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General Docket

US Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 97-15926

Filed: 5/29/97

Nsuit: 3440 Other civil rights (Fed)

Ho, et al v. SF Unified School, et al

Appeal from: Northern District of California (San Francisco)

Case type information:

- 1) civil
- 2) prisoner petition
- 3)

Lower court information:

District: 0971-3 : CV-94-02418-WHO
 presiding judge: William H. Orrick, Jr., District Judge
 Date Filed: 7/11/94
 Date order/judgment: 5/6/97
 Date NOA filed: 5/21/97

Fee status: paid-----
Prior cases:

None

Current cases:

	Lead	Member	Start	End
companion:	97-15926	98-70378	4/1/98	

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BRIAN HO, by his parent and
 next friend, Carl Ho
 Plaintiff - Appellant

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PATRICK WONG, by his parent
 and next friend, Charlene Wong
 Plaintiff - Appellant

Daniel C. Girard, Esq.
 (See above)
 [COR LD NTC ret]

HILARY CHEN, by his parent and
 next friend, Jane Chen
 Plaintiff - Appellant

Daniel C. Girard, Esq.
 (See above)
 [COR LD NTC ret]

v.

SAN FRANCISCO UNIFIED SCHOOL
 DISTRICT
 Defendant - Appellee

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 P.O. Box 123
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Defendant - Appellee [COR LD NTC ret]

WALDEMAR ROJAS, Superintendent
of the San Francisco Unified
School District
Defendant - Appellee Aubrey V. McCutcheon, Jr., Esq.
(See above)
[COR LD NTC ret]

BOARD OF EDUCATION OF THE
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Defendant - Appellee Aubrey V. McCutcheon, Jr., Esq.
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Defendant - Appellee

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BRIAN HO, by his parent and next friend, Carl Ho;
PATRICK WONG, by his parent and next friend, Charlene Wong;
HILARY CHEN, by his parent and next friend, Jane Chen

Plaintiffs - Appellants

v.

SAN FRANCISCO UNIFIED SCHOOL DISTRICT; SAN FRANCISCO BOARD
OF EDUCATION; WALDEMAR ROJAS, Superintendent of the San
Francisco Unified School District; BOARD OF EDUCATION OF THE
STATE OF CALIFORNIA; CALIFORNIA DEPARTMENT OF EDUCATION;
WILLIAM D. DAWSON; SAN FRANCISCO ASSOCIATION
FOR THE ADVANCEMENT OF COLORED PEOPLE

Defendants - Appellees

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5/29/97 DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS SENT (Y/N): n. setting schedule as follows: appellant's designation of RT is due 6/2/97,, ; appellee's designation of RT is due 6/10/97,, ; appellant shall order transcript by 6/20/97,, ; court reporter shall file transcript in DC by 7/21/97; certificate of record shall be filed by 7/28/97 ; appellant's opening brief is due 9/8/97,, ; appellees' brief is due 10/6/97,, ; appellants' reply brief is due 10/20/97,, ; [97-15926] (mhf) [97-15926]

5/29/97 Filed attorney for Appellant Civil Appeals Docketing Statement served on 5/20/97 (to CONFATT) [97-15926] [97-15926] (mhf) [97-15926]

7/3/97 Filed certificate of record on appeal RT filed in DC 7/2/97 [97-15926] (mhf) [97-15926]

7/7/97 Filed Appellant Brian Ho, Appellant Patrick Wong, Appellant Hilary Chen's motion to expedite appeal. [97-15926] served on 7/7/97 [to moatt per promo - to be treated as Rule 3-3 case) [97-15926] (mhf) [97-15926]

7/15/97 Case released from Pre-Briefing Conference program. (ah) [97-15812 97-15817 97-15884 97-15926 97-15976 97-15981 97-15987 97-15988 97-16023 97-16026 97-16049 97-16061 97-16068 97-16069 97-16082 97-16086 97-16154 97-35009 97-35292 97-55385 97-55400 97-55422 97-55596 97-55668 97-55732 97-55741 97-55761 97-55770 97-55776 97-55778 97-55784 97-55785 97-55786 97-55787 97-55840 97-55850]

7/17/97 Filed Appellee SF Unified School, Appellee SF Board of Educ, Appellee Waldemar Rojas, Appellee Board of Educ of, Appellee CA Dept of Education, Appellee William D. Dawson, Appellee SF NAACP response opposing appellant's motion to expedite appeal [3264979-1] served on 7/17/97 (MOATT) [97-15926] (mhf) [97-15926]

7/21/97 Filed order MOATT (RE) The appeal fgiled 5/21/97 is a preliminary injunction appeal. Accordingly, 9th Cir Rule 3-3 shall apply. W/in 7 days of filing the noa the parties shall make arrangements to obtain rts from dc. Apl't's br & exc due 8/1/97; answr brf due 9/1/97; & opt rpy brf due w/in 14 days of serv of the answr brf. The appeal & any mtns pending at the time brfg is completed shall be referred to the next available mtns panel for disposition. [97-15926] (mhf) [97-15926]

8/5/97 Filed original and 15 copies Appellant Brian Ho, Appellant Patrick Wong, Appellant Hilary Chen opening brief (Informal: n) 48 pages and five excerpts of record in 3volumes; served on 8/1/97 (4 copies of brfs & exc to MOATT)[97-15926] (mhf) [97-15926]

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8/5/97 Filed Apl'ts req for oral argument; [97-15926] served on 8/1/97 [MOATT] [97-15926] (mhf) [97-15926]

8/8/97 Filed Appellee SF Unified School, Appellee SF Board of Educ, Appellee Waldemar Rojas, Appellee Board of Educ of, Appellee CA Dept of Education, Appellee William D. Dawson, Appellee SF NAACP's motion to dismiss the case; served on 8/8/97 (MOATT) . [97-15926] (mhf) [97-15926]

8/15/97 Filed Aplts' response opposing dispositive motion to dismiss the case [3284917-1] served on 8/15/97 (MOATT) [97-15926] (mhf) [97-15926]

8/25/97 Filed Aples' rpy in support of jt mtn to dismiss; served on 8/25/97 (MOATT) [97-15926] (mhf) [97-15926]

9/2/97 Filed notice of appearance of Lawrence A. Calaghan, Michael E. Rosman & John Yoo (Withdrew as counsel: attorney Barry A. Zolotar for aple CA Dept of Education [97-15926] (mhf) [97-15926]

9/16/97 Filed order (Appellate Commissioner: PLS) denying aples' mtn to dismiss this appeal for lack of jurisdiction w/o prejudice to renewing the arguments in the answr brf. Aples' brf is due w/in 28 days from the dte of this order. The opt rpy brf is due w/in 14 days aft svc of aples' brf. (MTNS) [97-15926] (mhf) [97-15926]

9/26/97 Filed aple (CA State Dept of Education) notice of appearance of Lawrence Callaghan (Withdrew as counsel: attorney Barry A. Zolotar. (case file) [97-15926] (tsp) [97-15926]

9/29/97 Received ltr from Peter Graham Cohn, csl for aples re confirmation of the granting of a 14 day ext of tm to file the aples' brf. [97-15926] (mhf) [97-15926]

10/2/97 Filed order MOATT (FXM) Aples' unopposed req for a 14 day ext of tm to file the answr brf is GRANTED. Aples' answr brf is due 10/28/97, & the opt rpy brf is due w/in 14 days aft svc of aples' brf. [97-15926] (mhf) [97-15926]

10/7/97 Filed notice dtd 10/7/97 of appearance of Joseph Remcho, Robin B. Johansen, & Janet Sommer as csls for aples for aple Delaine Eastin, withdrew Joseph R. Symkowick & Barry A. Zolotar [97-15926] (mhf) [97-15926]

10/7/97 Filed ntc of Assoc of csl; filed 10/3/97 of Joseph Remcho, Robin B. Johansen & Janet Sommer as csl for aple State Dept of Educ [97-15926] (mhf) [97-15926]

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10/8/97 Received ltr dtd 10/8/97 from aty Robin B. Johansen co-csl for dfdts Delaine Eastin, Superintendent of Public Instr & Dir of the State Dept of Educ, & for the State Dept of Ed re: learned that document titled "Mtn of the Cal State of Educ to Substitute Csl" has not been authorized for filing by the Superintendent, nor has any employee of the State Dept of Educ & further states intentions to oppose the mtn & respectfully reqs permission to file opposition; served on 10/8/97 (MOATT) [97-15926] (mhf) [97-15926]

10/17/97 Filed Appellee CA Dept of Education's opposition to mtn to substitute csl; served on 10/17/97 (CONFAT per PROMO) [97-15926] (mhf) [97-15926]

10/23/97 Filed Appellee Delaine Eastin, State Superintendent of Public Instruction's response in opposition to the State Board of Educ to substitute its own csl; served on 10/17/97 (MOATT) [97-15926] (mhf) [97-15926]

10/28/97 Filed ACLU OF NORTHERN CALIFORNIA's motion to become amicus served on 10/28/97 (mtn bounded in brf - PROMO) [3331468] [97-15926] (mhf) [97-15926]

10/28/97 Received Amicus ACLU of Northern Cal's brief in 15 copies mtn & brf are bounded together - PROMO); served on 10/28/97 Notified counsel. [97-15926] (mhf) [97-15926]

10/28/97 Filed original and 15 copies Appellees SF Unified School, & SF NAACP JOINT brief, 45 pages, 2 Exc. vols: served on 10/28/97 minor defcy: (Missing Corp Discl Stmt) Notified counsel. (4 copies of brs & Exc to MOATT) [97-15926] (mhf) [97-15926]

10/28/97 Filed original and 15 copies Appellee Board of Educ of brief, 50 pages, -0- Exc. vols: served on 10/28/97 minor defcy: (Missing Corp Discl Stmt) Notified counsel. [97-15926] minor brief deficiency response due 11/12/97 (4 copies of brfs to MOATT); (mhf) [97-15926]

10/28/97 Received Appellee CA Dept of Education letter dated 10/28/97 re: they do not intend to take any position w/respect to the issues raised on this appeal & will comply w/any order or judgment issued by this ct (MOATT) [97-15926] (mhf) [97-15926]

10/30/97 Filed Aple Delaine Eastin, State Superintendent of Public Instruction's notification of joinder in aples SF Unified School & SF NAACP brief previously filed on 10/28/97 [97-15926] served on 10/28/97 [MOATT] (mhf) [97-15926]

11/3/97 Filed State Board of Educ's response to Superintendent's opposition to the Dept of Educ's mtn to substitute csl; served on 11/3/97 (MOATT) [97-15926] (mhf) [97-15926]

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11/5/97 Filed SF Unified School, SF NAACP motion to strike aple br of CA Board of Educ [97-15926] served on 11/5/97 [MOATT] (mhf) [97-15926]

11/6/97 Received Appellee Board of Educ of satisfaction of (minor) brief deficiency. (Recd orig & 3 copies of Corp Discl Stmt) [97-15926] (mhf) [97-15926]

11/13/97 Filed original and 15 copies Brian Ho, Patrick Wong, Hilary Chen reply brief, (Informal: n) 29 pages; served on 11/12/97 [97-15926] (mhf) [97-15926]

11/17/97 Filed Appellee Board of Educ of response opposing appellee's motion to strike brf [3336782-1] served on 11/17/97 (MOATT) [97-15926] (mhf) [97-15926]

12/18/97 Filed aplts Brian Ho, Patrick Wong, Hilary Chen additional citations, served on 12/17/97 (**RECORDS**) [97-15926] (mhf) [97-15926]

1/26/98 Filed order (James R. BROWNING, Andrew J. KLEINFELD, Sidney R. THOMAS,): Aples SF NAACP & SFUSD's mtn to strike the brf of aple Cal State is DENIED. If aples SF NAACP & SFUSD wish to file a jt suppl brf, they may do so w/in 14 days from the dte of this order. The suppl brf may not exceed 3,500 words or ten monotype pgs in length. The ct declines to consider at this time which csl properly represents the CA State Dept of Educ in this appeal. Because the goverance dispute bet the Cal State Board of Educ & the Superintendent of Public Instruction is currently pending bef the Cal of Appeal in a writ pet, the ct shall defer to the pending state ct proceeding to resolve this sensitive issue of state law. This preliminary injunction appeal is referred to the next available merits panel for disposition. Accordingly, this case is ready for calendaring & shall be calendared in due course. The mtn of the ACLU Foundation of o Cal to file an amicus brf also is referred to the merits panel for disposition [97-15926] (mhf) [97-15926]

1/29/98 Calendar check performed [97-15926] (mw) [97-15926]

2/12/98 Calendar materials being prepared. [97-15926] [97-15926] (uk) [97-15926]

2/19/98 CALENDARED: SF 4/15/98 9:00 am Courtroom 3 [97-15926] (uk) [97-15926]

3/17/98 Filed, as of 7/3/97 , certified record on appeal in 4 Vols.(total): 4 Clerks Rec -0- RTs (ORIG) & 2 Exhibits [97-15926] (mhf) [97-15926]

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3/23/98 Filed aples SF Unified School, et al's mtn for allowance of addl time (20 minutes) for oral argument; [97-15926] served on 3/23/98 [PANEL] (mhf) [97-15926]

3/30/98 Filed order (Deputy Clerk: CAC) Court Television Network applied to videotape for later broadcast the case captioned above, schedule to be heard in San Francisco, on Wednesday, 4/15/98. A majority of the judges on the panel have voted to deny the application. The Court Television Network's request to videotape is DENIED. (faxed to parties by eu) [97-15926] (hh) [97-15926]

3/31/98 Filed Appellants' response in support of aple's mtn for alddl time for oral argument so long as both sides are given the amse amt of time; served on 3/30/98 (PANEL by fax) [97-15926] (mhf) [97-15926]

4/9/98 Received copy of District Court order filed on 4/3/98 "Memorandum Decision & Order" (PANEL by Fax) [97-15926] (mhf) [97-15926]

4/10/98 Filed order (John T. NOONAN, Stephen S. TROTT, Evan J. Wallach,): Oral argument has been extended to 30 minutes per side (Phoned: 2:30) [97-15926] (mhf) [97-15926]

4/15/98 ARGUED AND SUBMITTED TO John T. NOONAN, Stephen S. TROTT, Evan J. Wallach (CIT) [97-15926] (mlm) [97-15926]

6/4/98 FILED OPINION: The appeal is DISMISSED. The petition for mandamus is DENIED. (Terminated on the Merits after Oral

Hearing; Dismissed/Frivolous; Written, Signed, Published.
 John T. NOONAN, author; Stephen S. TROTT; Evan J.
 Wallach, dissenting.) FILED AND ENTERED JUDGMENT.
 [97-15926, 98-70378] (dg) [97-15926 98-70378]

6/26/98 MANDATE ISSUED [97-15926, 98-70378] (jjf) [97-15926 98-70378]

5/23/00 RECORD RETURNED. (See control card for details.) (stev)
 [97-15926]

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PACER Service Center			
Transaction Receipt			
08/09/2007 09:40:00			
PACER Login:	hs0328	Client Code:	eeoc
Description:	dkt report	Case Number:	97-15926
Billable Pages:	10	Cost:	0.80