

DAILY CAL 2/5/04

by Andrea Hernandez
Contributing Writer

Following more than two hours of lengthy debate last night, the Berkeley Board of Education finally decided to adopt a new plan to integrate Berkeley schools that plays down the importance of race in favor of parental income and education levels.

The plan passed three to one, with one absentee, despite some board members' concerns that it left the district vulnerable to lawsuits from those who believe the new plan is in violation of Proposition 209.

The current plan assigns students to schools based solely on which racial category the students fall into: black, white or other.

The new plan will assign students based not directly on their race, but on a pre-drawn map of Berkeley that divides the city into three types of profiles.

The more affluent areas, where the students—mostly white—have parents with higher incomes and education levels, are assigned the orange profile. The poorer areas, populated by mostly black and Latino families with lower income and education levels, are colored in blue. Purple areas contain residents in between the two other profiles.

The students would then be placed into schools according to the proportions of the map.

But although most school board



PHOTO/DANIEL YAFFE

Protesters at the Berkeley Board of Education meeting carry signs opposing the board's new plan for assigning students to schools in the district.

members agreed on the concept of a "much more expansive view of diversity," the proposal vote was held up by whether the schools should continue to take race into account at all.

By using race as a factor in placing students, the district is leaving itself open to lawsuits from those who believe it is breaking state law, according to board member Shirley Isseel.

In the current legal climate, a stu-

dent assignment plan that factors in race could lead to a "complex, costly and unnecessary legal battle," Isseel said.

Back in August, the Pacific Legal Foundation sued the district on behalf of a Berkeley school parent who alleged that the district's current assignment plan violated Proposition 209, which bans discrimination or preference on

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The Daily Californian NEWS

PLAN: Board Approves Assignment Proposal

FROM FRONT

About 25 people, including Berkeley parents, teachers, and members of UC Berkeley's pro-affirmative action group BAMIN, gathered outside council chambers before the start of the board meeting, clutching signs to protest the board's impending vote on the new plan. The protesters said the plan diluted the strength of Berkeley's current desegregation plan by reducing the importance of race.

"What we've had for 40 years has been successful," said Jeff Bruno, whose son attends Rosa Parks Elementary School. "Why is there a need to change it now?"

"(It is) to make us a more inclusive school system," said Berkeley Superintendent Michele Lawrence. But, she added, "race is important and race counts."

Schools' Efforts Await Justices' Ruling in C

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schools in Champaign, Ill., where African-American students make up 36 percent of students. Under a court-supervised plan, the district keeps the proportion of black students in all the schools within 15 percentage points of that average by controlling school assignments.

Over the past 15 years, courts have ended desegregation orders in scores of school districts. But many districts around the country seek to maintain diversity with voluntary programs like magnet schools and magnet programs, clustering plans that group schools in black neighborhoods with those in white, and weighted admissions lotteries that assign classroom seats by race.

All of this is now a gray area of the law until there is guidance from the Supreme Court on how far school systems may go in the quest for racial diversity.

Courts in the 1990's mostly struck down the use of race in assignment decisions, but three federal rulings since 2003 have permitted its use. As the legal ambiguity has grown, hundreds of districts have dropped voluntary efforts to maintain racial balance. Others have vigorously pursued them, even as a debate has emerged over whether racially mixed schools provide the nation with important educational benefits.

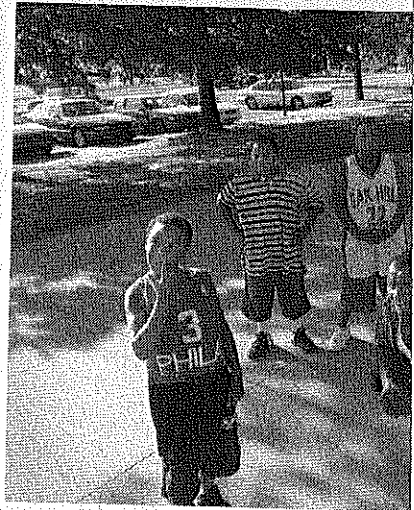
"Most school districts believe that there are educational benefits in having students attend school with other students of different backgrounds," said Maree Sneed, a lawyer who filed a brief in the Louisville case on behalf of the Council of the Great City Schools, a coalition of the nation's largest urban districts. "It prepares them to be better citizens."

But Roger Clegg, president of the Center for Equal Opportunity, a Washington group critical of affirmative action, said such assertions were based on "touchy-feely social science."

"It'd be dangerous for the court to allow discrimination whenever a school board produces some social scientist who claims that racially balancing schools to the nth degree is essential for teaching students to be good citizens," Mr. Clegg said.

The debate comes as immigration, housing patterns and ethnic change have made achieving racial balance in the schools an increasing challenge.

David M. Herszenhorn contributed reporting from New York for this article.



Zoe and Jack Ellers, top, are bused to a black section of Louisville. The boy above right, are bused to a white suburb. Teddy B. Gordon, left, will argue

A study published this year by the Civil Rights Project at Harvard University reported that partly because of the rapid growth of Latino and Asian populations, the traditional black-white model of American race relations was breaking down. Yet white students remained the most racially isolated group, even though they were attending schools with more minority students than ever before, the report said.

Although whites in 2003-04 made up 58 percent of the nation's public school population, the average white

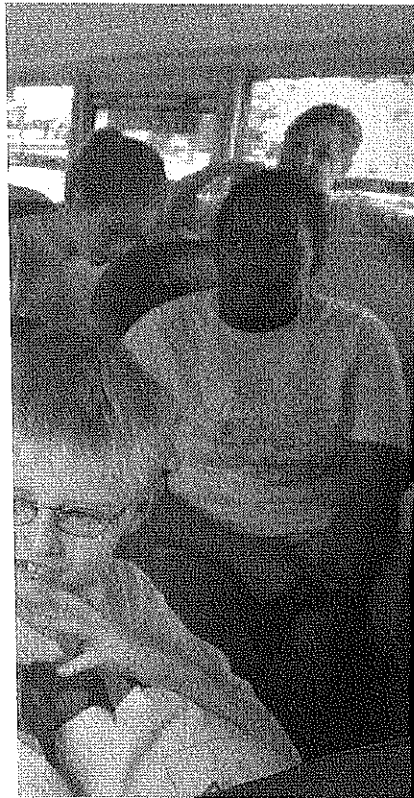
student attended a school where 78 percent of pupils were also white, the study said.

The proportion of black students attending schools where 10 percent of students or fewer were white increased to 38 percent in 2003-04 from 34 percent in 1991-92.

Gary Orfield, the project's director, said a decision barring the use of race in student assignments would most likely intensify those trends.

"School boards would be captives to the racial segregation that occurs in housing markets," Mr. Orfield

Cases on Race and School Assignments



partment of Education survey of schools, and David J. Armor, a George Mason University professor who participated in that survey, said that in the 1990's, many districts had abandoned race-based plans. Still, he estimated that "many hundreds of school districts" continue to use race in assigning students to schools.

Many of the nation's largest urban districts have so few white students that large-scale plans to seek racial balance are hardly feasible. New York, where 14 percent of students are white, does not consider race in school assignments, said Michael Best, the Department of Education's general counsel. The only exception is Mark Twain Intermediate School in Brooklyn, where a 1974 federal court order requires that the school's racial demographics be kept in line with surrounding middle schools.

At least a half-dozen cities have developed voluntary student transfer programs that involve enrolling minority students from an urban district in a suburban district.

The Jefferson County district in Louisville is one of the most thoroughly integrated urban school systems in the nation. That is partly because its boundaries include suburbs as well as Louisville's urban core. Sixty percent of students are white, and 35 percent are black.

Its student assignment plan, which evolved from a court-ordered desegregation effort, keeps black enrollment in most schools in the range of 15 percent to 50 percent by encouraging, and in some cases obliging, white students to attend schools in black neighborhoods, and vice versa.

Frán Ellers and her husband are writers who are white. They live in the Highlands neighborhood east of downtown. But they enrolled their children, Jack and Zoe, at Coleridge-Taylor Montessori Elementary in the largely black West End.

"We wanted a diverse environment," Ms. Ellers said. "When I toured Coleridge-Taylor, I was struck by the mix of black and white children, quietly working together as equals in a classroom."

Nechelle D. Crawford, by contrast, who is African-American and lives in the West End, said her sons Keion and Jeron could attend Coleridge-Taylor, but instead she opted to send them to Wilder Elementary in a largely white suburb 25 minutes away by bus. "The boys love Wilder," Mrs. Crawford said, adding that there are a number of international students. "They have different opportunities, see different faces."

In a survey carried out in 2000 by the University of Kentucky, 67 percent of parents said they believed

that a school's enrollment should reflect the overall racial diversity of the school district.

A white lawyer, Teddy B. Gordon, ran for a seat on the Jefferson County School Board in 2004, promising to work to end the district's desegregation plan. He finished last, behind three other candidates.

Mr. Gordon represents the plaintiff in the Louisville case, Crystal D. Meredith, who is white. She sued after the district denied her request to transfer her son Joshua from Young Elementary, in the West End, to Bloom Elementary, nearer her home. The district said the transfer would disrupt Young's racial balance.

Judge John G. Heyburn II of Federal District Court ruled against Ms. Meredith in 2004, saying that the district had shown a "compelling interest" in maintaining integrated schools. A federal appeals court upheld that ruling, but the Supreme Court has now agreed to review the case.

In an interview, Mr. Gordon predicted that if Louisville's student assignment plan were overturned, the schools would rapidly resegregate. But that should be of no concern, he said.

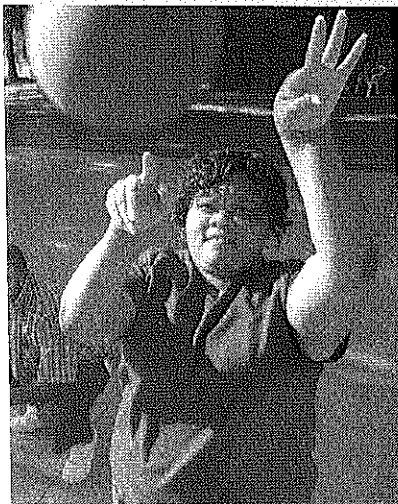
"We're a diverse society, a multi-ethnic society, a colorblind society," he said. "Race is history."

Chester Darling, the lawyer who represented parents in a 1999 suit challenging a school assignment plan in Lynn, Mass., holds similar views. "If children are in segregated schools, de facto or not, as long as they are getting the education they need that's fine," he said.

Lynn, nine miles north of Boston, is one of 20 Massachusetts school districts that receives financial incentives for promoting racial balance under state law. Lynn's plan seeks to keep the proportion of nonwhite students in elementary schools within 15 percent of the overall proportion of minorities in the district's student population: last year, 32 percent of students were white, and 68 percent were nonwhite.

Under the Berkeley plan, parents choose three schools, and the district weighs classroom space, parent's education and income, as well as race in assigning the child.

"New parents would prefer to have their kids in a neighborhood school, that's pretty overwhelming," said Michele Lawrence, Berkeley's superintendent. "But if I surveyed parents who have gone through the process and met teachers, they would have a high percentage of satisfaction."



Photographs by David R. Lutzman for The New York Times

Crawford children, with their parents, before the Supreme Court.

said. "Boards would be forbidden to do what courts once ordered them to do, and what they now want to do voluntarily."

How many of the nation's 15,000 districts currently consider race in assigning students to schools is unclear because no one keeps track, experts said. A brief filed in the Louisville case by the Pacific Legal Foundation, a conservative public-interest law firm, asserts that "nearly 1,000 districts" have some type of race-based assignment plan.

But that figure traces to a 1990 De-