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Berkeley schools may drop racial balance policy

Race-based placement may invite lawsuit

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Worried about a legal challenge from the right, the Berkeley Unified School District may drop a policy requiring racial balance in schools, district officials said Wednesday.

Berkeley currently mandates that most of its schools reflect the racial make-up of the surrounding area. But, faced with a growing number of California court rulings that forbid the consideration of race in governmental decision-making, officials said they may use other factors like household income and parent education levels to ensure diverse schools.

"We're going to have to go to another means of achieving diversity," said Board of Education President Shirley Issel.

Any policy shift, though, will face significant resistance. Three of the school board's five mem-

bers said they would support a change to a system that does not include race.

"I want to make sure that we don't go back to segregated schools," said Vice President Joaquin Rivera at the school board's Wednesday night meeting. "I think that would be a horrendous mistake."

Rivera said he is open to other approaches, but is skeptical that assignments based on household income or parent education level will result in racial diversity.

Legal experts say the cash-strapped district will be vulnerable to a costly law suit if it continues to assign students by race. UC Hastings law professor David Hastings, who worked to overturn San Francisco's race-based school assignment policy, said Berkeley has been exposed since 1996 when California voters approved Proposition 209, prohibiting preferential racial treatment by public entities.

"They've had their heads in the sand for quite some time," said Levine. "It seems to me that it's just utterly foolhardy, given the law for them to keep the



MELISSA McROSSIE/SPECIAL TO THE PLANET

Berkeley may have to drop a policy requiring racial balance in its schools.

current policy in place.]"

District officials have periodically revisited Berkeley's desegregation plan since 1996 but

have declined to make any changes, arguing that Proposition 209 language is vague and does not necessarily apply to

school assignment plans. Several board members made the argument again Wednesday

But in May, a state appellate court in southern California ruled that Proposition 209 forbids schools from using race to

balance schools. In August, the California Supreme Court declined to hear an appeal, leaving the appellate court ruling as the law of the land.

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School board member John Selawsky said the case, which involved the Huntington Beach Union High School District, should be studied. But, he said he is still leaning toward a school assignment system that includes race, even if it results in a costly law suit.

"I think it is important to stand up for what we believe in," he said, predicting that liberal advocacy groups would come to the district's aid and pay any legal fees. Berkeley Unified currently faces a \$3.9 million budget shortfall.

UC Berkeley law professor emeritus John Coons warned that, in the wake of the Huntington case, a policy making explicit use of race is unlikely to pass legal scrutiny. But he argued that there are ways to ensure diversity without relying upon race.

The Student Assignment Advisory Committee, a citizen group that has worked with the Berkeley Unified School District for two years, has developed the outlines of an alternative plan.

At the Wednesday night school board meeting, the committee recommended that the district, in assigning students, weigh some combination of four factors: household income, parental education level, English proficiency and single-parent family status.

The citizen group will present a more detailed plan at the board's Nov. 20 meeting and will seek public input at a Dec. 4 forum. The board is currently scheduled to vote on a final plan Dec. 11, but indicated Wednesday night that it may delay the vote until after Christmas.

Nancy Riddle, an advisory committee member and newly-elected school board member who will take office next month, said the group's proposal has tested well in simulations. Although it does not weigh race, she said, it still results in the sort of ethnically-diverse schools that are currently in place.

But school board members worry that, as Berkeley demographics change, the new system may not continue to produce racially-mixed schools.

Roia Ferrazares, also of the Student Assignment Advisory Committee, counters that the district could track racial diversity, English proficiency and other factors from year-to-year and make adjustments in school assignments.

But Sharon Browne, an attorney with Sacramento-based Pacific Legal Foundation, which sued the Huntington Beach district, warned against using measures like household income and English proficiency as stand-ins for race.

"If they're using different social indicators as a proxy for race, that would violate Proposition 209," she said.