Exhibit 94, please.

4 A. Okay.

5 Q. If you could go down to the fourth page, and
6 there's a heading that says, reporting and filing of
7 complaints.

8 A. Yes.

9 Q. Do you see where it says, any students,
10 parents, slash -- sorry, go ahead.

11 A. I think it was just an echo.

12 Q. It says, any student, comma, parent, slash,
13 guardian or other individual who believes that a student
14 has been subjected to bullying, or has witnessed
15 bullying, may report the instance to a teacher, the
16 principal, a compliance officer, or any other available
17 school or district employee.

18 When that report of bullying is submitted,
19 it's the next paragraph, it says, the principal or
20 district compliance officer shall inform the student or
21 parent, slash, guardian of their right to file a formal
22 complaint.

23 Do you know if anyone responded to this by
24 telling the parents or the students about their ability
25 to file a formal complaint?

1 Sorry. When I say, this, I mean the letter we
2 were looking at, exhibit 95.

3 A. That would happen at the school level, with
4 the students and the principal.

5 Q. So, you are not aware one way or the other
6 whether that occurred?

7 A. My understanding is limited to conversations
8 with legal counsel.

9 Q. As far as what you personally did, you did not
10 file any sort of report or send this to the UCP process?

11 A. At the time, I received the letter, I was
12 aware that the school was working with the students and
13 the families, which is the process.

14 Q. That's the UCP process, working with the
15 families?

16 A. It's up to the family to file the UCP, or the
17 student.

18 Q. Do you see the next paragraph down, when it
19 says, within one business day of receiving such a
20 report, a staff member shall notify the principal of the
21 report, whether or not a uniform complaint is filed?

22 A. I'm reading that, yes.

23 Q. Did you, when you received this, did you
24 notify the principal of the report?

25 A. The principal was already aware, so, if a

1 matter is being address, we don't interpret a subsequent
2 notification of the same matter to warrant redoing the
3 response.

4 Q. So then did this become a part of the ongoing
5 UCP investigation, is that what you're saying? So, if
6 there's one UCP investigation already ongoing, and
7 another complaint comes in, it kind of just gets
8 subsumed within the first one?

9 MS. LEVINE: Vague, and misstates the testimony.

10 THE WITNESS: I was not aware of any specific
11 students filing a complaint. I was aware that the
12 school was working with FCA and other student groups to
13 make sure the environment was safe. That letter was a
14 repetition of what was already working at the school
15 level.

16 BY MR. BLOMBERG:

17 Q. That what was going on at the school level was
18 a UCP investigation?

19 MS. LEVINE: Misstates the testimony.

20 THE WITNESS: I don't know whether Principal
21 Espiritu had the family fill out or the student fill out
22 a UCP complaint.

23 BY MR. BLOMBERG:

24 Q. Okay. If you could go to the marked exhibits
25 folder and go to Exhibit 57, so it's going to be further

1 up. This is one of the ones previously --

2 A. I got it.

3 Q. Do you have it up?

4 A. Yes.

5 Q. Do you see this is an e-mail from Michelle
6 Mayhew, and it says that it's, has a new club
7 affirmation statement that it wants student
8 organizations to sign.

9 Do you see that?

10 A. I see club affirmation statement. I don't
11 know where she references new, but --

12 Q. If you scroll to the second page, February 3,
13 2021, do you see that date?

14 A. Yes.

15 Q. And it's on district letterhead?

16 A. Yes.

17 Q. Do you recognize this policy, or this
18 document, rather?

19 A. Only in relationship to conversations with
20 legal counsel.

21 Q. Have you ever seen this document before?

22 MS. LEVINE: I'm going to instruct him not to
23 answer if he's only seen it pursuant to the direction of
24 counsel.

25 THE WITNESS: All related to legal counsel.

1 BY MR. BLOMBERG:

2 Q. So, the only time you've ever seen this
3 document is when legal counsel put it in front of you?

4 MS. LEVINE: He doesn't need to answer that,
5 because that would reveal the contents of the
6 communication.

7 MR. BLOMBERG: No. It would allow me to understand
8 the parameters of the communication. Privileged
9 communication, as you saw, has to state who was on the
10 communication and when it occurred, things of that
11 nature. I'm just trying to understand this, but you're
12 stating that the only time he's ever seen this, Amy, is
13 when you put it in front of him?

14 MS. LEVINE: I don't know that, but that's what he
15 just said.

16 BY MR. BLOMBERG:

17 Q. Is that what you were communicating, Stephen?

18 A. I don't recall seeing this outside of direct
19 preparations and conversations regarding the legal
20 matters. I'm not at the school site level. I've not
21 seen this e-mail before.

22 Q. To clarify, not the e-mail cover, but, rather,
23 the document, the February 3, 2021 document itself,
24 you're saying you've never seen that, other than when
25 your counsel has told you to review it?

1 A. I recall only seeing this in direct
2 relationship to legal counsel, and those conversations.

3 Q. Do you see where it says -- sorry, go ahead.

4 MS. LEVINE: No, I think that was just some random
5 noise on there. I didn't say anything.

6 MR. BLOMBERG: Okay, sorry, I'm getting some odd
7 feedback.

8 BY MR. BLOMBERG:

9 Q. So, midway down the page, do you see there's
10 kind of a centered statement, it says, affirmation of
11 conformance?

12 A. Yes.

13 Q. Do you know what an all comers policy is?

14 A. I know what it means.

15 Q. What does it mean?

16 A. Any student is welcome to join your club.

17 Q. Is it just to join?

18 A. Participate in the club.

19 Q. Is it just participation?

20 A. Can you clarify. I don't know what else a
21 student would do besides participate in a club.

22 Q. So, the --

23 A. In relation to the club.

24 Q. The last sentence of that paragraph there, it
25 says, this policy of nondiscrimination requires ASB

1 recognized student groups to permit any student to
2 become a member or leader.

3 So, does it include leadership, as well?

4 A. I was using participation as a broader term,
5 that whatever the club does, all students are welcome to
6 participate in it, whether that's membership,
7 leadership, activities, fundraisers, that you can, you
8 can't parse out some activities of a club from others
9 and say the club is welcoming to all students for
10 activities 1, 2, 3, and prohibit some students for
11 activities 4, 5, 6.

12 Q. And at the top of this paragraph, it says that
13 neither the district, the ASB, nor ASB recognized
14 student groups shall discriminate, and then it gives
15 that list that we were looking at earlier.

16 Is that right?

17 A. I'm still reading it.

18 Q. Yeah, take your time.

19 A. Similar to the earlier response, I'd want to
20 compare this list to the list in the board policy. It
21 doesn't appear to be exactly the same.

22 Q. So, does the requirement that they allow ASB
23 recognized student groups allow any student to become a
24 leader extend beyond the enumerated categories listed in
25 this policy statement?

1 MS. LEVINE: Vague. Calls for a legal conclusion.

2 THE WITNESS: If I understand correctly, age is not
3 listed. So, could the senior class require the senior
4 class president to be a senior? I believe, yes.

5 BY MR. BLOMBERG:

6 Q. Is it your understanding that this is the
7 current district policy for ASB approved groups?

8 MS. LEVINE: Vague.

9 THE WITNESS: I understood the question to be, is
10 this the district's policy?

11 BY MR. BLOMBERG:

12 Q. Correct.

13 A. The district's policy is the board of
14 education policies. This is what schools are using.
15 This is what schools may use to implement that policy
16 and add clarity for the students, but the policy of San
17 Jose Unified is in the board policies.

18 Q. So, to the extent there is any daylight
19 between the board policies and this, which controls?

20 A. Board policy.

21 Q. Do you know if the, that last sentence stating
22 that, all ASB recognized student groups should allow any
23 student to become a leader, exists in board policy
24 anywhere?

25 A. That goes back to my using the word,

1 participation. My interpretation of the board policy is
2 you can't parse out aspects of a club and allow
3 discrimination in some aspects and not others. It's
4 nondiscrimination in all programs and all activities.

5 Q. And is that reflected in board policy?

6 A. Yes.

7 Q. What board policy requires ASB recognized
8 student groups to permit any student to be a leader? Is
9 it the three they have listed here, just above that
10 sentence?

11 MS. LEVINE: Calls for a legal conclusion.

12 THE WITNESS: I do not believe it allows for any
13 student to be a leader. It prohibits precluding
14 students from the opportunity.

15 BY MR. BLOMBERG:

16 Q. So, the language here, it says, this policy
17 requires ASB recognized student groups to permit any
18 student to become a member or leader; is that correct?

19 A. That's what this document says.

20 Q. Is that based on board policy 0410, 5145.3,
21 and 5145.9?

22 A. I'm not the author of this document. My
23 interpretation and the staff's interpretation of the
24 board policy is that you can't preclude a student from
25 participating. It doesn't guarantee everyone will get a

1 leadership position, if they're interested in it,
2 because there should be a process for determining the
3 leaders of a student organization. That process needs
4 to be nondiscriminatory.

5 Q. And then the, the end of that sentence, the
6 last clause, where it says, if they meet
7 nondiscriminatory eligibility criteria, is that what you
8 were referring to regarding, like, with age, and the
9 senior class, so, the senior class can have a
10 requirement that you be a senior, because that's a
11 nondiscriminatory eligibility criteria?

12 A. Yes. That is what, reading this, at this
13 time, that's what I understand the intent to be.

14 Q. Looking on the second page of the document, it
15 talks a little bit more about the nondiscriminatory
16 criteria, in the third bullet point. Can you read that
17 and just let me know once you're done reading it.

18 A. Okay.

19 Q. Does this give some other guidance on what
20 nondiscriminatory eligibility criteria are, like,
21 regular attendance, or participation in group events?

22 MS. LEVINE: Document speaks for itself.

23 THE WITNESS: It provides examples.

24 BY MR. BLOMBERG:

25 Q. And those are nonexhaustive examples, right?

1 So it gives it looks like four examples that are regular
2 attendance, participation in group events, participation
3 for a minimum period of time, or participation in
4 orientation and training activities.

5 What other types of nondiscriminatory criteria
6 would be permissible for determining eligibility?

7 MS. LEVINE: Calls for speculation. Calls for a
8 legal conclusion.

9 THE WITNESS: Anything that's not in the
10 discriminatory list. The Left-Handers Club requires you
11 to be left-handed.

12 BY MR. BLOMBERG:

13 Q. So, and the discriminatory list would be that
14 paragraph at the bottom of the first page that we were
15 looking at, you can't discriminate on the basis of
16 gender, gender identity, that list?

17 A. Again, without comparing them side by side,
18 the board policy would govern over this, but the lists
19 appear to be very similar, with this one slightly more
20 specific. I don't recall the hair texture being in the
21 board policy.

22 Q. So, but since left-handed isn't on this list,
23 left-handed would be okay.

24 A. My interpretation application of the policy
25 would be if it's not specified, it could be used as a

1 criteria.

2 Q. And do you know who is primarily responsible
3 for interpreting, determining what qualifies as a
4 nondiscriminatory criteria?

5 A. The board policy.

6 Q. And would the principals in each school be the
7 ones who are kind of implementing the board policy for
8 nondiscriminatory criteria?

9 A. Specific to ASB?

10 Q. Yes. Sorry. Specific to ASB. So, would the
11 principals applying this at the individual schools,
12 would they be the ones to say the left-handed club is
13 nondiscriminatory?

14 A. My understanding is that the school district
15 wants the students to have ownership over this, which is
16 why there's more efforts to communicate clearly to the
17 students themselves what they need to know when they're
18 considering clubs at the ASB level. Ideally, ASB is
19 making these determinations, as the Associated Student
20 Body, fully informed on what the district policies are
21 that apply.

22 Q. And are you aware of any planned change in
23 policy, or is this the kind of the plan going forward
24 policy?

25 A. Neither the superintendent nor the board have

1 made me aware of any intention to change the board
2 policy.

3 Q. And then any intention to change this document
4 that students are receiving? Sorry.

5 Any intent to change this document that ASB
6 student organizations are receiving?

7 A. I'm not aware. I'm not working on this
8 document.

9 Q. I think you mentioned earlier, changing gears
10 slightly, that you had sent an e-mail to Principal
11 Espiritu with the three bullet points, which he then
12 later shared with the FCA students.

13 Do you know if that document has been produced
14 to plaintiffs in this case?

15 A. Can you clarify. I don't know if he shared.
16 I don't know who he shared the e-mail with.

17 Q. Sorry. The, so, my understanding from our
18 discussion earlier was that you had sent Principal
19 Espiritu a document, an e-mail that had those three
20 bullet points that we were looking at, that he then sent
21 on. He took that language, the three bullet points, and
22 sent it to, sent it to the FCA leadership. I think it
23 was Exhibit 11 that we were looking at earlier.

24 Do you know if the e-mail that you sent to
25 Principal Espiritu has been provided to the plaintiffs

1 in this case?

2 MS. LEVINE: Counsel, I can say that I don't think
3 it's been produced, because legal counsel was copied on
4 it. I believe it was on our privilege log from an early
5 production.

6 MR. BLOMBERG: Okay, thank you, Amy. So, that one
7 hasn't been produced to us yet?

8 MS. LEVINE: I don't think so.

9 MR. BLOMBERG: We can follow up with that a little
10 bit later.

11 BY MR. BLOMBERG:

12 Q. When did you search your e-mails for documents
13 responsive to our discovery requests?

14 MS. LEVINE: Vague, overbroad.

15 THE WITNESS: After I became aware of the request.

16 BY MR. BLOMBERG:

17 Q. And when was that?

18 A. It feels like a very short time ago, but I
19 think, in reality, several months ago.

20 Q. Do you have any way of estimating? Was it
21 last week?

22 A. It was definitely not last week.

23 Q. And what makes you think it might be several
24 months ago?

25 A. Seems like it was several months ago that I

1 was asked to provide e-mail communications.

2 Q. And did you promptly search your
3 communications, and have you not searched again since
4 then?

5 A. Yes, and yes, to the best of my recollection.

6 Q. So, you don't remember searching again last
7 week, or two weeks ago, or three weeks ago. You
8 remember doing it when you were asked to, and just kind
9 of getting it all done then?

10 A. I recall the request for documents I had, I
11 immediately remembered that I had sent the one e-mail to
12 Principal Espiritu. I don't recall looking for anything
13 else, or finding anything else.

14 Q. And that was immediately after you were asked
15 to look for it, or shortly after?

16 A. Shortly thereafter, yes.

17 Q. Did you search your text messages for any
18 communications about the FCA situation?

19 A. Yes.

20 Q. Did you produce those to be provided to the
21 plaintiffs?

22 A. I don't have them.

23 Can you hold on one second.

24 Q. No problem.

25 A. I don't have any texts.

1 Q. So, you searched for texts, and there just
2 weren't any that were about FCA?

3 A. I don't store them. So, the e-mail system,
4 unless I actively delete it, keeps the e-mails. I don't
5 store my texts or save them.

6 Q. So, did you delete the texts that you had
7 regarding the FCA matter?

8 A. Probably, within the day I sent or received
9 the text. At the time of the records request, I didn't
10 have any texts.

11 Q. Sorry. At the time of the records request,
12 you didn't have any texts regarding FCA?

13 A. Yes.

14 Q. Do you recall if you had texted Principal
15 Espiritu about the FCA matter?

16 A. It's likely. Probably, specific to a call,
17 or, I'll call you soon.

18 Q. Do you recall texting anyone else about the
19 FCA matter?

20 A. Outside of group texts, unlikely.

21 Q. And who would have been on the group texts?

22 A. Superintendent's counsel, Principal Espiritu.
23 I mean, my involvement was limited, and continues to be
24 limited.

25 Q. And when you say, superintendent's counsel,

1 that's referring to the superintendent, and then kind of
2 the deputy and assistance superintendents?

3 A. Yes. The group of four.

4 Q. Would it have been largely, it was similar to
5 the group that we looked at earlier in the text from
6 Principal Espiritu?

7 A. Again, I don't recall specifically, but it
8 would likely be a small group. If we're communicating
9 via text, it's for brief updates.

10 Q. And do you recall texting the superintendent
11 regarding the FCA matter?

12 MS. LEVINE: Misstates testimony.

13 THE WITNESS: I don't recall specifics. I tend to
14 do as much as I can in-person, either face-to-face or by
15 phone. As you can see in the documents we reviewed
16 already, conversations with Principal Espiritu are by
17 the phone, with FCA by the phone, with the
18 superintendent, almost always by phone. I, despite
19 being able to use the technology, don't prefer it as a
20 vehicle for solving problems.

21 MR. BLOMBERG: Well, can we take like a 10-minute
22 break. I think we're about ready to wrap up.

23 Does that work for you all?

24 MS. LEVINE: That's fine.

25 MR. BLOMBERG: Come back at 4:25.

1 (Recess: 4:14 p.m. to 4:27 p.m.)

2 MR. BLOMBERG: No further questions from our side.

3 We're going to, because we had the issue earlier with

4 instructions not to answer, we'll hold the deposition

5 open, look at the transcript, and see if there is

6 anything that we need to follow up on, and we'll let you

7 know, Amy, if we need to address that. I know you'll

8 object to it, but we can go from there.

9 Do you have any cross for him?

10 MS. LEVINE: No, I don't think so.

11 (Time noted: 4:28 p.m.)

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From: [Espiritu, Herbert](#)
To: [Charlotte Klarke](#); [Elizabeth Sinclair](#)
Cc: [Rigo Lopez](#); [Mayhew, Michelle](#)
Subject: Re: FCA club
Date: Thursday, May 2, 2019 3:25:34 PM

Charlotte and Elizabeth,

Thank you for meeting with me today. I'm very proud of the way you two have been patient and understanding throughout this process. Below are the talking points we discussed at our meeting today. Please let me know if you have additional questions and/or concerns.

(1) The Equal Access Act requires any public secondary school receiving Federal financial assistance to provide equal access to any group of students wishing to meet in school facilities during non-instructional time. San José Unified provides equal access to all student groups, regardless of the focus or viewpoint of the group.

(2) San José Unified requires all of its programs and activities to be free from discrimination based on gender, gender identity and expression, race, color, religion, ancestry, national origin, immigration status, ethnic group, pregnancy, marital or parental status, physical or mental disability, sexual orientation or the perception of one or more of such characteristics.

(3) San José Unified does not sponsor programs and activities with discriminatory practices. While there is equal access for student meetings of FCA, FCA meetings are not sponsored by Pioneer High School nor any San José Unified staff member. Any attendance of a staff member at a FCA meeting is to observe the meeting for purposes of maintaining order and protecting student safety.

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

From: Charlotte Klarke <charlotteklarke@gmail.com>
Sent: Thursday, May 02, 2019 7:43 AM
To: Espiritu, Herbert

Cc: Dennis Faigal; Rigo Lopez; Tawni K.; Lloyd Klarke; Mindi Elizabeths Mom; Jeff Sinclair; Elizabeth Sinclair; Ella From Fca; Evan Vernon; Mayhew, Michelle

Subject: FCA club

Cc'ing

Dennis Faigal: Pacific Justice Institute Attorney

Rigo Lopez: Bay Area FCA representative

Mayhew: Activities Director

Tawni and Lloyd Klarke: parents

Mindi and Jeff Sinclair: parents

Evan Vernon, Ella Lau and Elizabeth Sinclair: FCA leaders

Hi Mr. Espiritu,

We as leaders of the FCA club at Pioneer would like to talk to you about the decision being made about our club.

We feel it is unfair for a decision to be made without a direct discussion. When is a good time to meet with you?

Thank you



FCA Student Leader Application

Instructions: Please fill out this form and return to your Club Advisor and/or FCA Staff if you are interested in being considered as an FCA Leadership Team member this coming school year.

Personal Information

Date _____ School _____ T-Shirt Size _____ Graduation Year _____
 Name _____ Sport (you play or enjoy) _____
 Address _____
 City _____ State _____ Zip _____
 Phone (cell) _____
 Email _____
 School sport(s)/other club activities _____

Parent's name(s) _____
 Dad email _____ Mom email _____
 Dad cell phone _____ Mom cell phone _____

Church Involvement

Current church you attend _____
 How often? ___ Regularly ___ Sometimes ___ Rarely ___ I would like to find a Church/High School Youth Group
 Pastor/Priest's name _____

FCA Experience

Briefly list your FCA involvement:

What leadership position are you interested in?

Why would you like to be part of the FCA Leadership Team?

What is the purpose of FCA?

Are you a current FCA Teammate? ___ Yes ___ No (To join for free, visit fca.org)

Exhibit
89

FCA Leadership Commitments

Statement of Faith

FCA's Statement of Faith helps us keep Jesus Christ the center of our ministry with a clear understanding of what we believe. As a ministry, we focus on what we agree on, not what we disagree about. FCA does not deal with doctrinal differences like the gifts of the Spirit and baptism. This allows us to be inter-denominational while keeping Jesus Christ at the core of our ministry.

- We believe the Bible to be the only inspired, trustworthy and true, without error, Word of God. (2 Timothy 3:16-17)
- We believe there is only one God who eternally exists in three persons: Father, Son and Holy Spirit. (Matthew 28:19)
- We believe Jesus Christ is God, in His virgin birth, in His sinless life, in His miracles, in His death that paid for our sin through His shed blood, in His bodily resurrection, in His ascension/rising up to the right hand of the Father and in His personal return in power and glory. (John 1:1; Matthew 1:18,25; Hebrews 4:15; Hebrews 9:15-22; 1 Corinthians 15:1-8; Acts 1:9-11; Hebrews 9:27-28)
- We believe that acceptance of Jesus Christ and the corresponding renewal of the Holy Spirit are the only paths to salvation for lost/sinful men and women. (John 3:16; John 5:24; Titus 3:3-7)
- We believe in the present ministry of the Holy Spirit, who lives within and guides Christians so they are enabled to live godly lives. (John 14:15-26; John 16:5-16; Ephesians 1:13-14)
- We believe in eternal life, and that through belief in Jesus Christ as the Son of God, we spend eternity with the Lord in Heaven. We believe that in rejecting Jesus Christ as Lord and Savior, we receive eternal suffering in hell. (Matthew 25:31-46; 1 Thessalonians 4:13-18)

- We believe in the spiritual unity of believers in our Lord Jesus Christ, that all believers are members of His body, the Church. (Philippians 2:1-4)
- We believe God's design for sexual intimacy is to be expressed only within the context of marriage. God instituted marriage between one man and one woman as the foundation of the family and the basic structure of human society. For this reason, we believe that marriage is exclusively the union of one man and one woman. (Genesis 2:24; Matthew 19:5-6; Mark 10:6-9; Romans 1:26-27; 1 Corinthians 6:9)
- We believe that God created all human beings in His image. Therefore, we believe that human life is sacred from conception to its natural end; that we must honor the physical and spiritual needs of all people; following Christ's example, we believe that every person should be treated with love, dignity and respect. (Psalm 139:13; Isaiah 49:1; Jeremiah 1:5; Matthew 22:37-39; Romans 12:20-21; Galatians 6:10)

I understand that as a leader in FCA my life is an example to others . 1 Timothy 4:12 *"Don't let anyone look down on you because you are young, but set an example for the believers in speech, in life, in love, in faith and in purity."*

Do you agree with FCA's Statement of Faith? ___ Yes ___ No

Spiritual Formation

1. What do you think it means to be a Christian?

2. Share when you first believed in Jesus?

3. Have you come to the place in your own spiritual life where you know for certain that, if you died today, you would go to heaven? ___ Unsure ___ Yes ___ No

4. If you were to die today and stand before God, and He asked you, "Why should I allow you into heaven?" what would you say?

Focus on the Gospel of Jesus Christ

FCA's ministry presents Jesus Christ as Lord and Savior. Speaking in tongues, healings, prophesying, and baptism are a part of the Christian experience for many people; however, FCA chooses not to focus on them but on the basics of the gospel of Jesus Christ.

Do you agree to keep the focus on the gospel of Christ and not on these or other denominational issues? ___Yes ___No

FCA Student Leadership Statement

Just as "captains" are held to a higher standard for their team, FCA Student Leaders are held to a higher standard of biblical lifestyle and conduct. God desires all of His people, especially leaders, to pursue His standards of holiness through their conduct and obedience. Paul the Apostle instructed young Timothy to live similarly in 1 Timothy 4:12. (NLT): "Do not let anyone think less of you because you are young. Be an example to all believers in what you say, in the way you live, in your love, your faith, and your purity."

FCA Student Leaders are not always perfect examples, but they do their best to live and conduct themselves in accordance with biblical values and instruction in order to glorify God. If there are questions about what God says regarding how we live, love, or live sexually pure lives, FCA encourages student leaders to look to the Bible as their Playbook and speak to a FCA Adult Volunteer or Staff member if there are further questions.

Will you conform to FCA's Student Leadership Statement? ___ Yes ___ No

FCA Christian Character and Mission

To express and exercise FCA's Christian beliefs, all FCA representatives shall contribute to FCA's Christian character and mission. Accordingly, each FCA representative shall be expected to model FCA's Christian beliefs for the larger community, perform all of their duties as a service to God and comply with the following obligations.

Beliefs. Each FCA representatives shall affirm their agreement with FCA's Christian beliefs and shall not subscribe to or promote any religious beliefs inconsistent with these beliefs.

Christian Conduct Standards. FCA Representatives shall at all times (both during working and non-working hours) endeavor to conduct themselves in a manner that affirms biblical standards of conduct in accordance with FCA's Christian beliefs. Such conduct standards include FCA's Youth Protection Policy and Sexual Purity Statement.

Distinctly Christian Activities. Each FCA Representative shall be ready, willing and able to participate and contribute to distinctly Christian activities such as worship and prayer services.

Have you, or will you at this time commit to living a drug, alcohol and tobacco-free life? ____ Yes ____ No

Will you conform to FCA's Christian Character and Mission? ____ Yes ____ No

Signature _____ Date _____

(Turn in to FCA Club Advisor/FCA Staff)

RE: FCA Followup

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

Mon, Feb 3, 2020 at 10:01 AM PST (GMT-08:00)

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

Cc: McMahon, Stephen <smcmahon@sjusd.org>

Thanks, Katie. That is very interesting. I'm not going to say anything new to you, but I wanted to jot my ideas down while they are fresh. [REDACTED].

It seems to me that the rejection of homosexuality is still pretty explicit in the "purity" pledge, which I read as incorporated by reference in the "Christian Conduct Standards" that each leader must agree to abide by in the leadership application. They seemed to have buried it pretty neatly, but this organization still requires that its participants overtly discriminate against students who are homosexuals.

I read the Fed reg that were sent along but this doesn't seem to apply. SJUSD is not interfering with students' "constitutionally protected prayer" in any way. I'm inferring that FCA is arguing that this is "private speech endorsing religion", protected by the free speech and exercise clauses; however, when this "private" speech conflicts with a public institution's fundamental responsibility to support equitable access for all students on campus to an organization for which the entity has provided financial support, then I think the public entity should have the right to decline financial support. If the district supplements the speech through an in-kind contribution of staff paid for by the district, doesn't that become government sponsored?

This idea is encapsulated by the SC ruling that "...schools do not endorse everything they fail to censor", but "failure to censor" is such a passive act, as opposed to the imprimatur implicit in a fully sanctioned club or activity. Additionally, schools may "disclaim sponsorship...provided they administer such disclaimers in a manner that neither favors nor disfavors groups that meet to engage in in prayer or express religious perspectives". I think SJUSD is on solid ground "disclaiming sponsorship" when a group's religious beliefs manifest themselves in a way is discriminatory in practice.

I'm intrigued that the regs call out the right of the student leadership of these groups to be limited as the group requires in order to ensure the duties are properly carried out according to that religious observance, but I don't think that this requires "state sponsorship".

So interesting.

Jen

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

Sent: Friday, January 31, 2020 11:54 AM

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

Cc: McMahon, Stephen <smcmahon@sjusd.org>

Subject: FW: FCA Followup

Jen,

FYI – this just in from FCA.

This attached language differs from what I understood students were asked to pledge. The below is what I thought student leaders were pledging.

Thanks,
Katie

SJUSD011923

8-ER-1515

FCA's Statement of Faith

1. We believe the Bible to be the inspired, the only infallible, authoritative Word of God.
2. We believe that there is only one God, eternally existent in three persons: Father, Son and Holy Spirit.
3. We believe in the deity of Christ, in His virgin birth, in His sinless life, in His miracles, in His vicarious and atoning death through His shed blood, in His bodily resurrection, in His ascension to the right hand of the Father and in His personal return in power and glory.
4. We believe that for the salvation of lost and sinful men (women) regeneration by the Holy Spirit is absolutely essential.
5. We believe in the present ministry of the Holy Spirit, by whose indwelling the Christian is enabled to live a godly life.
6. We believe in the resurrection of both the saved and the lost, they that are saved unto the resurrection of life and they that are lost unto the resurrection of damnation.
7. We believe in the spiritual unity of believers in our Lord Jesus Christ.
8. Do you agree with the FCA's Statement of Faith? ____ Yes ____ No

1 Timothy 4:12 Don't let anyone look down on you because you are young, but set an example for the believers in speech, in life, in love, in faith and in purity. I understand that as a leader in FCA my life is an example to others.

FCA's Sexual Purity Statement

God desires His children to lead pure lives of holiness. The Bible is clear in teaching on sexual sin including sex outside of marriage and homosexual acts. Neither heterosexual sex outside of marriage nor any homosexual act constitute an alternative lifestyle acceptable to God.

While upholding God's standard of holiness, FCA strongly affirms God's love and redemptive power in the individual who chooses to follow Him. FCA's desire is to encourage individuals to trust in Jesus and turn away from any impure lifestyle.

1. Will you conform to the FCA's Sexual Purity Policy? ____ Yes ____ No
2. Have you, or will you at this time commit to living a drug, alcohol and tobacco-free life? ____ Yes ____ No

As an officer, I will be accountable to the other officers, Huddle Coach(es) and FCA staff. I understand that if I am found being involved in a lifestyle that does not conform to the FCA's Sexual Purity Statement, or break my commitment to living a drug-, alcohol- and tobacco-free life, that it means that I will need to step down from my leadership position with the Fellowship of Christian Athletes. This

does not mean that I am a bad person and that the FCA does not love me and want me involved; this is in order to protect the integrity of the ministry and to protect the ones to which we are ministering.

Signature _____ Date _____

From: Reed Smith <rsmith@clsnet.org>

Date: Friday, January 31, 2020 at 11:38 AM

To: Stephen McMahon <smcmahon@sjusd.org>, "Chang, Katie" <kchang@sjusd.org>

Cc: Kim Colby <kolby@clsnet.org>, "Stephen C. Seto" <sseto@wcjuris.com>, Steve Wood <wood@wcjuris.com>, "Chris Schweickert" <cjs@wcjuris.com> <cjs@wcjuris.com>

Subject: FCA Followup

Dear Stephen and Katie,

Thank you for your call on Monday. Please find attached correspondence addressing issues discussed on that call.

Please feel free to contact me with any questions.

Respectfully,

SJUSD011924

8-ER-1516

Reed



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

FCA Student Leader Application Original

From: McMahon, Stephen <smcmahon@sjusd.org>

Thu, Feb 6, 2020 at 9:44 AM PST (GMT-08:00)

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

[No message body]

Attachments

- FCA Student Leader Application Original.pdf



The heart and soul in sports®

FCA Student Leader Application

Instructions: Please fill out this form and return to your Huddle Coach if you are interested in being considered as an FCA Leadership Team member this coming school year.

Personal Information

Date _____ School _____
 Name _____ Current grade _____
 Address _____
 City _____ State _____ Zip _____
 Phone cell) _____ home) _____
 Email address _____
 School sport(s)/other club activities _____

Parent's name(s) _____
 Address _____
 City _____ State _____ Zip _____
 Parent's phone _____

Church Service

Current church you attend _____
 Address _____
 City _____ State _____ Zip _____
 Are you a member? ____ Yes ____ No
 In what area of church life do you now participate? _____
 Pastor/Priest's name _____

FCA Experience

Briefly list your FCA involvement:

What office are you interested in?

Why would you like to be part of the FCA Leadership Team?

What is the purpose of FCA?

Are you a member of Team FCA? ____ Yes ____ No (To join for free, visit fca.org)

Complete the following. (If you need more space, please continue on a separate sheet.)

1. What do you think it means to be a Christian?
2. Explain when and how your walk with Christ began.
3. Have you come to the place in your own spiritual life where you know for certain that, if you died today, you would go to heaven? ____ Yes ____ No

4. If you were to die today and stand before God, and He asked you, "Why should I allow you into heaven?" what would you say?

5. FCA's ministry presents Jesus Christ as Lord and Savior by evangelism through fellowship. Speaking in tongues, healings, prophesying and baptism are a part of the Christian experience for many people; however, the FCA chooses not to focus on them but on the basics of the gospel of Christ. Do you agree to keep the focus on the gospel of Christ and not on these or other denominational issues? ____ Yes ____ No

FCA's Statement of Faith

1. We believe the Bible to be the inspired, the only infallible, authoritative Word of God.

2. We believe that there is only one God, eternally existent in three persons: Father, Son and Holy Spirit.

3. We believe in the deity of Christ, in His virgin birth, in His sinless life, in His miracles, in His vicarious and atoning death through His shed blood, in His bodily resurrection, in His ascension to the right hand of the Father and in His personal return in power and glory.

4. We believe that for the salvation of lost and sinful men (women) regeneration by the Holy Spirit is absolutely essential.

5. We believe in the present ministry of the Holy Spirit, by whose indwelling the Christian is enabled to live a godly life.

6. We believe in the resurrection of both the saved and the lost, they that are saved unto the resurrection of life and they that are lost unto the resurrection of damnation.

7. We believe in the spiritual unity of believers in our Lord Jesus Christ.

8. Do you agree with the FCA's Statement of Faith? ____ Yes ____ No

1 Timothy 4:12 Don't let anyone look down on you because you are young, but set an example for the believers in speech, in life, in love, in faith and in purity. I understand that as a leader in FCA my life is an example to others.

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While upholding God's standard of holiness, FCA strongly affirms God's love and redemptive power in the individual who chooses to follow Him. FCA's desire is to encourage individuals to trust in Jesus and turn away from any impure lifestyle.

1. Will you conform to the FCA's Sexual Purity Policy? ____ Yes ____ No

2. Have you, or will you at this time commit to living a drug, alcohol and tobacco-free life? ____ Yes ____ No

As an officer, I will be accountable to the other officers, Huddle Coach(es) and FCA staff. I understand that if I am found being involved in a lifestyle that does not conform to the FCA's Sexual Purity Statement, or break my commitment to living a drug-, alcohol- and tobacco-free life, that it means that I will need to step down from my leadership position with the Fellowship of Christian Athletes. This does not mean that I am a bad person and that the FCA does not love me and want me involved; this is in order to protect the integrity of the ministry and to protect the ones to which we are ministering.

Signature _____ Date _____

FCA

From: Thomas, Jennifer <jthomas@sjusd.org>
To: McMahon, Stephen <smcmahon@sjusd.org>

Thu, Feb 6, 2020 at 1:10 PM PST (GMT-08:00)

As I suspected, spell check was objecting.

Mr. Smith and Mr. Seto,
I write in response to your letter of January 31, 2020.

As we discussed in our phone call and as your letter indicated, the Fellowship of Christian Athletes student leadership application documents that San Jose Unified possesses are not reflective of the current requirements of those desiring student leadership positions in the FCA.

We would like to invite students wishing to have their chapters of the FCA reconsidered for recognition resubmit their applications to their local ASB. They should include any and all documents students must sign or affirm in order to participate- including any applications for membership or leadership.

This review may resolve the conflict between the perceptions of the requirements of the club and the widely available materials attributed to FCA doctrine that otherwise conflict with SJUSD's policies on equity and inclusion.

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

FW: FCA

From: Thomas, Jennifer <jthomas@sjusd.org>
To: McMahon, Stephen <smcmahon@sjusd.org>

Thu, Mar 12, 2020 at 3:41 PM PDT (GMT-07:00)

You were gonna send this, because you talked to them on the phone.

From: "Thomas, Jennifer" <jthomas@sjusd.org>
Date: Thursday, February 6, 2020 at 1:10 PM
To: "McMahon, Stephen" <smcmahon@sjusd.org>
Subject: FCA

As I suspected, spell check was objecting.

Mr. Smith and Mr. Seto,
I write in response to your letter of January 31, 2020.

As we discussed in our phone call and as your letter indicated, the Fellowship of Christian Athletes student leadership application documents that San Jose Unified possesses are not reflective of the current requirements of those desiring student leadership positions in the FCA.

We would like to invite students wishing to have their chapters of the FCA reconsidered for recognition resubmit their applications to their local ASB. They should include any and all documents students must sign or affirm in order to participate- including any applications for membership or leadership.

This review may resolve the conflict between the perceptions of the requirements of the club and the widely available materials attributed to FCA doctrine that otherwise conflict with SJUSD's policies on equity and inclusion.

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

Fwd: [Caution] Today's Meeting

From: Goldman-Hall, Jason <jgoldmanhall@sjusd.org>

Mon, Feb 10, 2020 at 11:51 AM PST (GMT-08:00)

To: Rudolph, Scott <srudolph@sjusd.org>; Espiritu, Herbert <hmespiritu@sjusd.org>; Sweeney, Mary <msweeney@sjusd.org>

I am only sending this to the three of you.

Regarding the issue of litigation, any issues between FCA and the school are not a part of my decision.

Due to [REDACTED] actions, the decision has already been made that, [REDACTED], we as the Pony Express will not be covering FCA for the remainder of the school year. Our objectivity as a Newspaper has been irreparably compromised on this topic, FCA has a video of one of our writers verbally abusing their members, and as such, they have no reason to expect fairness or objectivity from our newspaper, nor do I have any standing to ask them, or others, to expect it.

Jason Goldman-Hall
English Teacher
Director of Publications
Pioneer High School
Room P6
408.535.6310 x 65506
[Jgoldmanhall@sjusd.org](mailto:jgoldmanhall@sjusd.org)

Begin forwarded message:

Exhibit
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