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California Three Rs

Rights, Responsibility, and Respect

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Curriculum Content and the First Amendment in Public Schools

Sedlock v. Baird: A Case about Yoga

Damon Huss, CA 3Rs Project Lead, Constitutional Rights Foundation

Given the growing presence and evidence of the health benefits of yoga as exercise, many public schools are exploring ways to include the practice in their physical education programs. This has brought challenges from parents and religious organizations in several public schools across the country, most resolved out of court. Though there may be more legal decisions on the topic, the issues behind those challenges are worth noting if districts want to avoid foreseeable problems. For example, earlier this year, parents in Encinitas, California sued their local school district over a controversial program of yoga instruction introduced in elementary physical education classes. Yoga, they argued, is inherently religious. Therefore, if taught in schools, yoga instruction violates the First Amendment's establishment clause. One important underlying issue in the case was funding from an outside religious organization.

The case also illustrates the fine line school local education authorities must walk when accepting such funding, even for expressly secular educational aims. In recent years, the Encinitas Unified School District (EUSD) accepted a \$533,000 grant to develop a yoga program for P.E. classes from the Encinitas-based Jois Foundation (Jois), named after Sri Patthabi Jois. The foundation promotes a particular kind of yoga that Jois developed called Ashtanga. EUSD's program was for "health and wellness."

A group of parents who happened to be Christians objected to the program, which involved students practicing yoga poses such as the "sun salutation" and the "lotus position." These parents also observed students saying "Namaste" to each other with "praying hands." ("Namaste" can be roughly translated as "I bow to the god [or the divine] within you".) The Christian parents opted their children out of the program.

Due to their objections, EUSD teachers modified instruction to remove overtly Hindu or Indian cultural references. In one well-reported example, the seated "lotus" position became "criss-cross applesauce." Responding to complaints and an as-yet unfiled complaint in 2012, EUSD Superintendent Dr. Timothy Baird said, "The District has selected the instructors, we are designing the curriculum, and we are training the teachers. There is no religion in this curriculum."

At trial, the objecting parents were represented by an attorney for the National Center for Law & Policy (NCLP), a Christian-advocacy nonprofit. They brought in a religious studies expert, Dr. Candy Gunther Brown, to testify that Ashtanga yoga is inherently religious. According to her sworn declaration, "Ashtanga yoga, as endorsed by the EUSD yoga curriculum, in my expert opinion, promotes and advances religion, including Hinduism, Buddhism, Taoism, and Western metaphysics." The defense's arguments echoed Dr. Baird's earlier statements that the school district, not Jois, controlled and effectively modified the curriculum and instruction.

On July 1, San Diego Superior Court Judge John Meyer ruled in *Sedlock v. Baird* that the yoga program did not advance religion in public schools. It is significant to note

that the court did find that “yoga is religious.” Using the three-part Lemon test, however, the court also ruled that (a) there was a secular purpose “to teach health and welfare;” (b) the curriculum neither advanced nor prohibited religion, as observed by “the objective child” situated in EUSD; and (c) there was no excessive entanglement between church and state because “the district has a complete separation from Jois.” In response to the ruling, Dean Broyles has pledged to appeal to a higher court.

Dr. Candy Brown wrote an op-ed calling Judge Meyers’ decision “precedent-setting,” despite the fact that it is only a trial-court ruling, and not just for yoga in P.E. classes. She cites “mindfulness meditation” as another stealth-religious practice gaining popularity. “If prayer and Bible reading do not belong in public schools,” writes Brown, “neither do religious yoga and meditation.”

On the other hand, the Hindu American Foundation (HAF) praised the ruling. The HAF’s “Take Back Yoga” campaign has sought to instill Western practitioners’ awareness of yoga’s distinctly Hindu religious character. HAF’s executive director lauded the fact that Judge Meyers acknowledged yoga’s origins in Hindu philosophy, even if EUSD’s version was “not authentic yoga.”

Other federal courts have similarly found that schools need to have complete control of curriculum and instruction in order to remain separate from outside religious groups, especially when those groups offer program funding. In *Crockett v. Sorenson* (1983), for example, a federal court in West Virginia found that a Bible-study program for elementary grades violated the establishment clause when a consortium of local Protestant churches not only funded it, but also “prescribed the curriculum, selected, supervised, and paid the teachers, [and] included prayers and hymns in the classes.” Significantly, the program was “not subject to the control and supervision of secular authority,” and therefore was not “an objective course of Bible study.” Note that the court found no constitutional issue with an “objective course of Bible study” itself.

For local educational authorities, Judge Meyers’ analysis under the Lemon test should be particularly instructive. Any public school program involving religion in any aspect must 1) have a secular purpose; 2) not have the primary effect of either advancing or inhibiting religion; 3) not require excessive entanglement between a religious group (church) and the school (state).

The outcome of any appeal in *Sedlock v. Baird* lay somewhere in the future, but school authorities ought to note that they must always be the agency of any and all curricular decision-making, and not any outside religious funders. It is also a timely reminder that potential church-state controversies are present in areas of the curriculum and school program well beyond the recently much legislated topic of Bible classes. At the California Three Rs Project, we continue to recommend that public school districts use a widely representative common-ground process to develop curriculum review procedures. Also, opt-in or opt-out policies should be used as appropriate—and in compliance with state education code—for challenges to curriculum. **Finding Common Ground** (2007) Chapter 3 outlines this process <http://www.firstamendmentcenter.org/madison/wp-content/uploads/2011/03/FCGcomplete.pdf>

Sources

Crockett v. Sorenson, 568 F.Supp. 1422 (1983). • Declaration of Candy Gunther Brown, Motion For The Issuance Of An Alternative Writ Of Mandamus (February 8, 2013). <<http://www.nclplaw.org/wp-content/uploads/2011/12/DECLARATION-OF-CANDY-BROWN-FINAL.pdf>>. • Handler, Judd. “EUSD and Jois Foundation Respond to Concerns About Religious Yoga.” Encinitas Patch. 02 Nov 2012: n. page. Web. 27 Sep. 2013. <<http://encinitas.patch.com/groups/schools/p/eusd-and-jois-foundation-respond-to-concerns-about-re3fb8edcad>>. • Minute Order, *Sedlock v. Timothy Baird*, Superintendent, No: 37-2013-00035910-CU-MC-CTL (San Diego County Superior Court, July 1, 2013), <<http://www.volokh.com/wp-content/uploads/2013/07/sedlock.pdf>>. • “Ruling in Encinitas Affirms HAF’s Take Back Yoga Project.” Hindu American Foundation. N.p., 02 Jul 2013. Web. 27 Sep 2013. <http://www.hafsite.org/Ruling_Encinitas_Affirms_Take_Back_Yoga>. • “Sedlock v. Baird (Yoga trial): Reaction to Statement of Decision.” The National Center for Law & Policy. N.p., 01 Jul 2013. Web. 27 Sep 2013. <<http://www.nclplaw.org/wp-content/uploads/2011/12/Post-Trial-Press-Release-FINAL.pdf>>. • Verified Petition for Writ of Mandamus; Complaint for Injunctive & Declaratory Relief (February 20, 2013). <http://www.utsandiego.com/documents/2013/feb/20/sedlock-v-eusd-complaint-petition/>.

Classroom reading and lesson: **What Is Yoga?** is available at ca3rsproject.org

“Humanity faces many daunting challenges in the 21st century. But none is greater – or more urgent – than the challenge of negotiating new ways to live with our religious and ethnic differences.”

Charles Haynes, director of the Religious Freedom Center of the Newseum Institute and U.S. advisor to the Face to Faith program

News of armed clashes in Syria...Egypt...Somalia...Nigeria...Kenya...,Borneo...China...and more dominate the airwaves. Almost daily there are new outbreaks or escalations of existing ethnic, cultural, religious and sectarian violence around the world. In the U.S., social media posts rage against beauty pageant winners, turban wearers, and others because of their “terrorist” ethnic and religious backgrounds. Is this the world we want for our children? Can civil society survive it?

Leaders Tony Blair and Charles Haynes and educators in the US and around the world are asking these questions and developing and testing ideas that are working to build understanding and trust among people of different cultures and beliefs. The California 3Rs Project is part of this effort, called Face to Faith.

The method is incredibly simple...Set up opportunities for students of different backgrounds, cultures, and ethnicities to talk to one another using respectful dialogue, active listening, effective cooperation, creative thinking, reflection and conflict management.

Technology makes that possible even if the students are thousands of miles apart. Through video-conferencing and a secure online community, students engage one another directly in engaging issues that are open ended and have a cultural or faith dimension. Nineteen countries are participating. It works.

The best part is that the program is free, flexible, and First Amendment friendly. The classroom materials are provided but adaptable. Everything is monitored both for smooth connectivity and educational content during the online student discussions. The blogging and video-conferences use simple internet connections that most schools already have. Technology resources are provided free for those who don't. It can be done during or after school. Best of all students are deeply engaged in thinking, listening, speaking, and writing about issues and ideas in the manner of the Common Core State Standards reform.

“In a world torn by sectarian violence and hate, the success of Face to Faith is a reminder that we can – and must – do much more to help young people experience our common humanity. Reading and math are important. But even more important are the kinds of human beings that read the books and do the math. Learning to respect one another across our deepest differences is the real work of education.” [Charles Haynes]

Learn More:

Tony Blair Faith Foundation <http://www.tonyblairfaithfoundation.org/>

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New Holiday Materials from CA 3RS

Holidays in Public Schools 2013: Halloween <http://ca3rsproject.org/pdfs/HalloweeninPublicSchools.pdf>

Holidays in Public Schools 2013: Day of the Dead <http://ca3rsproject.org/pdfs/dayofdeadious.pdf>

NEW RESOURCE FROM CA 3RS PROJECT

California's Diversity: Past and Present Lessons for the Fair Education Act of 2011 (SB48) developed by Marshall Croddy, Damon Huss and Keri Doggett, Constitutional Rights Foundation.

This document consists of five lessons that address the Fair Act through the lens of the Constitution. The Lessons include: Lesson 1 Diversity in California History; Lesson 2 Discrimination and Civil Rights in California; Lesson 3 Religious Diversity in California; Lesson 4 California Heroes Presentation; Lesson 5 Schools and Bullying. All lessons are aligned to Common Core ELA Standards and use instructional strategies that model how to deal constructively with controversial issues. Access the new document in pdf format at <http://ca3rsproject.org/diversity/california-diversity-past-and-present-home.html>

COMMON GROUND RESOURCES

Finding Common Ground: A Guide to Religious Liberty in Public Schools by Charles Haynes and Oliver Thomas, Esq. First Amendment Center, 2007. This book has guidelines on how to handle a wide range of issues related to religious liberty and public schools. Download free at <http://www.firstamendment.org/publications>, scroll to "religion."

The Religious Freedom Education Project at the Newseum <http://www.religiousfreedomeducation.org> is a program at the First Amendment Center focusing on religious liberty in public life.

CA 3Rs Project Website <http://ca3rsproject.org> This site has resources for teachers and administrators, documents published by the CA 3Rs Project, calendars of religious holidays, etc.

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For information on teaching about world religions, contact:

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