



LAW OFFICES OF SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP

Pacific Legal Foundation Sues Los Angeles and Berkeley Unified School Districts Over Race-Based Admissions Processes.

The Pacific Legal Foundation (“PLF”) has recently filed two separate suits against the Los Angeles Unified School District (“LAUSD”) and the Berkeley Unified School District (“BUSD”), alleging that their race-based admissions processes for various district programs violates the California Constitution.

The PLF has filed suit against the LAUSD for using race and ethnicity to assign students to their Magnet Program and in deciding which students may take advantage of a program that provides free transportation for students who wish to attend a school other than their neighborhood school. Students are required to identify their race on their applications to the programs; if they do not, or if they identify as “Multi-ethnic,” their applications are not processed. Admission to the Magnet Program, and the number of openings in a given program, are then based on a need to maintain a specific district-determined racial/ethnic balance. Students are chosen for the free transportation program based on whether their attendance at a new school will help the District achieve a better racial/ethnic balance.

The PLF has also filed suit against the BUSD for using race and ethnicity to assign students to elementary schools, admit them to the small schools and academic programs at Berkeley High School, and admit them to the AP Pathways Project. As in LAUSD, students are required to identify their race on their applications to the programs; if they do not, or if they identify as “Multi-ethnic,” their applications are not processed. This information is used to achieve a racial/ethnic balance in district elementary schools and in the small schools and academic programs at Berkeley High School. In addition, students can only participate in the AP Project, which offers tutoring, mentoring, college application assistance and community service assistance, if they are African American, Latino, or low-income.

Both lawsuits are based on Article I, Section 31 of the California Constitution, which forbids the State from “discriminat[ing] against, or grant[ing] preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of...public education.” The PLF also relies on *Hi-Voltage Wire Works, Inc. v. City of San Jose*, 24 Cal. 4th 537, 561 (2000) and *Crawford v. Huntington Beach Union High School District*, 98 Cal. App. 4th 1275, 1284 (2002), which interpreted the Constitutional language to “prohibit the State from classifying individuals by race or gender.” Because public resources are expended to facilitate the racial and ethnic balancing in these programs, the PLF is requesting that all programs be declared unconstitutional, that the court grant temporary and permanent injunctions on all programs, and that the plaintiffs receive the cost of the suit, including attorney’s fees.

SMYM will track and update the field on these cases as they develop.

7 PARK | 7 PARK CENTER DRIVE ■ SACRAMENTO, CA 95825 ■ T 916 646 1400 ■ F 916 646 1300

WWW.SMYMCHARTERLAW.COM

Both lawsuits are relevant to charter schools because many school districts and county offices of education still interpret Calif. Educ. Code Section 47605(b)(5)(G) as mandating racial diversity in charter schools. In addition, some districts have threatened to revoke or not renew a school's charter if the charter school does not achieve a racial balance reflective of the surrounding district schools. As a result, charter schools may decide to implement admissions, preference and enrollment procedures to achieve a specific racial or ethnic balance at their school. Doing so may be a violation of the California Constitution.

Charter schools need to be careful when developing and implementing their admissions, preference and enrollment procedures if they are using these mechanisms to achieve a specific racial and ethnic balance in their school. If you have any questions about the constitutionality of your procedures or would like help developing new procedures, please contact Paul Minney (pminney@smymlaw.com) or Jim Young (jyoung@smymlaw.com) at the Law Offices of Spector, Middleton, Young & Minney, LLP at (916) 646-1400.