

Pro bono case leads to changes in St. Paul schools

By Dan Heilman

Special to Minnesota Lawyer

The St. Paul Public School District received a little nudge into the ever more diverse future recently when the district settled a class-action lawsuit that promises to refine and expand the services offered to students still learning English.

A pair of Fredrikson & Byron attorneys, Aron Frakes and Christopher Pham, took on the pro bono case on behalf of St. Paul parents Jane Sommerville and George Thawmoo. The couple initiated the case on behalf of their Karen sons during the summer of 2017. The Karen make up a portion of people of Burmese descent.

The couple had originally spoken with district representatives about the issue three years before.

“We started small,” recalled Sommerville. “We talked with building officials and the superintendent and tried to approach it on a local basis.”

The couple also approached the state Department of Education and the city Department of Human Rights before considering legal action.

Sommerville and Thawmoo found little trouble in attracting other parents into the class that filed the suit. “We’ve talked with immigrant parents about this for a long time,” said Sommerville. “I’ve done political organizing in the past, so I was ready to get people to listen.”

The case came to Frakes and Pham via the firm’s pro bono director, Pamela Wandzel.

“The family had gotten word from the St. Paul Departments of Human Rights and Equal Employment Opportunity that there was probable cause for discrimination on the basis of national origin,” said Frakes. “So I expressed interest in pursuing the case on a



Aron Frakes



Christopher Pham

class-action basis.”

The lawsuit alleged that the district should not have placed one the couple’s sons, Lor Ler Kaw, into mainstream English and social studies classes at Como Park High School with students who spoke English fluently. The boy at the time was reading English at a second-grade level.

Then-superintendent Valeria Silva was then working to mainstream more English-language learners (ELL) and

special-education students into general-education classrooms. There are about 14,000 such students in the district, or about one-third of the entire student population. Fredrikson estimated that about 1,000 of those students are classified as students with limited or interrupted formal education (SLIFE).

Silva’s philosophy wasn’t popular with district teachers, who complained that the moves were made with little regard for individual students’ needs. The teachers’ union made the mainstreaming issue a topic in their most recent contract negotiations.

The suit also said the district waited too long to address what the parents suspected was a need for special-education services for their other son, Lor Ler Hok Koh.

Retained as expert witnesses in the case were Martha Bigelow of the University of Minnesota, who specializes in second language acquisition, schooling experiences of adolescent immigrant

youth, and multicultural education; and Jill Watson of St. Olaf College, as a special SLIFE consultant to the Minnesota Department of Education.

During yearlong court-mandated settlement talks, the two sides worked together to develop measures that include increased support for ELL students and the creation of a new districtwide specialist position focusing on the needs of ELL and SLIFE students. The settlement, approved by the school board last month, also stipulated that students need not have been in the United States for a minimum amount of time before they can be evaluated for special-education services.

In more detail, the settlement steers the district to change how it creates schedules for SLIFE and ELL students. Along with the new specialist positions, those changes include: developing a new research-based curriculum for SLIFE students; mandating professional training for teachers and guidance counselors regarding educating those students; requiring regular meetings with families and students about the program; regularly evaluating the program and students in it; offering further tutoring for ELL students; and working to dispel the idea that students need to have lived in the U.S. for a certain amount of time before being evaluated for special education.

Somerville and her family also received \$12,500 as part of the settlement.

Somerville gave the district credit for eventually recognizing that she and her fellow plaintiffs were serious about forcing change in how those students are handled.

“They started making some of these changes even before the settlement became official,” she said. “The early feedback I’ve gotten from teachers and parents has been positive.”