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9 UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF CALIFORNIA

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12  
13 PLANS, INC.,

14 Plaintiff,

15 v.

NO. CIV. S 98-266 FCD PAN

MEMORANDUM AND ORDER

16 SACRAMENTO UNIFIED SCHOOL  
17 DISTRICT, TWIN RIDGES  
18 ELEMENTARY SCHOOL DISTRICT,  
DOES 1-100,

19 Defendants.

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21 Plaintiff PLANS, Inc. ("PLANS") brings suit against the  
22 Sacramento City Unified School District ("SCUSD") and Twin Ridges  
23 Elementary School District ("Twin Ridges"), alleging that their  
24 operation of Waldorf public schools violates the First Amendment  
25 of the United States Constitution, as well as article XVI,  
26 section 5 and article IX, section 8 of the California State  
27 Constitution. PLANS alleges that the primary purpose and effect  
28 of Waldorf education is to advance religion, specifically the  
religious doctrines of Anthroposophy. PLANS seeks a declaratory

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1 judgment that the school districts' operation of "taxpayer funded  
2 Waldorf schools" is illegal, and seeks to enjoin the school  
3 districts from operating the schools.

4 This matter comes before the court on the school districts'  
5 joint motion for summary judgment, or in the alternative summary  
6 adjudication,<sup>1</sup> pursuant to Rule 56 of the Federal Rules of Civil  
7 Procedure. SCUSD and Twin Ridges move for summary judgment on  
8 two grounds. First, the school districts contend that PLANS'  
9 members lack taxpayer standing to bring this suit. Second, the  
10 school districts argue that their use of the "Waldorf methods"  
11 curriculum does not violate the First Amendment's Establishment  
12 Clause or the California Constitution.

13 The matter was submitted after oral argument on June 18,  
14 1999. Having fully considered the arguments and evidence offered

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16 <sup>1</sup> In the alternative to summary judgment, defendants seek  
17 summary adjudication of the following issues: (1) Plaintiff does  
18 not have taxpayer standing; (2) Defendant SCUSD is in conformance  
19 with the First Amendment and operation of its John Morse Waldorf  
20 Methods Magnet School does not violate Plaintiff's Establishment  
21 Clause rights; (3) Defendant SCUSD has a secular purpose for the  
22 operation of the John Morse Waldorf Methods Magnet School; (4)  
23 Defendant SCUSD's operation of the John Morse Waldorf Methods  
24 Magnet School does not advance religion; (5) Defendant SCUSD's  
25 operation of the John Morse Waldorf Methods Magnet School does  
26 not foster excessive state entanglement with religion; (6)  
27 Defendant SCUSD is in conformance with California Constitution,  
28 Article XVI, section 5, and Article IX, section 8, and the  
operation of John Morse Waldorf Methods Magnet School does not  
violate Plaintiff's rights; (7) Defendant Twin Ridges is in  
conformance with the First Amendment and operation of the Yuba  
River Charter School does not violate Plaintiff's Establishment  
Clause rights; (8) Defendant Twin Ridges has a secular purpose  
for the operation of the Yuba River Charter School; (9) Defendant  
Twin Ridges' operation of the Yuba River Charter School does not  
advance religion; (10) Defendant Twin Ridges' operation of the  
Yuba River Charter School does not foster excessive state  
entanglement with religion; and (11) Defendant Twin Ridges is in  
conformance with California Constitution, Article XVI, section 5,  
and Article IX, section 8, and the operation of Yuba River  
Charter School does not violate Plaintiff's rights.

1 by the parties<sup>2</sup>, the court (1) denies the school districts'  
2 motion for summary judgment, and (2) grants in part and denies in  
3 part the school districts' motion for summary adjudication.

4 **STANDARD**

5 "A party against whom a claim . . . is asserted or a  
6 declaratory judgment is sought may, at any time, move with or  
7 without supporting affidavits for a summary judgment in the  
8 party's favor as to all or any part thereof." Fed. R. Civ. P.  
9 56(b). Summary judgment is appropriate when "the pleadings,  
10 depositions, answers to interrogatories, and admissions on file,  
11 together with affidavits, if any, show that there is no genuine  
12 issue as to any material fact and that the moving party is  
13 entitled to a judgment as a matter of law." Fed. R. Civ. P.  
14 56(c). One of the principal purposes of the rule is to dispose  
15 of factually unsupported claims or defenses. Celotex Corp. v.  
16 Catrett, 477 U.S. 317, 325, (1986).

17 In considering a motion for summary judgment, the court must  
18 examine all the evidence in the light most favorable to the  
19 non-moving party. United States v. Diebold, Inc., 369 U.S. 654,  
20 655 (1962). If the moving party does not bear the burden of  
21 proof at trial, he may discharge his burden of showing that no  
22 genuine issue of material fact remains by demonstrating that  
23 "there is an absence of evidence to support the non-moving  
24 party's case." Celotex, 477 U.S. at 325. Once the moving party  
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26 <sup>2</sup> On May 28, 1999, one day after the school districts filed  
27 their reply brief, PLANS filed a supplemental brief on the issue  
28 of standing. This is improper. See L.R. 78-230. Accordingly,  
PLANS' "Supplemental Memorandum of Points and Authorities re:  
Standing" is stricken.

1 meets the requirements of Rule 56 by showing there is an absence  
2 of evidence to support the non-moving party's case, the burden  
3 shifts to the party resisting the motion to "set forth specific  
4 facts showing that there is a genuine issue for trial." Anderson  
5 v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). Genuine  
6 factual issues must exist that "can be resolved only by a finder  
7 of fact, because they may reasonably be resolved in favor of  
8 either party." Id. at 250. In judging evidence at the summary  
9 judgment stage, the court does not make credibility  
10 determinations or weigh conflicting evidence. See T.W. Elec. v.  
11 Pacific Elec. Contractors Ass'n, 809 F.2d 629, 630-31 (9th Cir.  
12 1987) (citing Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio  
13 Corp., 475 U.S. 574 (1986)); Ting v. United States, 927 F.2d  
14 1504, 1509 (9th Cir. 1991). The evidence presented by the  
15 parties must be admissible. Fed. R. Civ. P. 56(e). Conclusory  
16 or speculative testimony in affidavits and moving papers is  
17 insufficient to raise genuine issues of fact and defeat summary  
18 judgment. See Falls Riverway Realty, Inc. v. City of Niagara  
19 Falls, 754 F.2d 49 (2d Cir. 1985); Thornhill Publishing Co., Inc.  
20 v. GTE Corp., 594 F.2d 730, 738 (9th Cir. 1979).

21 Rule 56 allows a court to grant summary adjudication on part  
22 of a claim or defense. See Fed. R. Civ. P. 56(b) ("A party  
23 against whom a claim . . . is asserted . . . may . . . move . . .  
24 for a summary judgment in the party's favor as to all or any part  
25 thereof."); see also Allstate Ins. Co. v. Madan, 889 F. Supp.  
26 374, 378-79 (C.D. Cal. 1995); France Stone Co., Inc. v. Charter  
27 Township of Monroe, 790 F. Supp. 707, 710 (E.D. Mich. 1992).

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1 **BACKGROUND**<sup>3</sup>

2 PLANS (People for Legal and Non-Sectarian Schools), a non-  
3 profit California corporation whose members include taxpayers  
4 residing in both school districts at issue here, is "organized  
5 for the purpose, among other things, of educating the public  
6 regarding Waldorf education." Compl. ¶ 2. In Waldorf education,  
7 the arts are integrated into all subjects, including math and  
8 science, so as to creatively teach children the substantive  
9 concepts.<sup>4</sup> Students begin each school day with a two-hour main  
10 lesson, learning subjects in intensive three to four week blocks.  
11 Storytelling, reading of myths and legends, learning handcrafts,  
12 cooking, gardening, painting, music, and movement are also part  
13 of the Waldorf method. Another characteristic of Waldorf  
14 education is that the same teacher progresses through each grade  
15 with his or her class, through the eighth grade.<sup>5</sup> There are now  
16 more than 60,000 children in more than 700 Waldorf schools  
17 throughout the world.

18 Austrian-born Rudolf Steiner founded Waldorf education in  
19 1919 when he created a school in Germany for the children of the  
20 Waldorf-Astoria cigarette factory workers. Before he founded

21  
22 <sup>3</sup> See Defs.' Stmt. of Undisp. Facts and Pltf's Resp. to  
23 Defs.' Stmt. of Undisp. Facts. Except where noted, the facts  
herein are undisputed.

24 <sup>4</sup> PLANS asserts that the purpose of Waldorf education is to  
25 "'creatively' address the child's spirit." Pltf's Resp. To  
Defs.' Stmt. of Undisp. Facts, ¶ 7.

26 <sup>5</sup> PLANS concedes that these attributes characterize the  
27 Waldorf method, but alleges that these are not the only  
attributes of the Waldorf method. PLANS, however, does not  
28 identify additional attributes of the Waldorf method used at John  
Morse or Yuba River.

1 Waldorf education, Steiner formulated a "spiritual science" known  
2 as "Anthroposophy."<sup>6</sup> Literally translated from the Greek,  
3 "anthroposophy" means "knowledge of the human being."

4 **1. SCUSD**

5 In 1993, as part of its voluntary desegregation plan, SCUSD  
6 proposed that several of its schools become magnet schools with a  
7 specialty focus. Oak Ridge School chose to become a magnet  
8 school. After considering several alternatives, the staff chose  
9 Waldorf methods as its magnet focus in order to further SCUSD's  
10 desegregation plan, provide an innovative learning environment  
11 for its students, promote creativity, improve reading skills, and  
12 provide a caring environment for the students. The SCUSD School  
13 Board approved Oak Ridge's magnet focus in April 1995, and Oak  
14 Ridge began operating as a Waldorf methods magnet school in  
15 September 1995.

16 Rudolf Steiner College, a school for teacher training in  
17 Waldorf education, submitted a proposal for the training of the  
18 Oak Ridge teachers in the use of Waldorf methods in a public  
19 school setting. Betty Staley ("Staley"), the Dean of Faculty,  
20 created the teacher training program for Oak Ridge teachers in  
21 1995. The SCUSD School Board accepted Rudolf Steiner College's  
22 proposal in February 1996. The parties dispute whether the  
23 teacher training program excluded all topics of a spiritual,  
24 religious, or Anthroposophical nature.

25 Just prior to the 1997-98 school year, the Oak Ridge School

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26  
27 <sup>6</sup> Plaintiff alleges that Anthroposophy is a religion  
28 inseparable, in theory and in practice, from Waldorf education.  
Pl.'s Stmt. of Disp. Facts, ¶¶ 3-4. For purposes of this motion,  
defendants concede that Anthroposophy is a religion.

1 moved and became the John Morse Waldorf Methods Magnet School  
2 ("John Morse"). The parties dispute whether Anthroposophy is  
3 part of the John Morse curriculum.

4 **2. Twin Ridges**

5 After the closing of a nearby private Waldorf school,  
6 Waldorf parents in Nevada City investigated the possibility of  
7 founding a charter school that would use Waldorf methods. In  
8 August 1994, Twin Ridges agreed to sponsor the school in order to  
9 provide area residents with an alternative form of education  
10 which was both innovative and academically challenging. The Twin  
11 Ridges Alternative Charter School ("TRACS") opened in September  
12 1994. The following year, TRACS became the Yuba River Charter  
13 School ("Yuba River").<sup>7</sup> The parties dispute whether  
14 Anthroposophy is part of the Yuba River curriculum.

15 **EVIDENTIARY RULINGS**

16 PLANS submitted four declarations in opposition to the  
17 school districts' motion for summary judgment. The school  
18 districts object to and ask that the court exclude from  
19 consideration each declaration. For the purpose of the court's  
20 consideration of this motion, the court makes the following  
21 evidentiary rulings.

22 **1. Morehead Declaration**

23 PLANS designated John Morehead ("Morehead") as a retained  
24 expert and presents his declaration in opposition to the motion  
25 for summary judgment. Morehead is a licensed minister and the  
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27 <sup>7</sup> Yuba River teachers did not participate in the Rudolf  
28 Steiner College teacher training program created for the SCUSD  
faculty.

1 Executive Vice President of TruthQuest Institute, a Sacramento-  
2 based evangelical Christian "discernment ministry" that  
3 "contrast[s] biblical doctrine with the beliefs of non-biblical  
4 faiths and philosophies." He has researched, analyzed, and  
5 written articles concerning Anthroposophy and its relationship to  
6 Waldorf education. Morehead Decl., ¶¶ 1-2.

7 Morehead opines that Anthroposophy is a religion in the  
8 Western esoteric tradition, and that Anthroposophy is a "major  
9 influence on America's New Age Movement." Morehead Decl., ¶¶ 3-  
10 6. Morehead further opines that Anthroposophy is an integral  
11 part of the "Waldorf pedagogical method," Morehead Decl. ¶ 12,  
12 and that Waldorf education cannot be secularized for public  
13 schools because "Steiner taught that Waldorf education focused on  
14 a specific pedagogy that was based on an Anthroposophical  
15 understanding of a child's spiritual evolution." Morehead Decl.,  
16 ¶ 15. Morehead concludes: "In summary, there is no doubt that  
17 Anthroposophy is properly considered to be religious, and that  
18 this religion provides the foundation and underpinnings for  
19 Waldorf teacher training, curriculum, and methods in the public  
20 school." Morehead Decl., ¶ 17.

21 The school districts object to Morehead's declaration on the  
22 grounds that it is irrelevant and contains hearsay. The school  
23 districts also object on the grounds that Morehead lacks personal  
24 knowledge, draws legal conclusions, and fails to base his  
25 opinions on the facts of this case.<sup>8</sup> In support of their

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27 <sup>8</sup> The school districts note that the declaration is an  
28 edited version of a published article written by Morehead and  
(continued...)



1 objections, the school districts conclusorily argue that  
2 Morehead's declaration contains conclusory allegations not  
3 supported by fact, contains unsubstantiated speculation and  
4 subjective beliefs, does not assist the trier of fact, and does  
5 not relate to specialized knowledge regarding public education or  
6 Waldorf education.

7 For purposes of this motion, the school districts concede  
8 that Anthroposophy is a religion. Therefore, paragraphs three  
9 through six of the declaration and the article attached as  
10 exhibit B<sup>9</sup> are excluded as irrelevant. Morehead's declaration is  
11 relevant to the extent it discusses the relationship between  
12 Anthroposophy and Waldorf education. Morehead's quotations from  
13 the position statement of the Association of Waldorf Schools in  
14 North America, Morehead Decl. ¶ 14, the quotation attributed to  
15 M.C. Richards, Morehead Decl. ¶ 16, and the quotations attributed  
16 to Steiner, Morehead Decl. ¶¶ 8, 11, 12 & 13, are excluded as  
17 hearsay.<sup>10</sup> Morehead's statement that "[p]ublic school  
18 association with Waldorf is a direct endorsement of  
19 Anthroposophy," Morehead Decl. ¶ 17, is excluded as a legal  
20 conclusion. The school districts' objections based on lack of  
21 personal knowledge and lack of testimony concerning the specific

22 \_\_\_\_\_  
23 <sup>8</sup> (...continued)  
24 unrelated to either school. This appears to be true, but this  
25 fact alone does not constitute grounds for exclusion of the  
26 declaration.

26 <sup>9</sup> Roger E. Olson, Rudolf Steiner, Esoteric Christianity,  
27 and the New Age Movement, Syzgy: Journal of Alternative Religion  
28 and Culture 1:4 (1993), at 341-353.

28 <sup>10</sup> PLANS has not established the admissibility of these  
statements under Federal Rule of Evidence 803(18).

1 schools are improper objections to expert testimony and  
2 overruled.

3 The school districts' objections to Morehead's declaration  
4 are sustained as to paragraphs 3-6 and 8, 11-14, 16, and 17 (only  
5 those phrases identified above). In all other respects, the  
6 school districts' objections are overruled.

7 **2. Snell Declaration**

8 PLANS designated Debra Snell ("Snell") as a percipient  
9 expert and presents her declaration in opposition to the motion  
10 for summary judgment. Snell is the President of PLANS. Snell's  
11 testimony concerns her participation in the founding of the Twin  
12 Ridges Alternative Charter School ("TRACS," now Yuba River  
13 Charter School) and the eleven attachments to her declaration.<sup>11</sup>

14 The school districts object to Snell's declaration on the  
15 grounds that it is irrelevant and contains hearsay. The school  
16 districts also object on the grounds that Snell lacks personal  
17 knowledge, draws legal conclusions, makes unwarranted  
18 assumptions, and relies upon outdated school materials. In

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19  
20 <sup>11</sup> The following are attachments to Snell's declaration:  
21 the 1993-94 booklist from Rudolf Steiner College (Exh. A);  
22 "Anthroposophy and Waldorf Education," provided to the Vision  
23 Committee by TRACS faculty in January 1996 (Exh. B); a letter  
24 from a TRACS teacher to her colleagues referring to Anthroposophy  
25 (Exh. C); the 1995-1996 TRACS Parent Handbook which refers to  
26 Anthroposophical concepts (Exh. D); interview questions used in  
27 1995 that ask, "What is your relationship to Waldorf education  
28 and Anthroposophy? How does each influence the other?" (Exh. E);  
a Waldorf Parenting Handbook distributed by TRACS describing the  
Anthroposophical underpinnings of Waldorf education (Exh. F); a  
September 1995 TRACS Newsletter describing the celebration of  
Michaelmas (Exh. G); a November 1995 TRACS Newsletter describing  
the celebration of Martinmas (the Lantern Festival) (Exh. H); a  
December 1995 handout to TRACS parents of kindergarten students  
describing winter festivals (Exh. I); "First Grade Readiness and  
Related Issues," distributed to TRACS parents of kindergarten  
students (Exh. J); and Anthroposophical Press catalog (Exh. K).

1 support of their objections, the school districts conclusorily  
2 argue that Snell's declaration contains conclusory allegations  
3 not supported by fact, contains unsubstantiated speculation and  
4 subjective beliefs, does not assist the trier of fact, and  
5 focuses on acts remote in time.

6 Snell's declaration exclusively concerns Twin Ridges.  
7 Accordingly, as to SCUSD, the relevance objection is sustained.  
8 As to Twin Ridges, however, Snell's declaration is relevant. As  
9 a founding parent of TRACS and a member of the hiring committee,  
10 Snell has personal knowledge, and the time period is not so  
11 remote in time as to make her testimony irrelevant. The  
12 following testimony is excluded as conclusory and unsubstantiated  
13 speculation: paragraphs 13 (last clause), 14 (third sentence  
14 beginning at "commonly"), 15 (first sentence beginning at  
15 "commonly"), 17 (third sentence), 18 (third sentence), and 19  
16 (third sentence). As to the attachments, exhibit C is excluded  
17 as hearsay. In all other respects, Twin Ridges' objections are  
18 overruled.

19 **3. Dugan Declaration**

20 PLANS designated Dan Dugan ("Dugan") as a percipient expert  
21 and presents his declaration in opposition to the motion for  
22 summary judgment. Dugan, PLANS' Secretary-Treasurer, has studied  
23 Anthroposophy and Waldorf education for over ten years and has a  
24 library of thousands of books and documents related to those  
25 subjects. He has "reviewed, analyzed, and documented the  
26 relationship between Anthroposophy and Waldorf education, as well  
27 as the intrinsic racism of their belief system." Dugan Decl.,  
28 ¶ 7.

1 Dugan testifies that PLANS members reside and pay taxes in  
2 both school districts at issue here. A small portion of Dugan's  
3 testimony concerns the training SCUSD teachers received in the  
4 Rudolf Steiner College program for public school teachers. The  
5 remainder of his declaration contains quotations from three  
6 books<sup>12</sup> in SCUSD's possession relating to Waldorf education or  
7 Waldorf curriculum.

8 The school districts object to Dugan's declaration on the  
9 grounds that it is irrelevant and contains hearsay. The school  
10 districts also object on the grounds that Dugan lacks personal  
11 knowledge, draws legal conclusions, and makes unwarranted  
12 assumptions. In support of their objections, the school  
13 districts conclusorily argue that Dugan's declaration contains  
14 conclusory allegations not supported by fact, contains  
15 unsubstantiated speculation and subjective beliefs, and does not  
16 assist the trier of fact.

17 Apart from Dugan's testimony concerning the residence and  
18 taxpayer status of PLANS members, the testimony of paragraph two  
19 draws legal conclusions and is excluded. Dugan's testimony  
20 concerning Twin Ridges' sponsorship of Waldorf charter schools in  
21 Citrus Heights and Ukiah, Dugan Decl. ¶ 5, is excluded as  
22 irrelevant. The handwritten notes attached to Dugan's  
23 declaration as exhibit A and his testimony regarding exhibit A,  
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25 <sup>12</sup> An Overview of the Waldorf Kindergarten: Articles from  
26 the Waldorf Kindergarten newsletter 1981 to 1992 Volume 1 (1993);  
27 Rudolf Steiner's Curriculum for Waldorf Schools: An attempt to  
28 summarize his indications: A collection of quotations for the  
benefit of different Waldorf Schools (Roland Everett-Zade trans.  
1969); Eugene Schwartz, The Waldorf Teacher's Survival Guide  
(1992).

1 Dugan Decl. ¶¶ 8-12, are excluded as hearsay. The quotations  
2 from SCUSD books, Dugan Decl. ¶¶ 13-16, are excluded as  
3 hearsay.<sup>13</sup> In all other respects, the school districts'  
4 objections are overruled.

5 **4. Sutphen Declaration**

6 PLANS designated Kathleen Sutphen ("Sutphen") as a  
7 percipient expert and presents her declaration in opposition to  
8 the motion for summary judgment. In the 1993-94 and 1995-96  
9 school years, Sutphen taught at an elementary school in  
10 Marysville. In approximately 1993, at the request of the  
11 elementary school, Sutphen attended classes for public school  
12 teachers at the Rudolf Steiner College. Sutphen believes  
13 teachers from SCUSD were present. During those classes, Sutphen  
14 recalls instruction concerning reincarnation. In 1995, Sutphen  
15 again attended classes for public school teachers at Rudolf  
16 Steiner College. Oak Ridge teachers also attended the classes.  
17 During the classes, Staley distributed a handout which discusses  
18 the Anthroposophical concepts of "mental picture" and "will."  
19 See Sutphen Decl., Exh. B.

20 The school districts object to Sutphen's declaration on the  
21 grounds that it contains irrelevant facts and that Sutphen's  
22 testimony focuses on her teaching experience at a school not  
23 involved in this litigation. Sutphen's testimony and the  
24 handout<sup>14</sup> concern what she and SCUSD teachers learned at classes

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25  
26 <sup>13</sup> PLANS has not established the admissibility of this  
27 material under Federal Rule of Evidence 803(18).

28 <sup>14</sup> The handout appears to be the second in a series of  
(continued...)

1 for public school teachers taught at Rudolf Steiner College.  
2 This testimony is relevant. The school districts' objections are  
3 overruled.

#### 4 ANALYSIS

##### 5 1. Standing

6 Article III of the United States Constitution limits the  
7 "judicial power" of this court to the resolution of "cases" and  
8 "controversies." A fundamental requirement for the exercise of  
9 this court's judicial power is that a litigant have "standing" to  
10 challenge the conduct the party seeks to adjudicate.

11 [A]t an irreducible minimum, Art. III  
12 requires the party who invokes the court's  
13 authority to "show that he personally has  
14 suffered some actual or threatened injury as  
15 a result of the putatively illegal conduct of  
the defendant," and that the injury "fairly  
can be traced to the challenged action" and  
"is likely to be redressed by a favorable  
decision."

16 Valley Forge Christian College v. Americans United for Separation  
17 of Church and State, 454 U.S. 464, 472 (1982) (citations  
18 omitted).

19 PLANS alleges it has standing to bring this action, because  
20 its members are taxpayers in the relevant community, and the  
21 challenged practice involves the expenditure of state funds. To  
22 establish standing as a taxpayer, a party must bring a "good-  
23 faith pocketbook action." Doremus v. Board of Educ. of  
24 Hawthorne, 342 U.S. 429, 434 (1952). That is, PLANS "must

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26 <sup>14</sup>(...continued)  
27 published lectures. Neither Sutphen's declaration nor the  
28 handout itself identify the author or provide publication  
information.

1 demonstrate that the government spends 'a measurable  
2 appropriation or disbursement of school-district funds occasioned  
3 solely by the activities complained of.'" Doe v. Madison Sch.  
4 Dist. No. 321, 177 F.3d 789, 794 (9th Cir. 1999) (en banc)  
5 (quoting Doremus, 42 U.S. at 434). Put another way, PLANS "must  
6 demonstrate that the 'activity is supported by any separate tax  
7 or paid for from any particular appropriation or that it adds any  
8 sum whatever to the cost of conducting the school.'" Madison  
9 Sch. Dist., 177 F.3d at 793-94 (quoting Doremus, 342 U.S. at  
10 433).

11 Thus, where the plaintiff challenges a program supported by  
12 discrete and identifiable public funds, taxpayer standing is  
13 found. See, e.g., Everson v. Board of Education, 330 U.S. 1  
14 (1947) (implicitly finding standing where taxpayers challenged  
15 statute authorizing reimbursement of specific transportation  
16 costs to parents of children who attended parochial schools);  
17 Cammack v. Waihee, 932 F.2d 765, 771 (9th Cir. 1991) (taxpayer  
18 standing found where plaintiff challenged declaration of Good  
19 Friday as state holiday, because "state and municipal tax  
20 revenues fund the paid holiday for government employees");  
21 Hooehuli v. Ariyoshi, 741 F.2d 1169, 1178-80 (9th Cir. 1984)  
22 (finding taxpayer standing where plaintiffs challenged the State  
23 of Hawaii's race-based disbursement of benefits to resident  
24 descendants of the island's aboriginal inhabitants, on grounds  
25 that each plaintiff was a taxpayer, and expenditure of specific  
26 public funds was alleged).

27 By contrast, where a plaintiff identifies no tax dollars  
28 spent solely on the challenged practice, taxpayer standing does

1 not exist. See, e.g., Doremus, 342 U.S. at 434 (in challenge to  
2 Bible reading in classroom at opening of each public school day,  
3 taxpayer standing lacking where plaintiff failed to identify a  
4 measurable disbursement of public funds on the Bible reading  
5 activity); Madison Sch. Dist., 177 F.3d at 794 (in challenge to  
6 allowance of school prayer at graduation ceremony, plaintiff  
7 lacked taxpayer standing where she conceded that prayer "cost the  
8 state no additional expense"); see also Reimers v. Oregon, 863  
9 F.2d 630, 632 (9th Cir. 1988) (no taxpayer standing where  
10 plaintiff challenged not the disbursement of state funds on a  
11 chaplain program, but the requirement that a specific religion be  
12 represented on the chaplain staff).

13 Unlike the plaintiffs in Doremus and Madison School District  
14 No. 321, PLANS challenges the entire curriculum of the schools at  
15 issue, as opposed to a specific activity regarding which a  
16 separate public expenditure cannot be identified. Thus, this  
17 case is more akin to Cammack, Hoohuli and Everson, supra. There,  
18 as in here, plaintiff challenges discrete programs funded by  
19 particular appropriations.<sup>15</sup>

20 Accordingly, the court finds that plaintiff's members have  
21 taxpayer standing.

22 ///

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24  
25 <sup>15</sup> See Kendall Decl., Exhs. A & B (school districts'  
26 responses to PLANS' special interrogatories, identifying specific  
27 public funds expended on the John Morse and Yuba River schools).  
28 Contrary to defendants' assertions, these elements need not be  
present on the face of the complaint but may, in the context of a  
motion for summary judgment, be found outside the pleadings, as  
is the case here.



1 **2. The Establishment Clause of the United States Constitution**

2 Plaintiff asserts that the school districts' sponsorship of  
3 Waldorf schools violates the Establishment Clause of the United  
4 States Constitution, which provides: "Congress shall make no law  
5 respecting an establishment of religion . . . ." U.S. Const.  
6 amend. I, cl. 1. The prohibition of the Establishment Clause  
7 applies to state governments through the Fourteenth Amendment.  
8 Everson v. Board of Education, 330 U.S. 1, 8 (1947). According  
9 to the Supreme Court,

10 the Establishment Clause [has come] to mean  
11 that government may not promote or affiliate  
12 itself with any religious doctrine or  
13 organization, may not discriminate among  
14 persons on the basis of their religious  
15 beliefs and practices, may not delegate a  
16 governmental power to a religious  
17 institution, and may not involve itself too  
18 deeply in such an institution's affairs.

19 County of Allegheny v. ACLU, 492 U.S. 573, 590-91 (1989)  
20 (footnotes omitted), quoted in Alvarado v. City of San Jose, 94  
21 F.3d 1223, 1231 (9th Cir. 1996).

22 For purposes of this motion, the school districts concede  
23 that Anthroposophy is a religion. Therefore, the court assumes,  
24 without deciding, that Anthroposophy is a religion.<sup>16</sup>

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26 <sup>16</sup> This assumption is not employed lightly. "Attempting to  
27 define religion, in general and for the purposes of the  
28 Establishment Clause, is a notoriously difficult, if not  
impossible, task." Alvarado, 94 F.3d at 1227. "Few tasks that  
confront a court require more circumspection than that of  
determining whether a particular set of ideas constitutes a  
religion within the meaning of the first amendment." Africa v.  
Pennsylvania, 662 F.2d 1025, 1031 (3d Cir. 1981), quoted in  
Alvarado, 94 F.3d at 1227; see also Malnak v. Yogi, 440 F.Supp.  
1284, 1312-23 (D. N.J. 1977), aff'd, 592 F.2d 197 (3d. Cir. 1978)  
(engaging in a lengthy and exhaustive analysis of what actions  
constitute religious activity under the first amendment).

1           **a.    The Lemon Test**

2           As decreed by the Supreme Court, and followed in the Ninth  
3 Circuit,<sup>17</sup> claims brought under the Establishment Clause are  
4 analyzed under the three-part "Lemon Test," named for the Court's  
5 landmark decision in Lemon v. Kurtzman, 403 U.S. 602 (1971).  
6 "Under the Lemon analysis, a statute or practice which touches  
7 upon religion . . . must have a secular purpose; it must neither  
8 advance nor inhibit religion in its principal or primary effect;  
9 and it must not foster an excessive entanglement with religion."  
10 County of Allegheny, 492 U.S. at 592; see Lemon, 403 U.S. at 612-  
11 13.

12                       **i.    Secular Purpose**

13           The school districts argue that the Waldorf methods program  
14 was adopted "for the entirely non-religious (i.e. secular)  
15 purpose of educating the children in a creative and alternative  
16 manner." Defs.' MSJ at 15:2-4. Further, with respect to the  
17 John Morse School, SCUSD asserts that it adopted Waldorf methods  
18 with the hope that a specialty focus would lead to greater racial  
19 and ethnic diversity at this inner-city school. Defs. Stmt.  
20 of Undisp. Facts, ¶ 8.

21           In its opposition papers, PLANS concedes that defendants  
22 have articulated a secular purpose for adopting Waldorf education  
23 methods, but further argue that despite such articulations, the  
24 Waldorf program does in fact have a religious purpose. In  
25 support, PLANS cites the testimony of defendants' expert, Crystal

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27                       <sup>17</sup> See Brown v. Woodland Jt. Unif. Sch. Dist., 27 F.3d  
28 1373, 1378 (9th Cir. 1994); Kreisner v. San Diego, 1 F.3d 775,  
780 (9th Cir. 1993).

1 Tilton Olsen, to the effect that the Waldorf teaching method  
2 addresses the "child as a whole being," including his or her  
3 "spiritual component." See Olsen Dep. at 99:12-104:9.

4 This argument is flawed. Olsen's deposition testimony  
5 focuses on her own personal views as an Anthroposophist who  
6 promotes Waldorf education in public schools. The  
7 Anthroposophists' motivation is not at issue here. The question  
8 is whether the school districts can articulate any secular  
9 purpose for adopting the Waldorf teaching method. See Lynch v.  
10 Donnelly, 465 U.S. 668, 680 (1984) (secular purpose lacking "only  
11 when [the Court] has concluded there was no question that the  
12 statute or activity was motivated wholly by religious  
13 considerations"). PLANS concedes that the school districts have  
14 done so, and presents no relevant evidence casting doubt on those  
15 articulations. Therefore, use of Waldorf education methods at  
16 the schools in question does not violate the secular purpose  
17 prong of the Lemon test.

18 **ii. Primary Effect**

19 The second prong of the Lemon test "bars any government  
20 practice that has the 'primary' effect of advancing or  
21 disapproving of religion, even if that effect is not intended."  
22 Brown v. Woodland Jt. Unif. Sch. Dist., 27 F.3d 1373, 1378 (9th  
23 Cir. 1994) (quoting Committee for Public. Educ. & Relig. Lib. v.  
24 Nyquist, 413 U.S. 756, 783 n.39 (1973)).<sup>18</sup> A government practice  
25 impermissibly advances or disapproves of religion when it is

26 \_\_\_\_\_  
27 <sup>18</sup> "The concept of 'primary' effect encompasses even  
28 nominally 'secondary' effects of government action that directly  
or immediately advance, or disapprove of, religion." Brown, 27  
F.3d at 1378.

1 "sufficiently likely to be perceived by adherents of the  
2 controlling denominations as an endorsement, and by the  
3 nonadherents as a disapproval, of their religious choices."  
4 School Dist. of Grand Rapids v. Ball, 473 U.S. 373, 390 (1985).

5 In making this determination, courts apply a "reasonable  
6 observer" standard. See Brown, 27 F.3d at 1378. The "reasonable  
7 observer" is "informed as well as reasonable; we assume that he  
8 or she is familiar with the history of the government practice at  
9 issue . . . [and] is not an expert on esoteric religions . . . ."  
10 Alvarado, 94 F.3d at 1232 (citations omitted).

11 When the challenged practice involves school-aged children,  
12 however, courts modify this objective "reasonable observer"  
13 standard to account for the vulnerability and impressionability  
14 of young children. See Brown, 27 F.3d at 1378-79; Grand Rapids,  
15 473 U.S. at 390 ("The symbolism of a union between church and  
16 state is most likely to influence children of tender years, whose  
17 experience is limited and whose beliefs consequently are the  
18 function of environment as much as of free and voluntary  
19 choice.")

20 Thus, the proper inquiry in this instance is "whether an  
21 objective observer in the position of an elementary school  
22 student would perceive a message of endorsement" of Anthroposophy  
23 in the use of Waldorf education methods. Brown, 27 F.3d at 1378-  
24 79. Here, based on the evidence now before the court, PLANS has  
25 raised a genuine issue of material fact concerning whether an  
26 informed elementary school student might perceive a message of  
27 endorsement of Anthroposophy in the use of Waldorf education  
28 methods.

1           Essentially, PLANS argues that Anthroposophy is so  
2 fundamental to the structure of Waldorf education that the school  
3 districts cannot separate the religion from the curriculum. The  
4 school districts' argument that they have adopted only the  
5 methodology of Waldorf education does not foreclose the issue.  
6 That the methodology of Waldorf education may be based on  
7 Steiner's child development model may not insulate that  
8 methodology if Steiner's child development model is based upon  
9 Anthroposophical tenets.

10           While it is true that "a practice's mere consistency with or  
11 coincidental resemblance to a religious practice does not have  
12 the primary effect of advancing religion," Brown, 27 F.3d at  
13 1380, PLANS presents evidence that may establish that Waldorf  
14 education methods are more than "consistent with" the principles  
15 of Anthroposophy. PLANS presents evidence that the methodology  
16 itself is directed by, and grounded in, assumptions about  
17 learning and child development that can only be understood with  
18 reference to Anthroposophy.<sup>19</sup> PLANS also presents evidence that  
19 SCUSD teachers received training in Anthroposophy,<sup>20</sup> and that  
20 Twin Ridges sought and employed teachers with Anthroposophical  
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23           <sup>19</sup> See Snell Decl., ¶ 9 & Exh. B (handout given to members  
24 of Vision Committee by Twin Ridges faculty in 1996, observing  
25 that "[w]ithout Anthroposophy, we would not have Waldorf  
26 education. The education remains alive through the inner work of  
27 the teacher. Anthroposophy provides one of the guideposts for  
this work, which includes meditation and study. . . .  
Anthroposophy leads us to the realization that each child is a  
spiritual being . . . in the process of unfolding in a unique  
way.")

28           <sup>20</sup> See Sutphen Decl., ¶¶ 4-7 & Exh. B.

1 training.<sup>21</sup> Finally, PLANS presents evidence that the Waldorf  
2 curriculum requires participation in certain festivals<sup>22</sup> and  
3 rituals which PLANS claims are religious in nature. When a  
4 challenged practice involves active participation in a "ritual,"  
5 the practice "poses a greater risk of violating the Establishment  
6 Clause than does merely reading, discussing or thinking about  
7 religious texts." Brown, 27 F.3d at 1380.

8 In sum, PLANS has raised a disputed issue of material fact  
9 concerning the religious underpinnings of Waldorf education and  
10 whether public funding of Waldorf education has the unintended  
11 consequence of advancing Anthroposophy.

12 **iii. Excessive Entanglement**

13 In determining whether government entanglement with religion  
14 is excessive, courts "examine the character and purpose of the  
15 institutions that are benefitted, the nature of the aid that the  
16 State provides, and the resulting relationship between the  
17 government and the religious authority." Brown, 27 F.3d at 1383  
18 (quoting Lemon, 403 U.S. at 615).

19 The facts considered by the Supreme Court in Lynch v.  
20 Donnelly are illustrative. There, an action was brought  
21 challenging the City of Pawtucket, Rhode Island's inclusion of a  
22 nativity scene in its Christmas display. In determining whether

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23 <sup>21</sup> See Snell Decl., ¶¶ 5-7 & 12, & Exh. E.

24 <sup>22</sup> Plaintiff presented evidence supporting its allegation  
25 that two such festivals, the Harvest Festival and the Lantern  
26 Festival, are in actuality religious festivals also known as  
27 "Michaelmas" and "Martinmas," respectively. See Snell Decl.,  
28 ¶¶ 14-16 & Exhs. G-I (admissible portions only). Michael is  
described in materials distributed by Twin Ridges as an  
"archangel." Id. Exh. G. Martin is described in materials  
distributed by Twin Ridges as a "saint." Id. Exh. H.

1 the excessive entanglement prong of the Lemon test had been met,  
2 the Court identified the following factors supporting its  
3 conclusion that no excessive entanglement existed: (1) there was  
4 no evidence of contact between church authorities and the city  
5 concerning the content or design of the nativity scene; (2) no  
6 state expenditures for maintenance of the scene were necessary;  
7 and (3) the ongoing, day-to-day interaction between church and  
8 state was de minimis. Lynch, 465 U.S. at 684. In short, the  
9 Court determined that the city's ownership and use of the  
10 nativity scene presented nothing like the "'comprehensive,  
11 discriminating, and continuing state surveillance' or the  
12 'enduring entanglement' present in Lemon . . . ." Id.

13 By contrast, PLANS has presented evidence that SCUSD  
14 teachers received training in Anthroposophy<sup>23</sup> and that Twin  
15 Ridges sought and employed teachers with Anthroposophical  
16 training.<sup>24</sup> As observed by the Supreme Court, "[w]e cannot  
17 ignore the danger that a teacher under religious control and  
18 discipline poses to the separation of the religious from the  
19 purely secular aspects of precollege education." Lemon, 403 U.S.  
20 at 617. Additionally, as noted above, PLANS presents evidence  
21 that state funds are expended in implementing the Waldorf  
22 teaching method,<sup>25</sup> and that the Waldorf education methodology is  
23 directed by, and grounded in, assumptions about learning and  
24 child development that can only be understood with reference to  
25

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26 <sup>23</sup> See Sutphen Decl., ¶¶ 4-7 & Exh. B.

27 <sup>24</sup> See Snell Decl., ¶¶ 5-7 & 12, & Exh. E.

28 <sup>25</sup> See Kendall Decl., Exhs. B & C.

1 Anthroposophy.<sup>26</sup> Assuming, for purposes of this motion, that the  
2 Waldorf teaching method and Anthroposophy are in fact  
3 "inseparable in theory, and as practiced by defendants," State  
4 surveillance of the Waldorf education will be necessary to ensure  
5 that no trespass occurs. These "prophylactic contacts" may well  
6 result in excessive and enduring entanglement between church and  
7 state. See Lemon, 403 U.S. at 619.

8 As is the case with all similar analyses, it is clear that  
9 entanglement "is a question of kind and degree." Lynch, 465 U.S.  
10 at 684. Here, PLANS has raised a disputed issue of material fact  
11 concerning the degree of entanglement between church and state  
12 generated by the Waldorf teaching method.

### 13 **3. California Constitution**

14 Article XVI, section 5 of the California Constitution  
15 provides that "neither the Legislature, nor any . . . school  
16 district, . . . shall ever . . . pay from any public fund  
17 whatever, or grant anything to or in aid of any religious sect,  
18 church, creed, or sectarian purpose."<sup>27</sup> Article IX, § 8 of the  
19 California Constitution provides that no "sectarian or  
20 denominational doctrine [shall] be taught, or instruction thereon  
21 be permitted, directly or indirectly, in any of the common  
22 schools of this State."

23 As discussed above, PLANS has raised a genuine issue of  
24 material fact as to whether Anthroposophy is so fundamental to

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25 <sup>26</sup> See Snell Decl., ¶ 9 & Exh. B.

26 <sup>27</sup> The school districts' answers to interrogatories  
27 propounded by PLANS confirm that public funds are used to operate  
28 the John Morse and Yuba River schools. See Kendall Decl., Exhs.  
A & B.



1 Waldorf education as to be inseparable from it, thereby making  
2 public funding of Waldorf education methods a direct and  
3 substantial (if unintentional) endorsement of religion, and  
4 fostering excessive entanglement between church and state.

5 **CONCLUSIONS**

6 1. Defendants' motion for summary judgment is DENIED.

7 2. Defendants' motion for summary adjudication of the  
8 following issues is GRANTED:

9 a. Defendant Sacramento City Unified School District  
10 has a secular purpose for the operation of the John Morse Waldorf  
11 Methods Magnet School.

12 b. Defendant Twin Ridges Elementary School District  
13 has a secular purpose for the operation of the Yuba River Charter  
14 School.

15 3. Defendants' motion for summary adjudication is DENIED  
16 in all other respects.

17 IT IS SO ORDERED.

18 DATED: September 24, 1999

19   
20 FRANK C. DAMRELL, Jr.  
21 UNITED STATES DISTRICT JUDGE  
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