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DAILY PLANET STAFF

The threat of a lawsuit should not force the Berkeley Unified School District to abandon its controlled-choice system for achieving racial balance in this city's public schools, at least one member of the school board believes.

"I'm not going to let the Pacific Legal Foundation or any other right-wing group set the agenda

or determine what's right for Berkeley," Board Vice president Joaquin Rivera said a meeting Monday night of the Controlled Choice Committee. "I feel that what we have is worth fighting for."

At the moment, the district does not face any pending litigation challenging its use of race as a factor in determining which schools students will attend. But

lic institutions, including school districts that use race as a factor in making student assignments.

Berkeley's program is designed to provide relatively balanced racial compositions at each campus, whether the school is located in the hills or the flatlands. That requires busing throughout the community and forces many children to attend schools that aren't in their immediate neighborhoods.

over the last four years, districts across the country with similar student assignment plans have been taken to court - and have lost.

"The opinion of the legal counsel to the district is that the current race-based diversity program would face a difficult legal challenge," attorney Richard A. Hoyer writes in a memo to the committee. "The district anticipates that such a challenge will be made, and that such a challenge will result in costly and distracting litigation and/or the denial of federal funds essential to the Magnet School program."

The risk of a lawsuit led the school board to create the Controlled-Choice Committee, which has met four times over the last three weeks. The committee members were not appointed by the district, but are simply residents interested in the issues surrounding possible changes to the student assignment plan.

A final committee meeting is scheduled for this Saturday, at which time the group must issue a recommendation to the school board. The recommendation will be considered at the board's Nov. 17 meeting.

The pace of the process concerned some of the people at Monday's meeting, particularly since some of them had only learned of the committee's existence in the last few days.

But the issue that dominated much of the conversation was the notion of changing the current plan, which was implemented just five years ago, to avoid lawsuits that may or may not be filed.

"Berkeley doesn't always do things because it's more convenient or because it's more lucrative," said John Selawsky. "Berkeley often does things because they're the right things to do. It would be a real mistake if we were to capitulate too quickly or too easily to the threat of a lawsuit."

Still, the risk of legal action is on the minds of school district administrators.

"This committee is responsible for looking at the controlled-choice program to see if there's anything we want to do, to adjust it in any way, if at all, to lower our level of legal liability," Irving Phillips, director of the Magnet School Program and the committee's chair, told the Daily Planet on Tuesday. "Clearly, what we're doing right now would be unconstitutional in many jurisdictions."

That's not the case in California, which is part of the Ninth District Court of Appeals. But a number of cases are moving through the system that could

But by and large, that seems to be OK with most families. Parent

George Rose said that during the last round of modifications to the current policy, he and other parents talked to South Berkeley families whose children attended Jefferson. Overwhelmingly, those parents said they preferred the current model over neighborhood schooling, which they felt would lead to a de facto resegregation of the public schools, because Berkeley's neighborhoods in the hills are generally more affluent and more Caucasian than neighborhoods in the flatlands.

UC Berkeley education professor Pedro Noguera, who was serving on the school board when the current assignment plan was adopted, reminded the committee that integrated schools is no guarantee of academic success for students. But when all the pieces come together, including parental involvement and an appropriate campus atmosphere, a diverse school is a remarkable educational experience.

"I think it would be sad if (integrated schools disappeared) in Berkeley, sad because in Berkeley, race and class are very distinctly related," said Noguera. "What we would end up with could be racially segregated schools in Berkeley. The message we would send would be a very bad one, bad in the sense that we had given up on the idea that we can educate all kids