

1 Scott M. Kendall, SBN 166156  
2 Law Offices of Scott M. Kendall  
3 9401 E Stockton Blvd Suite 210  
4 Elk Grove, CA 95642  
5 Telephone: (916) 685-7700  
6 Facsimile: (916) 686-1074

7 Attorneys for Plaintiff

8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

10  
11 PLANS, Inc., ) No.: CIV. S-98-0266 FCD PAN  
12 Plaintiff, )  
13 vs. ) PLAINTIFF PLANS TRIAL BRIEF  
14 SACRAMENTO CITY UNIFIED SCHOOL ) Date: September 12, 2005  
15 DISTRICT, TWIN RIDGES ELEMENTARY ) Time: 1:30 p.m.  
16 SCHOOL DISTRICT, DOES 1-100, ) Courtroom: 2  
17 Defendant. )  
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2 **II. TABLE OF AUTHORITIES**

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9 **Anthroposophy is included in: James R. Lewis, The Encyclopedia of Cults, Sects, and New**

10 **Religions (Prometheus Books); Jonathan Z. Smith, The Harper Collins Dictionary of Religion;**

11 **John Bowker, The Oxford Dictionary of World Religions (Oxford University Press, 1997); and in**

12 **Mircea Eliade, The Encyclopedia of Religion (Vol. 1, Macmillan Publishing Company), is it stated**

13 **that Anthroposophy was intended to supersede religion.....5**

14 **Malnak v. Yogi, 440 F. Supp 1284 (1977) (Malnak I).....6**

15 **Malnak v. Yogi, 592 F. 2d 197 (3d Cir. 1979) (Malnak II)..... 6,7**

16 **Alvarado, at 1229.....6**

17 **<sup>1</sup> Malnak II, 592 F.2d 197, 200; See also, Malnak I at 1327 (“Although defendants have submitted**

18 **well over 1500 pages of briefs, affidavits, and deposition testimony in opposing plaintiffs’ motion**

19 **for summary judgment, defendants have failed to raise the slightest doubt as to the facts or as to**

20 **the religious nature of the teachings of the Science of Creative Intelligence and the puja.”).**

21 **.....7**

22 **Malnak I, 440 F.Supp 1284 (1977), at 1288.....7**

23 **Malnak I, at 1305.....7**

24 **Id., at 1295.....7**

25 **Malnak I, at 1297 (“Creative intelligence is not just an abstract concept or idea; it is a concrete**

26 **reality that can be practically applied to bring success and fulfillment to every phase of living**

27 **.....7**

28 **Malnak I, 440 F. Supp. 1284, at 1300.....8**

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4 **Africa v. Pennsylvania, 662 F.2d at 1031, cert. denied, 456 U.S. 908 (1982).....9**

5 **Malnak II, at 213, footnote 55. (“Appellants have argued that Creative Intelligence is a science,**

6 **not a religion, and that their claims for it are scientifically verifiable. But theology, too, may be**

7 **regarded as a science, and many theologians in the past have thought that the existence of their**

8 **God could be proved by reason.”).....9**

9 **Alvarado v. City of San Jose, 94 F.3d at 1238 (1996).....9**

10 **Malnak II, at 207-09.....9**

11 **<sup>1</sup> Malnak II, at 210. (“Thus, even if it true that a religion can exist without rituals and structure,**

12 **they may nonetheless be useful signs that a group or belief system is religious.”).10**

13 **Alvarado, 94 F.3d at 1238.....10**

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15 **Rudolph Steiner, The Spirit of the Waldorf School, Anthroposophic Press (1995), at 30-31.**

16 **.....10**

17 **Malnak II, at 210. (“Thus, even if it true that a religion can exist without rituals and structure,**

18 **they may nonetheless be useful signs that a group or belief system is religious.”).10**

19 **The Waldorf Teacher’s Survival Guide, by Eugene Schwartz.....10**

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2 **III. BRIEF STATEMENT OF FACTS**

3 Plaintiff, PLANS, Inc., is an organization of taxpayers that contests the funding of “Waldorf”  
4 education with public funds. Defendants, Sacramento Unified School District and Twin Ridges  
5 Elementary School District, operate Waldorf Methods schools within the public school system, and  
6 provide public funds to those schools. Waldorf schools were founded in 1919 by Rudolph Steiner, the  
7 founder of Anthroposophy, and Anthroposophical training is an integral part of Waldorf education.  
8 Without Anthroposophy, Waldorf education would not exist.

9 Anthroposophy is a religion. Therefore, the government’s endorsement of Waldorf education  
10 through public funding, and its use of Anthroposophical teacher training, promote the religion of  
11 Anthroposophy and create an excessive governmental entanglement with that religion, in violation of the  
12 Establishment Clause. [*Lemon v. Kurtzman*, 403 U.S. 602 (1971).]

13  
14 **IV. POINTS OF LAW**

15 **A. ANTHROPOSOLOGY IS A RELIGION ACCORDING TO ESTABLISHMENT CLAUSE**

16 **ANALYSIS**

17 Under both mandatory and persuasive Establishment Clause authority, Anthroposophy is a  
18 religion. Establishment and Free Exercise Clause cases have long held that it is not necessary for a  
19 belief system to be widely recognized or accepted in order to be defined as a religion,<sup>1</sup> but despite the  
20 difficulty courts have had in defining religion,<sup>2</sup> Anthroposophy is easily defined as a religion under all  
21 currently prevalent tests. Furthermore, many dictionaries define Anthroposophy as a religion or as a  
22 religious system<sup>3</sup> and recognize that Anthroposophy provides the spiritual foundation for the Christian  
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25 <sup>1</sup> *Torcaso v. Watkins*, 367 U.S. 488 (1961); *Welsh v. United States*, 398 U.S. 333 (1970); and *United States v. Seeger*, 380  
26 U.S. 163 (1965)

27 <sup>2</sup> *Alvarado v. City of San Jose*, 94 F.3d 1223, 1227 (9<sup>th</sup> Cir. 1996).

28 <sup>3</sup> Anthroposophy is included in: James R. Lewis, *The Encyclopedia of Cults, Sects, and New Religions* (Prometheus Books);  
Jonathan Z. Smith, *The Harper Collins Dictionary of Religion*; John Bowker, *The Oxford Dictionary of World Religions*

1 Community,<sup>4</sup> a religious organization with the trappings of traditional religious structure.<sup>5</sup>

2 To see that Anthroposophy meets the courts' definitions of religion, this court need look no  
3 further than *Alvarado v. City of San Jose*, 94 F.3d 1223 (9<sup>th</sup> Cir. 1996), *Malnak v. Yogi*, 440 F.Supp  
4 1284 (1977) ("*Malnak I*"), and *Malnak v. Yogi*, 592 F.2d 197 (3d Cir. 1979) ("*Malnak II*"). *Alvarado*  
5 was decided by the United States Court of Appeals for the Ninth Circuit in 1996. There, the court  
6 addressed the question of whether or not the "Plumed Serpent" display in the City of San Jose promoted  
7 or endorsed religion. In defining "religion," the court considered two approaches to defining religion.  
8 First, it applied a three factor test, originally applied in *Africa v. Pennsylvania*, 662 F.2d 1025 (3d Cir.  
9 1981), and originating in Judge Adams's concurring opinion in *Malnak II*. Alternatively, the court  
10 considered the approach taken by the *Malnak II* court in its majority opinion. Based on the *Alvarado*  
11 Court's conclusion that the display involved presented no "cognizable religious issue,"<sup>6</sup> the Court ruled  
12 in favor of the City of San Jose. In its analysis, the *Alvarado* court determined that the plaintiffs' claim  
13 that "New Age" is a religion was without substantial merit.

14 In contrast to the broad and general concept of religion espoused by the plaintiff in *Alvarado*,  
15 which attempted to define the entire scope of "New Age" as religion, Anthroposophy is comprised of a  
16 very specific set of religious beliefs. These beliefs are held by a significant number of people, and  
17 centers of learning are established around the world to promote Anthroposophical teachings.

### 18 **Malnak v. Yogi**

19 The *Malnak* case, from which the *Alvarado* court's tests for "religion" were drawn, addressed a  
20 set of religious teachings very similar to those of Anthroposophy. *Malnak v. Yogi*, 440 F.Supp. 1284  
21 (1977). On appeal to the Third Circuit, the Court of Appeals concluded that the District Court had  
22 properly ruled that the Science of Creative Intelligence was a religion, and that entry of summary  
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24 (Oxford University Press, 1997); and in Mircea Eliade, *The Encyclopedia of Religion* (Vol. 1, Macmillan Publishing  
25 Company), is it stated that Anthroposophy was intended to supersede religion.

26 <sup>4</sup> See *id.*

27 <sup>5</sup> Cite to CC materials.

28 <sup>6</sup> *Alvarado*, at 1229.

1 judgment on behalf of the plaintiffs was appropriate. *Malnak v. Yogi*, 592 F.2d 197 (3d Cir. 1979). The  
2 World Plan Executive Council – United States (“WPEC-US”) and its divisions were primarily  
3 responsible for providing training in the Science of Creative Intelligence and the related practice of  
4 Transcendental Meditation to students in New Jersey public schools. Despite finding that the structure  
5 of the World Plan Executive Council was changing, and the relationship between its international and  
6 national organizations was “nebulous,”<sup>7</sup> the court concluded that the training being provided was  
7 religious in nature and upheld the District Court’s ruling in favor of the plaintiffs’ summary judgment  
8 motion.<sup>8</sup>

9 Like Anthroposophy, the “Science of Creative Intelligence” is not presented as a religion,<sup>9</sup> but as  
10 a reality that permeates everything.<sup>10</sup> Similarly, both are presented as not just abstract concepts or ideas,  
11 but as real life.<sup>11</sup> By attempting to distinguish between religion and a belief in certain existence that is  
12 “real life,” the *Malnak* defendants, as well as those in the case at bar, expose the disingenuousness of the  
13 claim that their beliefs are not a religion. The *Malnak I* court exposed this fallacy:

14 Indeed, a person who believes in the existences of both God and creative  
15 intelligence theoretically could see creative intelligence as an aspect of  
16 God. To an atheist, however, creative intelligence must take on the role of  
17 an ultimate essence or supreme being. While an atheist might be able to  
18 accept statements that freedom, truth, and justice all were eternal concepts

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20 <sup>7</sup> *Malnak I*, 440 F.Supp 1284 (1977), at 1288.

21 <sup>8</sup> *Malnak II*, 592 F.2d 197, 200; *See also, Malnak I* at 1327 (“Although defendants have submitted well over 1500 pages of  
22 briefs, affidavits, and deposition testimony in opposing plaintiffs’ motion for summary judgment, defendants have failed to  
23 raise the slightest doubt as to the facts or as to the religious nature of the teachings of the Science of Creative Intelligence and  
24 the puja.”)

25 <sup>9</sup> *Malnak I*, at 1305.

26 <sup>10</sup> *Id.*, at 1295.

27 <sup>11</sup> *Malnak I*, at 1297 (“Creative intelligence is not just an abstract concept or idea; it is a concrete reality that can be  
28 practically applied to bring success and fulfillment to every phase of living)

1 with no relation to God, creative intelligence, with all its extraordinary  
2 characteristics, would require the belief in an essence or being beyond  
3 human existence.<sup>12</sup>

4 Anthroposophy has an express purpose that is far more religious than that of creative  
5 intelligence. While creative intelligence could arguably take on the role of an “ultimate essence or  
6 supreme being” to an atheist, Anthroposophy expressly teaches about numerous spiritual beings and  
7 spiritual hierarchical structures and explains man’s relationship to these beings and structures.

8 Transcendental Meditation is an integral part of the Science of Creative Intelligence.<sup>13</sup> Much  
9 like the claims of Anthroposophy, it is claimed that the practice of Transcendental Meditation bestows  
10 upon a practitioner the ability to tell what is right from what is wrong<sup>14</sup> and that the laws and traditions  
11 of one’s religion provide guidelines “to proper modes of thinking and behavior” prior to the attainment  
12 of cosmic consciousness, but once a practitioner of Transcendental Meditation achieves cosmic  
13 consciousness, mundane moral codes apparently are superfluous.<sup>15</sup> According to Dr. Sloan, one of the  
14 defendants’ two expert witnesses, the same is true of Anthroposophy. An Anthroposophist is free to  
15 have his or her own religion, but a person must find his or her ultimate truths through Anthroposophy  
16 and moral codes of that individual’s religion are subject to overriding truths found through  
17 Anthroposophy. Based on the teachings of Rudolph Steiner and the defendants’ own expert’s testimony,  
18 Anthroposophy is not itself a religion, but is a path of knowledge to find truth.

19 According to many proponents of Anthroposophy and defendants’ experts, it is possible to  
20 belong to any religious group and still be an Anthroposophist. However, in order to be an  
21 Anthroposophist, one is encouraged to accept certain beliefs about nature, human existence, spiritual  
22 hierarchies, and spiritual beings as being true. Conveniently, Anthroposophists claim that  
23 Anthroposophy is merely a science – a belief system that does not require one to reject his or her  
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25 <sup>12</sup> *Malnak I*, 440 F. Supp. 1284, at 1300.

26 <sup>13</sup> *Malnak I*, at 1287, et seq.

27 <sup>14</sup> *Malnak I*, at 1291, footnote 8 and reference undisputed facts.

28 <sup>15</sup> *Malnak I*, at 1291, footnote 8

1 religion to pursue – but as Judge Adams noted in *Malnak II*, even theologians often assert that religion is  
2 a science and that the existence of God can be scientifically proven.<sup>16</sup> Anthroposophy has an individual  
3 existence separate and apart from any set of traditional religious beliefs, and beliefs founded in  
4 Anthroposophical “insight” supersede those religious beliefs when the two conflict. While Dr. Sloan  
5 claims that Anthroposophy is not a religion, he clearly indicated that it is his understanding that  
6 Anthroposophists must be their own arbiters of truth, and that the truth found by an Anthroposophist in  
7 his or her individual search should supersede any conflicting beliefs held by that person’s religion.

### 8 **Malnak – Judge Adams’ Tri-part Analysis**

9 In Judge Adams’ concurring opinion in *Malnak II*, which was relied upon in *Alvarado*, he  
10 addressed traditional and contemporary legal definitions of religion and proposed three "helpful indicia"  
11 to supplement the "definition by analogy" approach favored by the District Court.<sup>17</sup> After these three  
12 indicia were adopted by the Third Circuit in *Africa v. Pennsylvania*, 662 F.2d at 1031, cert. denied, 456  
13 U.S. 908 (1982), they were adopted in this jurisdiction by the Ninth Circuit in *Alvarado v. City of San*  
14 *Jose*, 94 F.3d at 1238 (1996). These three indicia are as follows:

15 First, a religion addresses fundamental and ultimate questions having to do with  
16 deep and imponderable matters. Second, a religion is comprehensive in nature;  
17 it consists of a belief-system as opposed to an isolated teaching. Third, a religion  
18 often can be recognized by the presence of certain formal and external signs.  
19 (*Alvarado*, 94 F.3d at 1238.)

20 In concluding that the Science of Creative Intelligence and the associated activities constituted a  
21 religion under his newly conceived test, Judge Adams made several notable observations. For example,  
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25 <sup>16</sup> *Malnak II*, at 213, footnote 55. (“Appellants have argued that Creative Intelligence is a science, not a religion, and that  
26 their claims for it are scientifically verifiable. But theology, too, may be regarded as a science, and many theologians in the  
27 past have thought that the existence of their God could be proved by reason.”)

28 <sup>17</sup> *Malnak II*, at 207-09.

1 Judge Adams specifically acknowledged that a religion can exist without rituals and structure.<sup>18</sup> While  
2 this could be perceived as inconsistent with the “formal and external signs” factor of his test, Judge  
3 Adams clearly intended his three-factor test to be taken as general guidelines, and not as firm criteria.  
4 Thus, despite the lack of formal organization of the Science of Creative Intelligence movement, Judge  
5 Adams concurred in the determination that it was a religion.

6 Like the Science of Creative Intelligence, the organizational structure of Anthroposophy is rather  
7 amorphous, and, aside from certain Anthroposophical rituals, many of the formal and external signs  
8 typically associated with religion are not found in either the Science of Creative Intelligence or  
9 Anthroposophy. However, the teachings of Anthroposophy clearly identify with the other two factors  
10 formulated by Judge Adams.

11 **B. ANTHROPOSOPHY IS AN INTEGRAL PART OF WALDORF EDUCATION**

12 In one of his initial presentations on Waldorf education, Rudolph Steiner announced that “the  
13 Waldorf School can be successful only if it is completely inspired by the Spirit that aspires toward the  
14 threefold nature of the social organism,” and that, “in establishing the Waldorf School, Mr. Molt has, to  
15 a large extent, felt motivated to do something to further the development of inner spirituality.” (Rudolph  
16 Steiner, The Spirit of the Waldorf School, Anthroposophic Press (1995), at 30-31.) Later in the same  
17 text, Rudolph Steiner went on to state:

18 Anthroposophy is life, it is not merely a theory. Anthroposophy can go into the  
19 formation, into the practice of teaching. Insofar as Anthroposophy can become  
20 pedagogical . . . to this extent we strive to bring in Anthroposophy. We aspire to  
21 methodology, to instructional reform. That is what will result from the true  
22 knowledge of the spiritual. . . We will only strive to teach as well as it is  
possible to teach when enlivened by Anthroposophical impulses. (Id., at 30-31.)

23 Since Rudolph Steiner made these statements in 1919, the relationship between Anthroposophy  
24 and Waldorf education has only deepened. According to the The Waldorf Teacher’s Survival Guide, by  
25 Eugene Schwartz, “[I]f we want to be co-creators with the Hierarchies in unfolding these new impulses  
26 in education, then the study and meditative work arising out of Anthroposophy is a *sine qua non*.” (Page

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27 <sup>18</sup> *Malnak II*, at 210. (“Thus, even if it true that a religion can exist without rituals and structure, they may nonetheless be  
28 useful signs that a group or belief system is religious.”)

1 21) Schwartz goes on to state, “If Waldorf education is truly going to be a ‘movement for cultural  
2 renewal,’ it is our responsibility to share with the parents those elements of anthroposophy which will  
3 help them understand their children and fathom the mysterious ways in which we work. (Page 46) In  
4 addition, Schwartz clearly indicates the relationship of Michael, Lucifer, and Ahriman to Waldorf  
5 education. (Pages 9, 54, and 61, for example).

6 In order to become a Waldorf school teacher, a person must attend certain courses in Waldorf  
7 education. Many of the Waldorf education courses are held at Rudolph Steiner College, which was  
8 formerly known as the Center for Anthroposophical Studies. These courses often contain clearly  
9 Anthroposophical materials. In fact, the Foundation Course, offered by Rudolph Steiner College, is  
10 comprised almost exclusively of Rudolph Steiner’s writings on Anthroposophy. Even public Waldorf  
11 schools have openly acknowledged a relationship between Anthroposophy and Waldorf education,  
12 stating that the Waldorf curriculum and methodology can be viewed as a child of anthroposophy.

13 **C. PUBLIC SCHOOLS BASED ON WALDORF METHODS INHERENTLY ENTANGLE**

14 **THE PUBLIC SCHOOL SYSTEM WITH ANTHROPOSOPHY**

15 Because of the unique interrelationship between Waldorf education and Anthroposophy, the  
16 public funding of Waldorf schools results in an excessive entanglement between government and  
17 religion, and the only way to remedy this entanglement is to withdraw public funding from Waldorf  
18 education.

19 In order to train teachers to teach in Waldorf methods public schools, Twin Ridges Elementary  
20 School District pays for teachers to attend classes at Rudolph Steiner College. In its teacher training  
21 courses, Rudolph Steiner College does not differentiate between credentials for public and private  
22 Waldorf school teachers. Furthermore, there is no differentiation between courses designed for public  
23 Waldorf school teachers and private Waldorf school teachers. Another reason insufficient protections  
24 against entanglement exist, is the fact that public Waldorf school teachers are often hired from private  
25 Waldorf schools.

26 In this instance, defendants have conveyed a message of endorsement of religion in  
27 general and Anthroposophy in particular:  
28

