

Ho by Ho v. San Francisco Unified Sch. Dist.

United States District Court for the Northern District of California

October 20, 1998, Decided ; October 20, 1998, Filed

Case No. C-94-2418-WHO, (Related Case C-78-1445 WHO)

Reporter: 1998 U.S. Dist. LEXIS 21406

BRIAN HO, by his parent and next friend, CARL HO, et al., Plaintiffs, vs. SAN FRANCISCO UNIFIED SCHOOL DISTRICT, et al., Defendants.

Disposition: [*1] Defendants Ex Parte Motion for Denial and Summary Dismissal of Plaintiffs Renewed Motion for Summary Judgment granted, and Plaintiffs' Renewed Motion for Summary Judgment denied and dismissed with prejudice.

Counsel: For BRIAN HO, PATRICK WONG, HILARY CHEN, Plaintiffs (94-CV-2418): Daniel C. Girard, Robert Crowe, Anthony K. Lee, Gordon M. Fauth, Girard & Greene LLP, San Francisco, CA.

For BRIAN HO, Plaintiff (94-CV-2418): David S. Levine, San Francisco, CA.

For SAN FRANCISCO UNIFIED SCHOOL DISTRICT, SAN FRANCISCO BOARD OF EDUCATION, WALDEMER ROJAS, SAN FRANCISCO NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, defendants (94-CV-2418): Barry A. Zolotar, CA State Dept of Education, Sacramento, CA.

For SAN FRANCISCO UNIFIED SCHOOL DISTRICT, defendant (98-CV-2418): Robin Johansen, Remcho Johansen & Purcell, San Francisco, CA.

For SAN FRANCISCO UNIFIED SCHOOL DISTRICT, SAN FRANCISCO BOARD OF EDUCATION, WALDEMAR ROJAS, CALIFORNIA DEPARTMENT OF EDUCATION, WILLIAM D. DAWSON, SAN FRANCISCO NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, defendants (94-CV-2418): Aubrey V. McCutcheon, Jr., Aubrey V. McCutcheon Jr Law Offices, Ypsilanti, MI.

For SAN FRANCISCO [*2] UNIFIED SCHOOL DISTRICT, SAN FRANCISCO NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, defendants (94-CV-2418): Thomas I. Atkins, Brooklyn, NY.

For BOARD OF EDUCATION OF THE STATE OF CALIFORNIA, CALIFORNIA DEPARTMENT OF EDUCATION, defendants (94-CV-2418): Patrick Manshardt, Individual Rights Foundation, Los Angeles, CA.

For BOARD OF EDUCATION OF THE STATE OF CALIFORNIA, CALIFORNIA DEPARTMENT OF EDUCATION, defendants (94-CV-2418): Mark V. Santa Romana, San Francisco, CA.

For SAN FRANCISCO NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, defendant (94-CV-2418): James L. Hunt, McCutchen Doyle Brown & Enersen LLP, Eva Paterson, Lawyers Committee for Urban Affairs, San Francisco, CA.

For SAN FRANCISCO NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, defendant (94-CV-2418): Peter Graham Cohn, Petaluma, CA.

Judges: Honorable William H. Orrick, U.S. District Judge.

Opinion by: William H. Orrick

Opinion

CLASS ACTION

ORDER GRANTING DEFENDANTS *EX PARTE* MOTION FOR SUMMARY DENIAL AND DISMISSAL OF PLAINTIFFS' RENEWED MOTION FOR SUMMARY JUDGMENT

Local School District Defendants' *Ex Parte* Motion for Summary Denial and Dismissal of Plaintiffs Renewed [*3] Motion for Summary Judgment has been carefully considered.

Oral argument is not necessary. It is clear from a review of the declaration of Gordon Fauth, Jr., submitted by Plaintiffs as sole support for its "renewed" motion, that Plaintiffs have not demonstrated an absence of material facts or shown that Plaintiffs are entitled to summary judgment as a matter of law or otherwise carried its burden under *FRCP 56(c)*.

In fact, as demonstrated by Defendants, there now exist even additional genuine issues of material fact not referenced in our May 5, 1997, denial of Plaintiffs prior Motion for Summary Judgment in this same matter.

At least some of those additional disputed facts are clearly set forth in the Joint Pre-trial Conference Statement filed

with the Court by Plaintiffs and Defendants on August 21, 1998. **It is therefore ordered that:**

1. Defendants *Ex Parte* Motion for Denial and Summary Dismissal of Plaintiffs Renewed Motion for Summary Judgment is granted, and

2. Plaintiffs' Renewed Motion for Summary Judgment is denied and dismissed with prejudice.

Dated: *OCT 20 1998*, 1998

Honorable William H. Orrick

U.S. District Judge