APPENDIX M

HANDBOOK FOR CONDUCTING RACIAL AND ETHNIC STUDIES IN SCHOOL DISTRICTS

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I. STATUTORY AUTHORITY

A. California *Education Code,* Section 35753(a)(4) - "The reorganization of the districts will not promote racial or ethnic discrimination or segregation."

This section of the *Education Code* relating to promotion of racial or ethnic discrimination or segregation was added to the list of conditions that must be considered in school district reorganization after the California State Board of Education instituted a policy on "de facto" school segregation in June, 1962. Referring to the 1954 U.S. Supreme Court decision that declared that segregation of schoolchildren on a racial basis was unlawful discrimination, the State Board of Education statement said that "primarily because of patterns of residential segregation, some of our schools are becoming racially segregated, in fact, and that this challenge must be met with the full thrust of our legal authority and moral leadership." The declaration recognized there are social and economic forces over which the board has no control, but "in all areas under our control or subject to our influence, the policy of elimination of existing segregation and curbing any tendency toward its growth must be given serious and thoughtful consideration by all persons involved at all levels."

In 1963, the California Supreme Court recognized that this policy is a legal obligation for all school boards charged with fixing boundaries of school districts (*Jackson v. Pasadena School District,* 59 Cal 2d 876). Subsequently, the State Board of Education adopted Title 5 *Administrative Code* regulations, which established procedures and criteria to be considered in avoiding or preventing segregation in school district reorganization and transfer of territory proposals, and in state and local procedures in the selection of school sites.

A major Title 5 *Administrative Code* regulation was adopted in 1969 that required local school boards to "study and consider possible alternative plans when the percentage of pupils in one or more racial or ethnic groups differs significantly from the district-wide percentages." In the years since the 1962 policy declaration, however, the State Board of Education's approach to this regulation and others affecting the responsibilities of local school boards has varied considerably. However, the *Education Code* and Title 5 administrative regulations have remained consistent in the requirement that school district reorganization and transfer of territory proposals may not promote racial or ethnic segregation or discrimination.

B. *California Code of Regulations,* Title 5, Section 18573 (a)(5) (A–E) (Revised 03/29/96)

(4) To determine whether the new districts will promote racial or ethnic discrimination or segregation, the effects of the following factors will be considered:

(A) The current number and percentage of pupils in each racial and ethnic group in the affected districts and schools in the affected districts, compared with the number and percentage of pupils in each racial and ethnic group in the affected districts and schools in the affected districts if the proposal or petition were approved.

(B) The trends and rates of present and possible future growth or change in the total population in the districts affected, in each racial and ethnic group within the total district, and in each school of the affected districts.

(C) The school board policies regarding methods of preventing racial and ethnic segregation in the affected districts and the effect of the proposal or petition on any desegregation plan or program of the affected districts, whether voluntary or court ordered, designed to prevent or to alleviate racial or ethnic discrimination or segregation.

(D) The effect of factors such as distance between schools and attendance centers, terrain, and geographic features that may involve safety hazards to pupils, capacity of schools, and related conditions or circumstances that may have an effect on the feasibility of integration of the affected schools.

(E) The effect of the proposal on the duty of the governing board of each of the affected districts to take steps, insofar as reasonably feasible, to alleviate segregation of minority pupils in schools regardless of its cause.

These rather detailed regulations were adopted in 1976 (revised in 1996) to clarify procedures and identify factors that should be considered in analyzing proposals and also to provide consistency and continuity with other regulations adopted earlier by the State Board of Education that required school districts to adopt and implement a plan for the alleviation of segregation of minority pupils. However, these regulations were rescinded by the State Board of Education in 1991 (formerly *California Code of Regulations* [CCR], Title 5, sections 90–101). Subsequently, the Department of Education Legal Office issued a memorandum that stated: “School districts are still under a constitutional obligation to prevent segregation in the schools and must act to prevent segregation and/or to alleviate the harmful effects of segregation.” The authority cited for this memorandum was the ruling of the California Supreme Court in

the companion cases of *Crawford v. Board of Education of Los* Angeles (1976) 17 Cal. 3d 280 and *N.A.A.C.P. v. San Bernardino City Unified School District* (1976) 17 Cal. 3d 311. The court stated that school districts are required to "take steps, insofar as reasonably feasible to alleviate segregation in schools regardless of its cause." This ruling of the California Supreme Court is now incorporated in paragraph (E) of the 1996 revision, replacing paragraph (G) in the 1976 adoption.

The "Findings of Fact" section of this handbook outlines the steps and procedures in analyzing proposals. Each of the factors of the Title 5 regulations will be considered separately relative to its impact on the promotion of segregation or discrimination.

II. DEFINITION OF TERMS

A. Segregated School or District

A school or district in which the minority student enrollment is so disproportionate as realistically to isolate minority students from other students and thus deprive minority students of an integrated educational experience.
—California Supreme Court, 1976.

In the process of analyzing district reorganization and transfer of territory proposals, one of the most difficult problems encountered is the determination by numerical ratios and comparisons alone when there is a promotion of segregation. In some instances a change may occur that affects a district policy or a desegregation plan, voluntary or court ordered, which will promote segregation. However, in the absence of these or other conditions, any change that significantly increases the percentage of minority group students could be the controlling factor in the determination of a promotion of segregation. Generally, a promotion of segregation will occur when a proposal changes the minority enrollment in a district or affected schools from proportionate (balanced or slightly imbalanced) to "disproportionate," the term or condition described by the California Supreme Court. When a disproportion of minority students occurs, minority students are isolated and deprived of an integrated educational experience, according to the holding of the court. As a general guideline, minority student enrollment of approximately 75 percent may be characterized as disproportionate. Lower limits such as 60-65 percent may also be considered to be disproportionate if records over a significant period of time (at least five years) and an assessment of present and future demographic factors indicate the minority percentage has been steadily increasing and will likely continue to do so.
In summary, the definition of segregation describes a condition in which a disproportionate percentage of minority students in a district or affected school(s) occurs as a result of a proposal, making it unrealistic to provide

integrated educational experiences. Such proposals promote segregation and discrimination.

B. Minority Groups

Minority students are those who regard themselves or are regarded by the school or community as belonging to one of the following groups:

American Indian or Alaskan Native
Asian
Pacific Islander
Filipino
Black, not of Hispanic origin
Hispanic

The racial and ethnic groups listed above have been identified by federal and state agencies that have responsibility for equal opportunity policies and practices, gathering of statistics for purposes of information, and for enforcement of non-discriminatory statues and regulations. In California, racial and ethnic school and district enrollment statistics are compiled by California Basic Educational Data System (CBEDS) in the California Department of Education.

It should be pointed out that racial and ethnic groups identified as "minority" in many situations are not a numerical " minority" compared with the white "majority" group. A more realistic definition has its roots in past laws, which subjected these groups to discriminatory practices and segregation based solely on race, color, or ethnicity. Although all such laws have been repealed or declared unconstitutional by the courts or repealed by the State Legislature, the pervasive, lingering effects of past discrimination and some continuing community practices require vigilance in overcoming past discrimination and protecting and expanding human rights and equal opportunity. In the review of proposals, all minority groups are combined into one numerical quantity for comparison with the white group; this is consistent with the definition of segregation set forth by the California Supreme Court.

C. Integrated Educational Experience

"Integrated educational experience" means the process of education in a racially and ethnically diverse school that has as its goal equal opportunities for participation and achievement among all racial and ethnic groups in the academic program and other activities of the school, together with the development of attitudes, behavior, and friendship based on the recognition of dignity and value in differences as well as similarities."

This definition was developed by the Intergroup Relations Office in the California Department of Education following the California Supreme Court definition of segregated schools in the Los Angeles and San Bernardino desegregation cases.

The definition describes a *quantitative* characteristic of segregated schools as being "so disproportionate as realistically to isolate minority students" and a *qualitative* characteristic as one that deprives minority students of an "integrated educational experience." Such educational experiences can only be developed in schools that are racially and ethnically diverse—schools in which there is *not* a disproportion of minority students.

III. GENERALIZATIONS/GUIDELINES

The statements in this section were developed for a State Board of Education workshop on making a determination of whether a proposal promotes segregation or discrimination. These statements can serve as a general guide to understanding some of the complex issues involved in the process.

A. The statutes are essentially reactive or preventive; occasionally segregation can be alleviated or racial/ethnic diversity promoted. The statutes are not generally perceived to be a positive tool to facilitate desegregation/integration.

B. By definition the promotion of *minority group* segregation is prohibited. A proposal could be approved if majority group (white) "segregation" occurs in the absence of any minority group segregation.

C. The definition of segregation involves both *quantitative* and *qualitative* elements: "so disproportionate"—the quantitative element refers to grossly disparate numbers of minority group students, resulting in denial or absence of any realistic opportunity for "integrated educational experiences"—the qualitative element.

D. The statutes do not provide a precise quantitative definition of segregation. In the analysis, the districts and/or affected school(s) are evaluated in terms of differences in racial/ethnic composition "before" and "after" the transfer or reorganization. There could be a finding of promotion of segregation when the following statistical conditions are present:

1. The minority group percentage in a district or affected schools is more than 50–60 percent as a result of the proposed transfer or reorganization, or becomes more than 50–60 percent as a result of the proposal, and is *steadily* increasing; and

2. The trend and rate of minority group increase has been in evidence over a period of at least five years; and

3. The trend will likely continue and become “disproportionate” in five years or less. This determination relies on the use of statistical data and analysis procedures.

E. Districtwide percentages are given primary consideration if there are relatively few schools in the affected district(s). Districtwide percentages are of limited value when applied to very large districts or if affected schools are distant from each other or if geographic, safety, or other factors must be considered. In such cases, only “affected” school are considered in the analysis.

F. A district’s desegregation plan or court order must be considered in the analysis. The transfer/reorganization cannot alter or modify a court-ordered plan unless the court gives approval. A district plan is considered in terms of current and future implementation plans and schedules, together with a determination of whether the plan and its component parts are reasonable and feasible.

G. A proposal could be approved even if the transfer/reorganization results in exceeding the district criteria established to identify a segregated school. However, in such cases alternatives that are reasonable and feasible should be available.

H. There cannot be a “trade-off”; that is, a proposal cannot be approved if segregation is promoted in one district and racial/ethnic diversity occurs in the other district.

IV. GENERAL CONSIDERATIONS

A. Report of the County Committee on School District Organization (for state-level consideration)

All proposals submitted to the State Board of Education include a report developed by the staff of the Office of the County Superintendent of Schools for the County Committee on School District Organization, or by a private consultant or consulting firm working under contract with the county. The reports vary considerably in the presentation of data and information that is accurate, complete, and consistent with all the factors and criteria that must be considered. When additional information is needed, the staff of the county committee should be contacted. Other parties to the proposal can be contacted if the county staff is not able to provide the information.

B. Statistical Data

CBEDS data are almost uniformly used in county committee reports, which can be verified by CBEDS reports produced by the California Department of Education. When data are not identified as CBEDS or need to be separately compiled for the state or county report, the accuracy of such data should be agreed upon by all parties to the proposal. A common problem in many proposals is incomplete or inaccurate data on the number and ethnicity of students residing in the existing district(s) and currently attending school in a proposed new district or area of a transfer of territory (or vice versa). The numbers of such students and their racial/ethnic compositions may be a pivotal factor in the review process. *All* students must be accounted for *by residence* in the district(s) and/or school(s) (where possible) as the proposal is presented. The "before" and "after" effect cannot be accurately assessed unless all students are accounted for in their district of residence as proposed.

C. Communication with Parties

Most proposals are highly controversial, regardless of the number of students involved or size and location of the proposed change; therefore, it is necessary to maintain effective communication among the parties to the proposal. All parties should be informed if there are changes in the data are new data are developed as the result of such communication. Every effort should be made to obtain agreement among the parties as to the accuracy of objective or statistical data. Usually, the county committee staff should be the responsible source for correcting any erroneous data or supplying new data or information. The county staff should also accept responsibility for most of the communication relative to any changes in the report submitted by the county committee.

D. Site Visits (for State-level Consideration)

Some proposals involve questions or complexities that could be clarified by a site visit. When this is not feasible, alternative approaches or sources will have to be considered, such as maps, reports, and studies by reputable persons or agencies, and telephone inquires to responsible, knowledgeable persons. However, it may be necessary to include a statement in the report that a site visit was not possible in order to completely verify or clarify a condition or question at issue.

V. FINDINGS OF FACT

The "Findings of Fact" section of the report lists in sequential order all the data and information required by the CCR Title 5 regulations to determine whether a proposal promotes segregation or discrimination. The following steps should be followed, usually in the order prescribed by the Title 5 regulation:

A. Step 1

Prepare tables and description of racial/ethnic enrollment of:

1. Existing and proposed districts;
2. Affected schools;
3. Adjacent schools in areas of affected districts that could be affected by the proposal;
4. Comparison of *existing* and *proposed* districts and affected schools (i.e., before and after). (At this point of comparison disproportionate differences in minority racial/ethnic enrollment could indicate a promotion of segregation.)

B. Step 2

Prepare tables and description of the trends and rates of change in racial/ethnic enrollment and other changes in demographic conditions.

C. Step 3

Prepare description and assessment of various factors that affect feasibility of integration: distance between schools, safety, capacity of schools, geographic features, etc.

D. Step 4

Prepare description and assessment of district policies and desegregation programs or plans, voluntary or court ordered.

E. Step 5

Prepare description and assessment of the duty of affected districts to take reasonable and feasible steps to alleviate segregation.

F. Step 6

Summarize all conditions or changes that would occur if the proposal were approved that would promote segregation, referring only to data or information given in Steps 1 through 5. Do not introduce any new data or information in this section.

G. Step 7

Prepare a concluding statement to indicate whether the proposal promotes segregation or discrimination.

A. Racial/Ethnic Enrollment - Affected Districts

1. Consideration of districtwide data is the first step in the process of analyzing a proposal. These data are important if the proposal will create significant racial/ethnic enrollment changes in total district enrollment. Districts with large enrollments will usually show only minor changes when there is a comparatively small number of students involved in the proposal. Districtwide data are also unimportant if schools and attendance centers are distant from each other or if there are other geographic or safety factors affecting the feasibility of integration. Nevertheless, districtwide data of existing and proposed districts will always appear first in the "Findings of Fact," regardless of their impact on the proposal.

   Note: In the state report data relating to affected districts, affected schools, adjacent affected schools, and trends (Sections A and B of the "Findings of Fact") are described briefly in narrative form in conjunction with limited tables in the text of the "Findings of Fact." Detailed tables, graphs, or other extended displays of these data will appear in Appendix A.

2. Racial/Ethnic Enrollment - Affected Schools

   The racial/ethnic enrollment of all schools in districts affected by a proposal will be included in this section. As indicated previously, when districtwide data are not relevant, the racial/ethnic enrollment of affected schools takes primary importance.

3. Racial/Ethnic Enrollment - Affected Adjacent Schools

   A proposal may not directly indicate which school or schools that a proposal may affect, especially when a new district is proposed. A new boundary may separate some students from their existing school of attendance. Thus, alternative school assignments will be required for some students who reside in a district and currently attend a school in a proposed new district, or vice versa.

   Schools located in adjacent areas with appropriate grade levels are possible alternative school assignments for students who are dislocated by a proposal. In that case the number, racial/ethnic group, grade level, and residence of all displaced students will have to be determined. These data together, with the racial/ethnic enrollment of adjacent schools, will be included in

this section of “Findings of Fact.” Usually, the only source of data relating to displaced students is the district in which they reside.

4. Comparison of Racial/Ethnic Enrollments: Existing and Proposed

The determination of whether a proposal promotes segregation or discrimination is made most frequently by comparing the racial/ethnic enrollment of the districts and/or affected schools as they currently exist with the racial/ethnic enrollment of the districts and/or affected schools as proposed. Any difference between the minority percentage that is disproportionate before and after reorganization, or will likely become disproportionate in the near future, will usually be apparent in this comparison. An important factor in this phase of the analysis is obtaining an accurate count of the students who will be residents of the district as proposed by reorganization or territory transfer. This problem has been noted previously because it is a frequent error or omission in many reports. Students in a district attending a school located in a proposed new district must be accounted for in the district of residence; similarly, there may be students who are residents of a proposed new district who are attending schools in the existing district. In the absence of other factors that may have an effect on the proposal, the comparison of minority racial/ethnic percentages “before” and “after” reorganization may be the sole basis for determining whether there is a promotion of segregation.

Due to their focal importance, the table(s) of the “before” and after” data and the differences, if any, should appear in the text of the report, followed by a discussion of the comparison and its statistical impact.

B. Racial/Ethnic Enrollment: Trends and Rates of Change

Population changes are a fact of life in the nation as a whole and are especially true in California. Changes may vary widely among the various racial and ethnic groups in a district or region; therefore, trends and rates of change in racial/ethnic school enrollment need to be closely examined in each proposal. Data of at least the five previous years should be reviewed. These data will include district totals and, where appropriate, each racial/ethnic group and each affected school. These data may indicate a steady districtwide trend and rate of change with small variations from year to year among the various racial/ethnic groups and the schools of the district. If this rate of change has been steady,

with limited variations from year to year, an estimate of future enrollment can be made by applying the average change of the previous five or more years to the future five years. Such *estimates* or *projections* are not measures of statistical certainty and should be used with caution in predicting demographic trends and changes.

Occasionally a proposal will include more sophisticated statistical analyses of population changes or projections. These data should be agreed upon by the parties and, when necessary, there should be recognition of the competence of the person or agency responsible for the analysis.

In some large districts the racial/ethnic enrollment of a particular school or several schools in an area may show changes that vary considerably from other schools in the district. Such significant variations should be closely examined relative to the possible effect on district totals or "affected" school totals, and whether there are current or future "reasonable and feasible steps" available to alleviate any segregation that may occur. The trend and rate of change in racial/ethnic enrollment will need careful consideration when the proposal results in a minority percentage of 50–60 percent, but less than 75 percent. If the estimate or projection of the trend and rate of change indicates that within five years or less the minority percentage is likely to steadily increase and become disproportionate, then a finding of promotion of segregation may be indicated.

C. School Board Policies; Desegregation Plans and Programs

Many school districts have adopted policies designed to alleviate or prevent segregation or discrimination in response to local initiatives, court orders, or previous state laws or regulations. A substantial number of districts have adopted a districtwide desegregation plan or are implementing a limited desegregation program. Other districts are carrying out court-ordered desegregation plans. These policies, plans, or programs, whether voluntary or court-ordered, must be considered relative to the effect a proposal might have on their effective implementation. As a primary consideration, a court-ordered plan or program that is part of a court order may not be modified or altered by a proposal. Court orders can be changed only by petition of one or more of the parties and by order of the court.

District policies and voluntary desegregation plans or programs must also be evaluated to determine whether any changes will create obstacles in the district's efforts to alleviate or prevent segregation. However, the analysis of a proposal in this regard should indicate whether the policy, plan, or program is reasonable and feasible, and if current implementation of the policy or plan will be adversely affected by the proposal. Also, reasonable and feasible alternatives may be available to correct or ameliorate a problem created by the proposal. Generally, district voluntary plans and programs designed to prevent or

alleviate segregation and that are currently effective in accomplishing their objectives should remain in place and may not be altered or abridged by a proposal.

D. Factors Affecting Feasibility of Integration

Local school boards are expected to take reasonable and feasible steps to alleviate segregation, according to the ruling of the California Supreme Court. Proposals to reorganize school districts or transfer territory are also held to standards of reasonableness and feasibility in determining promotion of segregation or discrimination. The regulations establish a number of factors that must be considered:

1. Distance between schools and attendance centers
2. Terrain and geographic features affecting safety
3. Capacity of schools
4. Other conditions that may have an effect on the feasibility of integration of schools

Generally, these factors establish practical limitations on applying racial/ethnic enrollment differences as the sole criteria in the promotion of segregation; therefore, each proposal must be examined closely to determine the effect of one or more of these factors. Various kinds of descriptive information, including maps and related data, are helpful and frequently necessary in evaluating these factors. Site visits may be appropriate. A general rule is that conditions of infeasibility of integration currently existing in a district may not invalidate a proposal if those conditions remain unchanged. Geographic isolation (distance between schools and attendance centers), safety factors, and capacity of schools are frequently major determinants of reasonableness and feasibility. Opinions may vary widely among the parties to a proposal relating to the effect of these factors on a proposal, but in all situations a judgment must be made of whether the effect of one or more of these factors present obstacles in achieving integrated schools.

E. Duty of School Boards to Alleviate Segregation

The California Supreme Court has ruled that local school boards have a duty to take reasonable and feasible steps to alleviate segregation, regardless of cause. Therefore, the analysis and evaluation of proposals to reorganize school districts or transfer territory relative to promotion of segregation or discrimination must also consider the duty of local school boards to alleviate segregation. This consideration should be an integral part of the total process of the assessment of a proposal and should have equal standing with other factors in determining promotion of segregation or discrimination. If segregation exists in a district, and reasonable and feasible steps are available to alleviate the problem, then the analysis should indicate whether the proposal would create

any obstacles in alleviating the segregation. Generally, the analysis must consider the following questions:

- Are there one or more conditions of segregation or potential segregation in the existing or proposed district(s)?

- Are there reasonable and feasible steps available to alleviate the segregation?

- What effect would the proposal have on alternative methods of alleviating the segregation?

- Do existing districts have a clearly articulated plan with implementation schedules designed to alleviate the problem?

- Would the proposal create obstacles in achieving the objective of the plan?

The analysis must be as objective as possible in addressing these questions, keeping in mind that the California Supreme Court also stated that local school boards should "take reasonable and feasible steps" that are determined locally.

VI. SUMMARY STATEMENT: FINDINGS OF FACT

The Summary Statement is a brief recap of the factors that have the effect of promoting segregation or discrimination if the proposal were approved. The factors usually will be listed in the order in which they appear in the "Findings of Fact." However, the factor or combination of factors that have the most significant impact should be clearly delineated. The Summary Statement should not contain any new information or data; the purpose of this section is to make a final determination on a promotion of segregation or discrimination based on the statistical data and existing or resulting conditions described in each section of the "Findings of Fact."

VII. CONCLUSION

This section is a brief statement of the conclusion on whether the proposal promotes segregation or discrimination.

APPENDIX A: Condensed Outline of Procedures

(Following is a condensed outline of the procedures and essential elements required to prepare a report on whether the creation of new districts will promote racial or ethnic segregation.)

Step 1. Prepare statistical tables and describe racial/ethnic enrollment of:

a. Existing district(s) and proposed district(s)

b. Affected schools; existing and proposed districts

c. Adjacent schools that could be affected; existing and proposed districts and description of differences between them

d. The difference between existing and proposed districts, affected schools, and adjacent schools (where appropriate)

e. Identify the number and percentage of minority students enrolled in racially/ethnically diverse schools (non-segregated) who would be displaced by the proposal. Describe racial/ethnic enrollment, capacity, location, etc., of possible schools where minority displaced students might be reassigned.

Step 2. Prepare statistical tables and describe trends and rates of racial/ethnic enrollment/population change.

a. Use previous five-year data history for existing district and affected and adjacent schools, where appropriate.

b. Project future five-year change based on average annual change.

c. Describe other demographic factors that could affect trends or changes.

Step 3. Prepare a description of:

a. District policies and procedures relating to equal educational opportunity and the alleviation of racial/ethnic segregation and whether the policies and procedures are effectively implemented. Describe how the proposal might place substantial obstacles in the way of effective implementation of the policies and procedures.

b. If the district(s) have a desegregation plan, voluntary or court ordered, describe whether the proposal would adversely affect any part of the plan.

c. If any policy or desegregation plan or program is adversely affected by the proposal, are there reasonable and feasible alternatives available that could mitigate the adverse effects?

Step 4. Prepare a description of:

a. The effect of distance between schools, safety factors, capacity of schools, etc., on the feasibility of integration of affected schools; and

b. Consider district policies relating to each factor and whether such policies are reasonable and appropriate.

Step 5. Prepare a description of:

a. The steps undertaken by the existing district(s) to alleviate segregation and whether the proposal would place obstacles that would prevent or preclude the duty of the districts to alleviate segregation;

b. Any condition of segregation that could or should be alleviated by the existing district(s) and whether the proposal would adversely affect the duty to alleviate such segregation; and

c. Any condition of segregation that would be created by the proposal and whether there are reasonable and feasible steps available to alleviate such segregation.

Step 6. Summarize all conditions or changes that would promote the occurrence of segregation if the proposal were approved, referring only to data or information given in Steps 1 through 5. Do not introduce any new data or information in this section.

Step 7. Prepare concluding statement to indicate whether the proposal promotes segregation or discrimination.