Yoga in the Curriculum?

In seeking a higher level of academic achievement and broader fulfillment of each child's potential, public schools have considered various instructional approaches. At the same time, societal pressures have expanded the expectations for and scope of the schools' curriculum to address issues such as diversity, suicide, AIDS, and bullying. These movements and their intersection have led to litigation, often based on constitutional challenges by parents who have perceived certain curricular activities as violations of the First Amendment's establishment clause. For most such cases, the courts have relied on the tripartite, or *Lemon*, test or a variation of it. The decisive parts are often whether the activity at issue has a secular purpose and, if so, whether the activity's primary effect is religious rather than secular.

The following case illustrates a novel approach to the traditional elementary school physical education curriculum and the resulting religion-based constitutional litigation. The accompanying question-and-answer discussion presents variations of the same theme.

The Case

In the 1940s, K. Pattabi Jois developed and popularized a form of yoga called Ashtanga. He first established an institute for the teaching of Ashtanga yoga in India. According to Jois, a series of Hindu texts, including the Yoga Sutras, explains the meaning of yoga. The meaning amounted to an eight-limbed form of yoga in which the eighth and final limb is "union with the universal or the divine."

In 1974, Jois introduced Ashtanga yoga in the United States after traveling to Encinitas, California. He subsequently established the KP Jois Foundation, with the mission of "establish[ing] and teach[ing] Ashtanga yoga in the community at minimum, the physical postures, breathing, and relaxation."

For the 2011-2012 school year, interpreting its mission to include promoting yoga in schools as an alternative to traditional PE, the foundation funded a yoga program at one of the elementary schools in Encinitas. With the funds, the principal hired Jennifer Brown, who taught at Jois yoga studio in Encinitas, to teach the new classes in PE. The classes included the primary series of poses in Ashtanga yoga, some related Sanskrit terms, and readings from a book called *Myths of the Asanas*. She omitted the numerous references in this book to Hindu deities. District officials were pleased with this pilot program.

In July 2012, the assistant superintendent submitted a proposal to the foundation for additional funding to expand the program to the remaining eight elementary schools in the district. The proposal specified that the funds would be used for "certified yoga instructors, selected by District staff and trained by … Foundation teachers." The proposal also provided that the district would develop a K-6 yoga curriculum "scalable and transferable to other settings" and focused on "life skills built around key themes of yoga instruction such as self-discipline, balance, and responsibility."

Soon thereafter, the foundation awarded the grant in the amount of $533,720. Later that summer, the foundation trained a pool of 22 individuals, from which the district, through its principals, selected 10 to implement the program. The district selected Leslie Wright to serve as the lead developer of the curriculum. She met regularly with the selected yoga teachers and the assistant superintendent for curriculum development.

In fall 2012, five elementary schools participated in the yoga program. In November, Wright presented an initial draft of the curriculum, which included guided meditation scripts to be used during the lessons. In January 2013, the program was expanded to the remaining elementary schools. The classes included instruction performing various yoga poses, proper breathing, and relaxation and instilling various character traits, such as empathy and respect. In response to complaints and concerns from some parents, Wright promptly removed parts of the curriculum that they perceived as religious, including all Sanskrit language, postcards from India, Ahstanga tree poster, and chanting "om." She also changed the names of the poses to kid-friendly terms, for example renaming the lotus pose as

"criss-cross applesauce." The revised curriculum removed guided meditation scripts and content that, according to complaining parents, were "overly religious," such as the statement, "yoga brings [out] the inner spirit of the child."

In February 2013, the parents of two siblings in the elementary grades filed suit in state court, claiming that the district's implementation of the Ashtanga yoga program as a component of its PE curriculum violated the religion-related provisions in the California Constitution, primarily the provision parallel to the establishment clause of the federal Constitution. An organization of more than 100 other Encinitas elementary school students and their parents filed a motion to intervene in support of the yoga program.

The trial court ruled in favor of the district defendants. The plaintiff parents timely filed an appeal.

What do you think was the judicial outcome of the appeal?

In *Sedlock v. Baird* (2015), the California Court of Appeals ruled that the district's yoga program did not violate the state's constitution. More specifically, using the tripartite test, the court concluded that the program has a secular purpose, does not have the effect of advancing or inhibiting religion, and does not excessively entangle the school district in religion.

First, assuming without deciding that Ashtanga yoga, based on its relationship with Hinduism, is a religion, the court found undisputed that the district's yoga program had a secular purpose of physical fitness. Second, and ultimately the linchpin of the case, the court concluded that a "reasonable observer" would not view the program as either advancing or inhibiting religion.

In reaching this conclusion the court distinguished the content and implementation of the program from Ashtanga eight-limbed yoga, pointing to the district's controlling role in the selection of the teachers and in the development and refinement of the curriculum separate from the foundation's mission and funding. The court also cited the abundant evidence of the ubiquitous practice of yoga in our society entirely distinct from religious ideology in rejecting the plaintiff-parents' contention that it was inherently religious. Finally, the court relied on the same district steps to control and refine the curriculum as defeating the plaintiff's excessive entanglement arguments.

Would excusal of the children of these objecting parents defeat their establishment clause claim?

No. Excusal may defeat a parent's claim based on the free exercise clause, although it is not constitutionally necessary if the challenged activity does not conflict with their genuine religious belief or if the challenged activity has a compelling justification. However, it is not the solution for an establishment clause challenge because the plaintiff-parents in establishment clause cases are typically not satisfied with excusal because they seek instead elimination of the activity at issue. And the secular purpose and the other two parts of the *Lemon* test, currently conflated into the "endorsement" criterion, apply to the activity generally, not to the children of the protesting parents specifically.

If the district had fully embraced the foundation's Ashtanga form of yoga and refused to eliminate the Hindu deities, Sanskrit terminology, and prescribed chanting, would the outcome be in favor of the plaintiff-parents?

Although the ultimate outcome would depend on the specific factual nuances and, especially for religion-based cases, the particular judges, the odds would certainly and significantly shift in the plaintiff's direction. For example, the 3rd Circuit reached a conclusion years ago that would likely be the same today, specifically that the use of Maharishi Yoga's Science of Creative Intelligence Transcendental Meditation in the curriculum violated the establishment clause (*Malnak v. Yogi*, 1979). The reason was that the program was not meditation generically but this specific form of it, which included the mantra derived from a Sunday ceremony that included offerings to a deified "Guru Dev."

Does an elementary school's use of the Waldorf method violate the First Amendment's establishment clause?

No, according to the 9th Circuit Court of Appeals. This court summarily affirmed the lower court's decision that the method's underlying doctrine, anthroposophy, did not constitute "religion" for establishment clause purposes (*PLANS, Inc. v. Sacramento City Unified School District*, 2012).

Conclusion

Both religion and curriculum are broad concepts that do not have crystal clear boundaries. The key for elementary school principals is to tread carefully on the metaphoric and uncertain wall between the establishment and free exercise clauses. Excusal is a consideration for the free exercise clause, but the establishment clause in most cases hinges on whether a reasonable observer, albeit through the lens of an impressionable young student, would perceive the primary effect of a challenged activity as endorsing religion. The litigation concerning religion-based curriculum challenges is a continuing feature of the public school landscape, with our last coverage in the January 1995 issue of this column.

Thus, embracing methods that enhance academic and social achievement is salutary. The takeaway is that when the source of the method has a religious connotation, the school needs to maintain careful control of the selection, development, and implementation with the perspective of a relatively objective observer. And upon religious objection, the school must respond with reasonable accommodation, not frightened elimination. P

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