

State Supreme Court Rejects Challenge to Berkeley's Assignment Plan

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said the ruling will now be published and confirmed as law statewide.

"I expected the Supreme Court to deny Pacific Legal Foundation's request because the Court of Appeal's decision is well reasoned," said Streeter, who worked on the case pro bono.

"The Court of Appeal has endorsed Berkeley Unified School District's efforts to ensure diversity in its schools. I am proud that the school district and the board of directors had the leadership, vision and commitment to fight the case all the way to the Supreme Court for the purpose of diversity," he stated.

Streeter, who chairs Kecker & VanNest's Pro-Bono Committee, said he took up Berkeley Unified's case because

he wanted to help the district.

"I am a citizen of Berkeley and committed to my community," he said. "When I saw the filing of the case by PLF, I felt that the values we stand for were under attack, and I was happy to donate my time."

Streeter's pro bono cases have included civil rights cases such as *Avila v. Berkeley Unified School District*, a voluntary desegregation case in which he represented the school district and won.

Calling Berkeley's assignment policy discriminatory, Pacific Legal Foundation's principal attorney Sharon Browne said in a statement that she was disappointed with the Supreme Court's decision.

"Berkeley Unified is using race as a factor in assigning students to public

schools, which violates Proposition 209," Browne said. "The First District Court of Appeal said it was okay for the school district to use the race of the student's neighbor instead of the race of the individual student. No matter how it is labeled, the district is coding people by color and treating people—students—differently based on racially based criteria."

Browne said that the "final word had not been uttered on this issue."

"In school districts that fall outside of the First District Court of Appeal's jurisdiction, any school assignment policies of this kind would still be subject to legal challenge," she said.

Berkeley Unified's student assignments are based on a geographic area and do not include an individual stu-

dent's race, district officials said.

"We will let the ruling speak for itself," said Francisco Martinez, the district's director of human resources. "It shows that we meet the demands of Prop. 209 and are committed to creating diversity and integration in our schools."

Berkeley Board of Education Director John Selawsky said there was a very high likelihood that the district's plan would withstand any challenge in the future.

"Because the appeal was filed under Prop. 209—a state law—it cannot be appealed in federal court," he said.

"There's no other recourse under the state of California. For Berkeley, that's the end of the challenge. But we have to wait and see what happens with other districts, because any new law can be challenged by anybody."

State Supreme Court Rejects Challenge to Berkeley's Assignment Plan

By RIYA BHATTACHARJEE

The state Supreme Court Wednesday rejected a challenge to Berkeley Unified School District's student assignment plan, upholding a March appellate court decision and paving the way for other school districts to replicate it.

Sacramento-based nonprofit Pacific Legal Foundation challenged Berkeley's student integration plan in the Supreme Court on the grounds that it violated Prop. 209, which forbids the use of race in school admissions.

The foundation's attorneys represented the American Civil Rights Foundation in challenging the school district's Elementary Student Assignment Plan for elementary schools as well as the admissions policy for specialized academic programs at Berkeley High School. The attorneys charged that both policies "use race, impermissibly, to assign or admit students."

The California Court of Appeal, on March 17, upheld an earlier Alameda County Superior Court ruling that the plan is fair and legal, and on Wednesday the state Supreme Court declined Pacific Legal Foundation's request to review the decision.

The appellate court judges concluded that Berkeley Unified's policy was not discriminatory because it did not show partiality, prejudice, or preference to any student on the basis of that student's race. The court further stated that the "California Constitution prohibits unequal treatment of particular persons and groups of persons but does not prohibit the collection and consideration of communitywide demographic factors."

Jon Streeter, a partner at the San Francisco-based law firm Kecker and Van Nest,

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