

178.4

ASSIGNMENT OF STUDENTS  
BERKELEY UNIFIED SCHOOL DISTRICT  
AUGUST 1973

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# Joint Legislative Audit Committee

GOVERNMENT CODE: SECTIONS 10500-10504

## California Legislature

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November 20, 1973

Assemblyman Floyd L. Wakefield  
Room 4160, State Capitol  
Sacramento, California 95814

Dear Floyd:

Transmitted herewith is a report on the Berkeley Unified School District prepared in response to your request. The essence of the report is as follows:

- Approximately 45 percent of the Grade K-6 children in Berkeley Unified School District are assigned to other than neighborhood schools to maintain the same ratio of races in each school as in the district as a whole.
- Secondary schools of the district have been desegregated since 1964.
- Home-to-school transportation is provided at district expense only for elementary school students. The estimated cost for 1972-73 is \$443,000.
- The passage of Proposition 21 of the 1972 general election has had no effect on district's assignment of students in 1972-73 or future plans.

With my warm best wishes,

Sincerely,



VINCENT THOMAS, Chairman  
Joint Legislative Audit Committee

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## INTRODUCTION

We have reviewed the records of Berkeley Unified School District to determine if students are assigned to attend particular schools because of race or ethnic origin.

Since the mid 1960s, the California State Board of Education has urged school district governing boards to move towards the elimination of racial and ethnic segregation in schools. The United States Constitution, as interpreted by both federal and state courts since 1954, requires changes to achieve racial and ethnic balance in the schools.

In 1971, Sections 5002 and 5003 were approved by the Legislature and added to the Education Code, effective March 4, 1972. Section 5002 read in part:

"It is the declared policy of the Legislature that persons or agencies responsible for the establishment of school attendance centers or the assignment of pupils thereto shall prevent and eliminate racial and ethnic imbalance in pupil enrollment. The prevention and elimination of such imbalance shall be given high priority in all decisions relating to school sites, school attendance areas, and school attendance practices."

Sections 5002 and 5003 of the Education Code were almost identical to the State Board of Education Rules and Regulations contained in pre-existing Sections 14020 and 14021, Title 5, of the California Administrative Code.

Section 5003 of the Education Code placed the responsibility for carrying out the intent of the legislation with the State Board of Education. The State Board of Education had not adopted rules and regulations for implementing Sections 5002 and 5003 prior to the passage of Proposition 21.

The Legislative Counsel has provided us with opinion #14570, dated July 5, 1973, stating that:

"A school district was not required by Section 5002 of the Education Code to actually engage in any activity to eliminate racial imbalances in the schools under its jurisdiction during the time that the section was operative."

The full text of the opinion is attached as Appendix A.

In the statewide general election November 1972, the voters approved Proposition 21 which added to the Education Code:

"Sec. 1009.6. No public school student shall because of his race, creed, or color, be assigned to or be required to attend a particular school."

Proposition 21 also repealed Sections 5002 and 5003 of the Education Code, and Sections 14020 and 14021, Title 5, of the California Administrative Code.

The question presently before the courts is whether Education Code Section 1009.6 is constitutional or whether it violates the 14th Amendment of the United States Constitution. In February 1973 a superior court in Sacramento ruled Section 1009.6 to be constitutional. In May 1973 a superior court in San Bernardino ruled Section 1009.6 to be unconstitutional.

SUMMARY

	<u>Page</u>
- APPROXIMATELY 45 PERCENT OF THE GRADE K-6 CHILDREN IN BERKELEY UNIFIED SCHOOL DISTRICT ARE ASSIGNED TO OTHER THAN NEIGHBORHOOD SCHOOLS TO MAINTAIN THE SAME RATIO OF RACES IN EACH SCHOOL AS IN THE DISTRICT AS A WHOLE.	7
- SECONDARY SCHOOLS OF THE DISTRICT HAVE BEEN DESEGREGATED SINCE 1964.	9
- HOME-TO-SCHOOL TRANSPORTATION IS PROVIDED AT DISTRICT EXPENSE ONLY FOR ELEMENTARY SCHOOL STUDENTS. THE ESTIMATED COST FOR 1972-73 IS \$443,000.	10
- THE PASSAGE OF PROPOSITION 21 OF THE 1972 GENERAL ELECTION HAS HAD NO EFFECT ON THE DISTRICT'S ASSIGNMENT OF STUDENTS IN 1972-73 OR FUTURE PLANS.	11

## BACKGROUND

Unlike some other California school districts, Berkeley Unified School District has not been involved in litigation to force desegregation of the district's schools.

In response to community requests for the Berkeley Board of Education to study the effects of racial segregation in the district schools, the board adopted a plan for desegregating the secondary schools in May 1964. This was followed in January 1967 by a board statement of intent to desegregate the elementary schools. The organization plan for desegregation of the elementary schools was formally adopted by the Board of Education in January 1968, with implementation scheduled for September the same year.

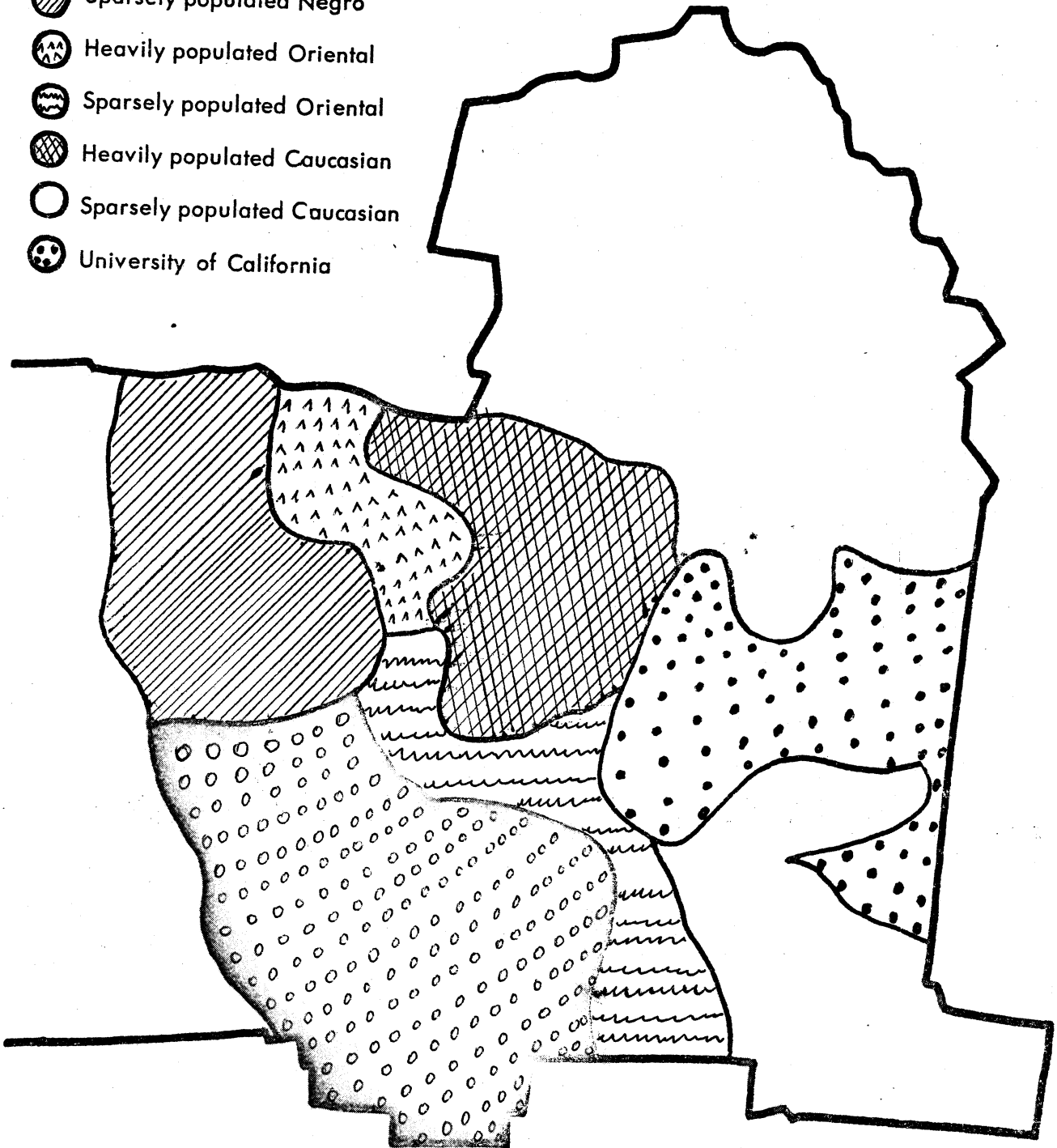
A detailed chronicle of the events leading to total integration of the district schools is shown in Appendix B.

In 1968, Berkeley had a population of slightly above 120,000 people with a racial distribution about 70 percent caucasian, 25 percent black and five percent oriental as shown on Exhibit I.

Residential patterns of segregation were reflected in the elementary schools. The four grade K-6 schools in the southwest section of Berkeley had black population ranging from 68.4 percent to 97.4 percent of the school student body.

### Legend

- Heavily populated Negro area
- ▨ Sparsely populated Negro
- ▲ Heavily populated Oriental
- ▩ Sparsely populated Oriental
- ⊠ Heavily populated Caucasian
- Sparsely populated Caucasian
- ⊙ University of California



Student Racial Distribution and Population Density  
in Berkeley



Since 1968, the white population has remained relatively constant whereas the minority population has increased. The racial/ethnic census in the fall 1972 reported a school population of 44.6 percent white, 44.2 percent black, 3.0 percent chicano and all others 8.2 percent.

The movement to integrate its schools and the many experimental and innovative programs offered by the district has brought considerable attention to the district. Berkeley was the first city with a population over 100,000 to use busing to achieve integration of all its schools.

ELEMENTARY SCHOOL ASSIGNMENTS

- APPROXIMATELY 45 PERCENT OF THE GRADE K-6 CHILDREN IN BERKELEY UNIFIED SCHOOL DISTRICT ARE ASSIGNED TO OTHER THAN NEIGHBORHOOD SCHOOLS TO MAINTAIN THE SAME RATIO OF RACES IN EACH SCHOOL AS IN THE DISTRICT AS A WHOLE.

Since implementation of the elementary desegregation plan in September 1968, home-to-school transportation has been provided by the district to assure the racial/ethnic balance in all elementary schools.

For the preceding three years, the average number of children bused has been:

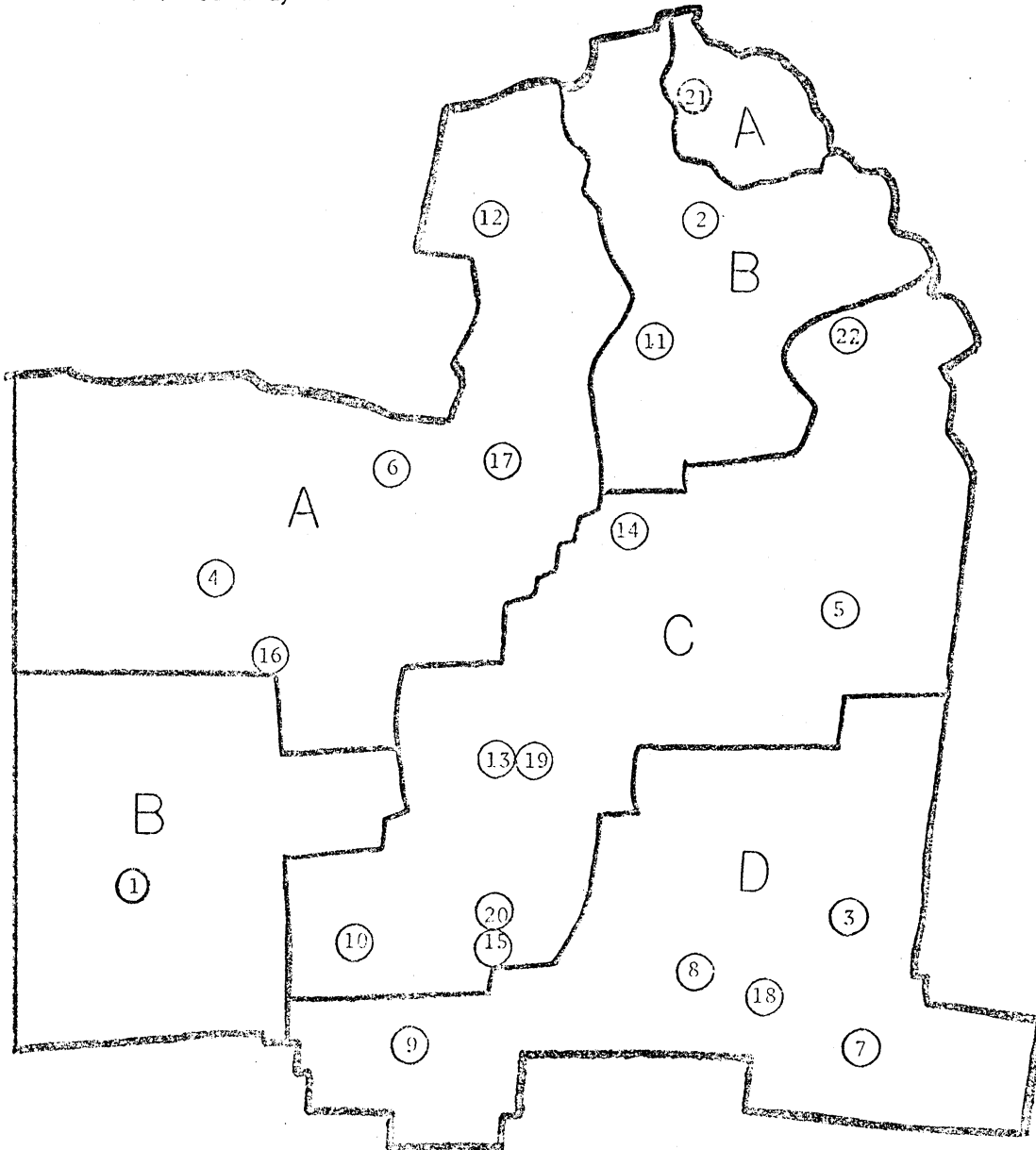
<u>Fiscal Year</u>	<u>Average Number Bused</u>	<u>Total K-6 Enrollment</u>	<u>Percent</u>
1970-71	3,175	8,583	36.9%
1971-72	3,313	8,397	39.4
1972-73	3,736	8,063	46.3

In addition to busing, reorganization of the elementary schools of the district was a part of the desegregation plan. All grade K-6 schools were converted to span either grades K-3 or 4-6. The four elementary schools in the southeast sector of Berkeley with the predominately black population were the schools designated to house grade 4-6.

The district was divided into four racially balanced attendance zones. Zones "A" and "B" are not contiguous.

LEGEND

- |                |                                    |
|----------------|------------------------------------|
| 1. Columbus    | 12. Thousand Oaks                  |
| 2. Cragmont    | 13. Washington                     |
| 3. Emerson     | 14. Whittier                       |
| 4. Franklin    | 15. Proposed Early Learning Center |
| 5. Hillside    | 16. West Campus, BHS               |
| 6. Jefferson   | 17. King                           |
| 7. John Muir   | 18. Willard                        |
| 8. Le Conte    | 19. Berkeley High                  |
| 9. Lincoln     | 20. East Campus, BHS               |
| 10. Longfellow | Continuation and Adult             |
| 11. Oxford     | 21. Tilden                         |
|                | 22. Grizzly Peak                   |



BERKELEY SCHOOLS AND ATTENDANCE ZONES

ASSIGNMENT OF SECONDARY STUDENTS

- SECONDARY SCHOOLS OF THE DISTRICT HAVE BEEN DESEGREGATED SINCE 1964.

Desegregation of the secondary schools was accomplished by reorganizing the three junior high schools of the district and changing attendance procedures. Since the district has only one high school, it always has been desegregated.

One of the junior high schools centrally located was designated as the school of attendance for all ninth-grade students. The district attendance boundaries were modified for the other two junior high schools providing racial/ethnic balance for all secondary schools.

COST OF BUSING

- HOME-TO-SCHOOL TRANSPORTATION IS PROVIDED AT DISTRICT EXPENSE ONLY FOR ELEMENTARY SCHOOL STUDENTS. THE ESTIMATED COST FOR 1972-73 IS \$443,000.

The desegregation plan for the elementary schools required the busing of students to achieve racial balance in the schools. The district contracted for bus service in 1968-69, 1969-70, 1970-71 and 1971-72. In 1972 the district began using district owned and operated equipment.

The costs for busing the elementary students for the last three years were:

<u>Fiscal Year</u>	<u>Cost</u>
1970-71	\$415,007
1971-72	458,508
1972-73 (Est.)	443,000

The plan requires most children to experience busing for one-half of their elementary school years. As shown in Exhibit II, attendance zones A and B are each divided into two parts. The parts are not contiguous, so that although children are not bused outside of their attendance zones except for safety reasons, some students are bused across intervening zones.

Tentative boundaries were established through the use of the latest census data for the city. In the five years since implementation, it has been necessary twice to change boundary lines to maintain the racial/ethnic balance within the zones.

DISTRICT PLANS

- THE PASSAGE OF PROPOSITION 21 OF THE 1972 GENERAL ELECTION HAS HAD NO EFFECT ON THE DISTRICT'S ASSIGNMENT OF STUDENTS IN 1972-73 OR FUTURE PLANS.

In view of the Board of Education's continuing and heavy involvement in total integration of the district schools, long prior to the passage of Proposition 21, and the legal questions concerning the constitutionality of Section 1009.6 of the Education Code which was added by Proposition 21, the district has made no changes in the assignment of students since the passage of Proposition 21. No changes are planned for 1973-74.



Walter J. Quinn  
Chief Deputy Auditor General

September 18, 1973

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Sacramento, California  
July 5, 1973

Honorable Vincent Thomas  
Assembly Chamber

School - Racial and Ethnic  
Imbalances - #14570

Dear Mr. Thomas:

QUESTION

You have asked if a school district was required by Section 5002 of the Education Code to actually engage in any activity to eliminate racial imbalances in the schools under its jurisdiction during the time that the section was operative.

OPINION

A school district was not required by Section 5002 of the Education Code to actually engage in any activity to eliminate racial imbalances in the schools under its jurisdiction during the time that the section was operative.

ANALYSIS

At the outset, we point out that the Supreme Court of California has held that the governing board of a school district is required to take affirmative steps, insofar as reasonably possible, to alleviate racial segregation in the schools under its jurisdiction, regardless of whether the

segregation is de facto segregation or de jure segregation (Jackson v. Pasadena City School Dist. (1963), 59 Cal. 2d 876, 881-882; see San Francisco Unified School Dist. v. Johnson, 3 Cal. 3d 937, 957-959; Serrano v. Priest (1971), 5 Cal. 3d 584, 604). The question here presented relates only to the provisions of Sections 5002 and 5003 of the Education Code.\*

Sections 5002 and 5003 were added by Chapter 1765 of the Statutes of 1971 and became operative on March 4, 1972. The sections were repealed by an initiative measure approved by the voters on November 6, 1972. The question is whether or not Section 5002 required a school district to undertake any activity during the time between the two dates. We do not think that it did, since Section 5002 merely declared the policy of the Legislature with respect to the prevention and elimination of racial and ethnic imbalances. Section 5002 provided as follows:

"5002. It is the declared policy of the Legislature that persons or agencies responsible for the establishment of school attendance centers or the assignment of pupils thereto shall prevent and eliminate racial and ethnic imbalance in pupil enrollment. The prevention and elimination of such imbalance shall be given high priority in all decisions relating to school sites, school attendance areas, and school attendance practices."

Section 5003 provided:

"5003. (a) In carrying out the policy of Section 5002, consideration shall be given to the following factors:

"(1) A comparison of the numbers and percentages of pupils of each racial and ethnic group in the district with their numbers and percentages in each school and each grade.

"(2) A comparison of the numbers and percentages of pupils of each racial and ethnic group in certain schools with those in other schools in adjacent areas of the district.

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\* All references to code sections are to sections of the Education Code unless otherwise noted.



"(3) Trends and rates of population change among racial and ethnic groups within the total district, in each school, and in each grade.

"(4) The effects on the racial and ethnic composition of each school and each grade of alternate plans for selecting or enlarging school sites, or for establishing or altering school attendance areas and school attendance practices.

"(b) The governing board of each school district shall periodically, at such time and in such form as the Department of Education shall prescribe, submit statistics sufficient to enable a determination to be made of the numbers and percentages of the various racial and ethnic groups in every public school under the jurisdiction of each such governing board.

"(c) For purposes of Section 5002 and this section, a racial or ethnic imbalance is indicated in a school if the percentage of pupils of one or more racial or ethnic groups differs significantly from the districtwide percentage.

"(d) A district shall study and consider plans which would result in alternative pupil distributions which would remedy such an imbalance upon a finding by the Department of Education that the percentage of pupils of one or more racial or ethnic groups in a school differs significantly from the districtwide percentage. A district undertaking such a study may consider among feasibility factors the following:

"(1) Traditional factors used in site selection, boundary determination, and school organization by grade level.

"(2) The factors mentioned in subdivision (a) of this section.

"(3) The high priority established in Section 5002.

"(4) The effect of such alternative plans on the educational programs in that district.

"In considering such alternative plans the district shall analyze the total educational impact of such plans on the pupils of the district. Reports of such a district study and resulting plans of action, with schedules for implementation, shall be submitted to the Department of Education, for its acceptance or rejection, at such time and in such form as the department shall prescribe. The department shall determine the adequacy of alternative district plans and implementation schedules and shall report its findings as to the adequacy of alternative district plans and implementation schedules to the State Board of Education. A summary report of the findings of the department pursuant to this section shall be submitted to the Legislature each year.

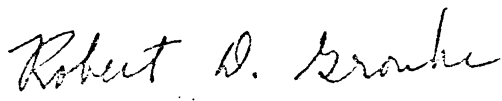
"(e) The State Board of Education shall adopt rules and regulations to carry out the intent of Section 5002 and this section."

Since Section 5002 was limited to a declaration of legislative policy, it did not impose a requirement upon school districts to undertake any particular activity to eliminate racial imbalances.

As to Section 5003, such requirements could have been imposed by regulations of the State Board of Education adopted under subdivision (e), but none were ever adopted. While Section 5003 required school districts to submit certain data and study and consider certain plans, it did not require school districts to undertake any activity to eliminate racial or ethnic imbalances in the schools under their jurisdiction.

Very truly yours,

George H. Murphy  
Legislative Counsel

  
By  
Robert D. Gronke  
Deputy Legislative Counsel

CHRONICLE OF EVENTS LEADING TO DESEGREGATION

THE BERKELEY STORY

**Winter 1957** A letter was sent to the Berkeley Board of Education from the NAACP asking when there would be racial equality in education. The letter was followed by the visitation of a representative of the black community to the Superintendent and a presentation to the School Board by an NAACP representative. A community service group also wrote to the Board requesting an end to segregated schooling.

**Summer 1958** A citizens committee was appointed to "study certain interracial problems in the Berkeley schools and their effect on education."

**Fall 1959** The committee reported on ways to improve certain aspects of the human relations climate of the schools. It did not recommend any degree of desegregation.

Changes implemented as a result of the citizens' study included creation of an Intergroup Education Project Office, more hiring of minorities, and a reassessment of textbook content.

**During 1962** Spokesmen for the Congress of Racial Equality confronted the Board with the reality of de facto segregation in Berkeley's schools and asked that a study be made and changes effected. Other citizen groups supported this request.

**January 1963** Another citizens' committee was appointed, this one with 36 rather than 16 members and with a board representation of race, economic and occupational condition, and points of view.

**November 1963** The committee reported its finding that residential segregation had created racial isolation in Berkeley's schools—with almost all of the black youths located in four schools in the lower section of the community and in one of the city's three junior high schools. The committee recommended total desegregation, kindergarten through secondary, and presented alternate plans by which this could be achieved.

**Winter 1963**

**Spring 1964** The meeting at which the committee reported its recommendation was attended by more than 2,000 persons. A subsequent series of public meetings was held, heavily attended, and spokesmen from a considerable segment of the community expressed strong opposition to racial integration in the schools.

**Early Spring**

**1964** A five-member staff committee worked on a desegregation plan based on the committee's recommendation. Meanwhile, public meetings continued throughout the community. Staff was involved in workshops. Every school parent group in the city held a public meeting on the citizens' committee findings and recommendation for desegregation.

**March 1964** The Superintendent recommended that the Board adopt the citizens' committee report in principle and assign staff to devise a plan incorporating the many suggested changes made by both staff and community.

**May 19, 1964** The Superintendent recommended to the Board that it adopt the desegregation plan based on the citizens' committee report and staff revisions. It called for total desegregation, from kindergarten on up. The Board voted to adopt the secondary school part of the plan and to table the plan for desegregation of the city's 14 elementary schools. At this meeting, attended by more than 3,000 persons, opponents of integration formed into a group called Parents for Neighborhood Schools and indicated that they would take measures to reverse the Board's decision.

The Board vote was unanimous. One member had previously resigned, leaving the Board at four. The plan adopted reorganized the city's three junior high schools, leaving one for ninth graders only. The boundary line for the other two was drawn up the center of the city, from the bay to the hills. This brought desegregation to all three schools. With the city having only one high school, it was automatically integrated. Desegregation of the secondary schools involved no district-conducted busing. From grade seven on, transportation is provided by each family unit.

### **After Board's Decision**

Petitions were circulated throughout the community calling for recall of the Board of Education and election of new members. Ten thousand signers were required and were obtained. The election was set for October. Pro-desegregation advocates formed the Friends for Better Schools and organized support of the Board and its action.

**Summer 1964** The unanimous consensus of countless long-time Berkeleyans is that no other issue has ever engendered in this community the kind of emotional expiation that occurred during the debate over desegregation of the three secondary schools. Meetings were continuous and generally highly agitated. The controversy eventually touched almost everyone in the entire community.

**October 6, 1964** The recall election resulted in a large plurality of citizen support for the Board and its desegregation action. Implementation of the plan had begun at the opening of school the month prior. The District's new superintendent was Neil Sullivan.

**February 1966** With ESEA funds, 240 elementary students from the four predominantly black elementary schools were bused to white "hill" schools to lessen class size in the "flats" schools and to provide the community with the beginning of a model of interracial education.

**April 1967** With very little prior community dialogue, but after hearing appeals from civil rights and teacher groups for an end to segregation in all grades, the Board unanimously agreed that it was time to bring integration to the elementary schools. The decision was preceded by a suggestion on the part of a small group of white parents for open enrollment of their children into the predominantly black schools as a public show of the immorality of segregated education.

**May 16, 1967** The Board set a timetable for elementary desegregation. It was to be implemented no later than fall 1968. The Board was to adopt a specific plan no later than January 1968 so that time could be provided for preparation of staff, students and community.

**Summer 1967** A seven-member district task force worked through the summer culling the many community suggestions on ways to desegregate and the many plans submitted nation-wide from institutes and study groups.

**Fall 1967** At a meeting of all school staff and then at a huge community-wide public meeting, five plans were reported by the task force as to ways of achieving desegregation. A series of meetings was held to elicit views of staff and community. Careful attention was placed on keeping public and school staff closely informed of all developments. All views and suggestions were recorded on charts to be shared with those who would assist the Superintendent in selecting the plan he would recommend to the Board. Many community meetings were held and the District sent representatives to all of them.

**October 1967** In making his selection of a plan, the Superintendent formed a committee of 35 educators, and together with them selected the K-3, 4-6 prototype for reorganization of the elementary schools. The Superintendent's recommendation was announced at a mass meeting, and more community meetings ensued. An addendum to the plan finally adopted reflected considerable suggestions for modification made by community persons and groups.

An Office of Elementary Integration was established after the prototypes were devised and announced to the community. A Speakers' Bureau operated from this office, supplying resource persons for informational meetings on the forthcoming desegregation.

The dialogue continued through the winter but the debate did not reach the controversial level that had occurred during the prior struggle over secondary desegregation. The District directed the dialogue along the channel of "how to do it" rather than "should we do it or not." Opposition was sporadically loud but minor. Those who did not agree were largely submitting without strong resistance. One call for a ballot on the subject of elementary integration withered quickly and a substitute plan advanced by a citizen failed to gather substantial support. This plan would have involved one-way busing, of black youngsters only.

**Jan. 16, 1968** At a meeting attended by over 2,000 people, the Board adopted the K-3, 4-6 organizational plan for desegregation of the elementary schools.

### **From Then Until School Opened**

**in September** Through the Office of Elementary Integration, plans were effected to prepare community, staff and students for the forthcoming reorganization. A district Integration Council was created through which the various levels of preparation would be supervised and implemented.