

178.1

ASSIGNMENT OF STUDENTS  
SANTA ANA UNIFIED SCHOOL DISTRICT  
JUNE 1973

# Joint Legislative Audit Committee

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September 20, 1973

Assemblyman Floyd L. Wakefield  
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Dear Floyd:

Transmitted herewith is a report on the assignment of students at the Santa Ana Unified School District prepared in response to your request. Reviews of other school districts are in progress. The report shows that 1,778 students will be bused during the 1973-74 school year at an estimated cost of \$264,000.

Other findings in the report are as follows:

- The district's construction program which was in process prior to passage of Proposition 21, and the district's grade restructuring program which commenced in 1972, were designed to achieve racial and ethnic balance in the schools and are included in the district's desegregation plan. The plan also purports to provide educational advantages so that it is possible to hold that its purpose is either to further the process of desegregation or to improve education.
- The district submitted its "Desegregation Plan" to the federal government in May 1973 as an active plan to obtain federal funds designated for school districts in the process of desegregation in 1973-74. Although the superintendent said that it was not expected that students would be bused for ethnic reasons, the plan, requiring minimum busing of students, has not been revoked by the board.

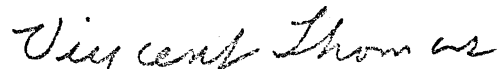
Assemblyman Floyd L. Wakefield  
September 20, 1973  
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- While attendance area changes and busing planned for 1973-74 will help to improve racial balance, individual students will not be assigned to schools based upon their ethnic background. The changes will primarily affect the eastern and southern portions of the district. These students will be bused because of the lack of schools near their residence and for reasons of traffic safety.
- The district's construction plans gave little consideration to economic factors in the location of schools. Had economy, rather than ethnic balance, been the primary concern, the vast majority of the cost of busing to be incurred in 1973-74 and subsequent years could have been saved.

The report concludes that busing will be required because the district is creating excess capacity in established and developed areas of the district, providing no capacity in newly developed areas, and not following natural attendance area boundaries.

With my warm best wishes,

Sincerely,



VINCENT THOMAS, Chairman  
Joint Legislative Audit Committee

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## INTRODUCTION

We have reviewed the records of Santa Ana 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, has required changes in assignment of pupils 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 pre-existing Sections 14020 and 14021, Title 5, of the California Administrative Code adopted by the State Board of Education in 1968.

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 in November 1972.

The Legislative Counsel issued opinion #14570 on July 5, 1973

(Appendix A), which states 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."

In the statewide general election November 1972, the voters approved Proposition 21 which added Section 1009.6 to the Education Code which provides as follows:

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.

The Orange County Counsel has advised the district that Proposition 21 is unconstitutional in his opinion, and therefore would have no effect upon the Santa Ana Unified School District's plan to achieve racial balance. A copy of this opinion is included as Appendix B.

SUMMARY

Page

DESEGREGATION PLAN

- The district's construction program, which was in process prior to passage of Proposition 21, and the district's grade restructuring program, which commenced in 1972, were designed to achieve racial and ethnic balance in the schools. They are included in the district's desegregation plan which also purports to provide educational advantages so that it is possible to hold that the purpose of the plan is either to further the process of desegregation or to improve education.

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APPLICATION FOR FEDERAL FUNDS FOR DESEGREGATION

- The district submitted a "Desegregation Plan" to the federal government in May 1973 as an active plan to obtain federal funds designated for school districts in the process of desegregation in 1973-74. Although the superintendent advised the auditor that it was not expected that students would be bused for ethnic reasons, the plan requiring minimum busing of students has not been revoked by the board.

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ATTENDANCE AREA CHANGES  
AND BUSING PLANNED 1973-74

- While attendance area changes and busing planned for 1973-74 will help to achieve racial balance, individual students will not be assigned to schools based upon their ethnic background. The changes will primarily affect the eastern and southern portions of the district. Students will be bused because of the lack of schools near their residence and for reasons of safety.

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COST CONSIDERATIONS

- 1,778 students will be bused during the 1973-74 school year at an estimated cost of \$264,245.
- The district's construction plans gave little consideration to economic factors. Had economy, rather than ethnic balance, been the primary concern, the vast majority of the cost of busing to be incurred in the 1973-74 and subsequent years could have been saved.

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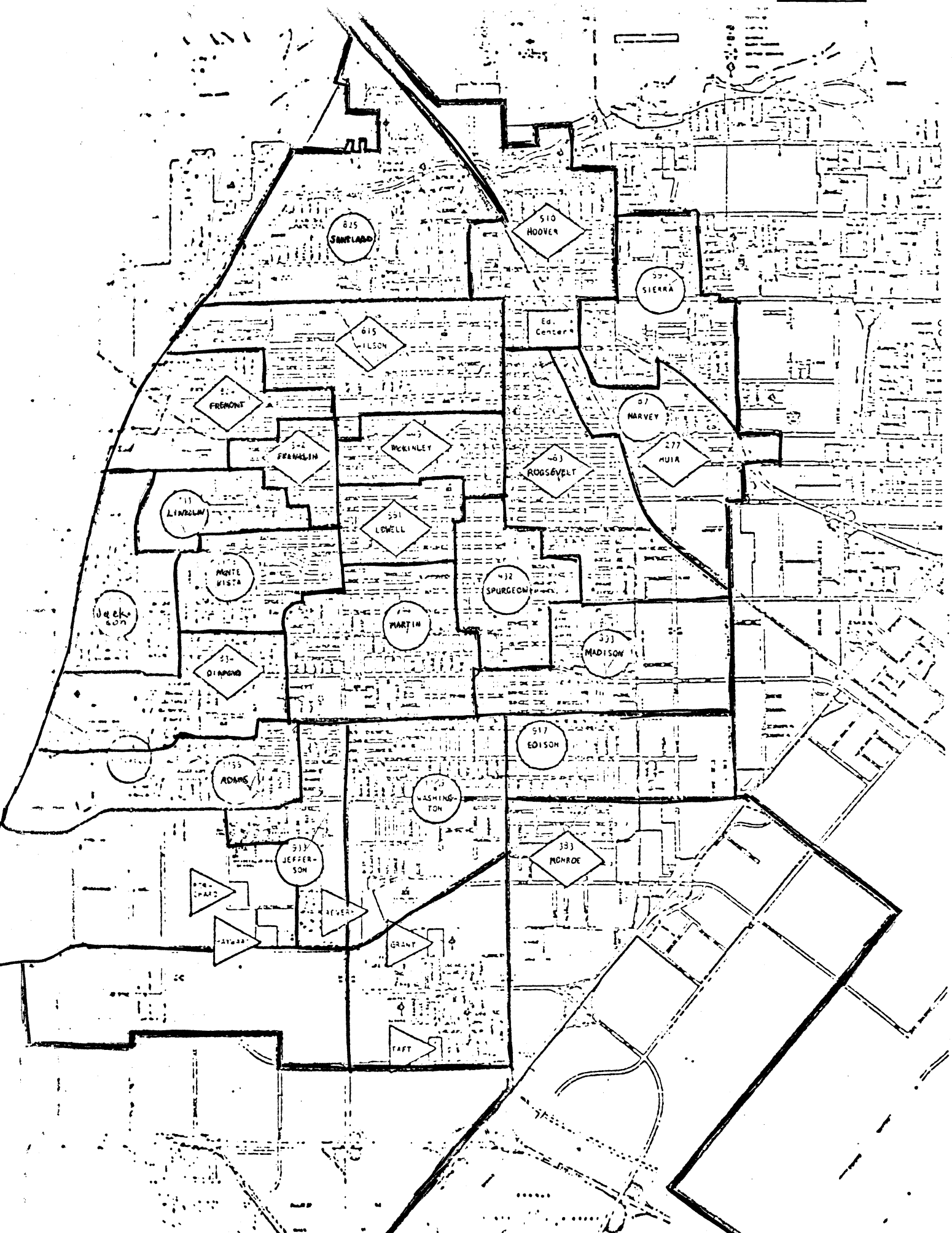


## DESEGREGATION PLAN

On December 9, 1969, the Santa Ana Board of Education determined that it would desegregate the Santa Ana Unified School District. The district studied:

- Redrawing of attendance areas and boundary changes to facilitate desegregation
- Constructing new schools and abandoning certain others that were located in heavily racially isolated areas
- Assigning students outside of their original attendance area to prevent racial isolation.
- Changing grade configurations to restructure schools to a K-5 from a K-6; to a 6-8 from a 7-9; and 9-12 from a 10-12.

The Santa Ana Unified School District operated 23 elementary schools, four junior high schools and three high schools prior to the February 9, 1971 earthquake. The district, as it existed on September 1, 1970, is shown on Exhibit I. After the earthquake, 10 elementary schools were abandoned because they did not meet earthquake safety standards.



On May 20, 1971 the district's voters approved a bond election providing money to replace the abandoned schools and to construct new elementary and junior high schools in conjunction with plans to desegregate. The plan called for rebuilding six of the ten unsafe elementary schools and the construction of one additional junior high school.

The Board of Education reaffirmed its policy of desegregating the district on August 4, 1971. On August 24, 1971, the board adopted a plan to achieve racial and ethnic balance, subject to modification based upon population shifts and traffic constraints. On March 28, 1972, the board adopted a plan which modified the plan adopted on August 24, 1971. This most recent plan was also subject to modification based upon population shifts and traffic constraints.

The March 28, 1972 plan (referred to as Plan "A") contains the following requirements:

- The attendance areas shall be redrawn to facilitate desegregation.
- The Fremont, Lowell, Wilson, Hoover, Roosevelt and Monroe Elementary Schools shall be rebuilt.
- The Franklin, McKinley, Muir, Spurgeon Elementary Schools shall not be rebuilt because of geographical constraints.
- One additional junior high school shall be built to accommodate the increase in junior high enrollment.
- Minimum busing of students will be used.

Other modes of achieving racial and ethnic balance, such as pairing plans and cluster plans, were evaluated before the board settled on Plan "A". Estimates on the number of children, who would be required to be bused to achieve ethnic balance (district-wide percentage of each ethnic group plus or minus 15 percent in each school) under the various plans, ranged from 900 to 4,000. Plan "A" calls for the reassignment of 1,692 students based solely on the ethnic background of the students (Exhibit II).

Reference was made in the minutes of the Board of Education to the desirability of initiating a voluntary desegregation plan (one originated by the district) in order to prevent the imposition of a mandatory plan by the courts.

The reduction of four elementary schools and the addition of a junior high school enabled the district to make grade configuration changes as part of the district's desegregation plan. The elementary schools were changed to kindergarten through fifth grade from kindergarten through sixth grade. The junior high schools were changed to sixth through eighth grade from seventh through ninth grade.

Attendance areas and boundaries were also redrawn to facilitate desegregation. The busing of students was planned as the final measure to ethnically balance the district's schools.

School construction began in 1972. With the exception of Fremont elementary school, all elementary school construction will be complete by September 1973. Only minor changes have been made in the attendance areas during the 1972-73 school year. These changes resulted from the completion of construction and the closing of schools which are being abandoned.

EXHIBIT II  
ETHNIC BALANCE

Number of Students to be re-assigned in and out to obtain balance

School	Out			In		
	Spanish Surname	Other White	Black	Spanish Surname	Other White	Black
Santiago		226		140		60
Hoover						50
Sierra					60	50
Fremont	112				206	
Wilson	82				31	
Roosevelt					45	70
Lincoln	146		311			
Lowell	65					
Monte Vista			159		2	
Jackson				121		
Martin				96	96	60
Madison				20	14	60
Diamond						
Adams				54		
Washington		171			16	60
Edison	34				71	
Jefferson		198		95		
Monroe	163				48	
Taft				107		60
TOTALS	602	595	470	633	589	470

Total 1692 to be re-assigned

The plan also purports to provide educational advantages (particularly in the case of the grade configuration changes) so that it is possible to hold that its purpose is either to further the process of desegregation or to improve education.

APPLICATION FOR FEDERAL FUNDS FOR DESEGREGATION

The Santa Ana Unified School District submitted a report entitled "Desegregation Plan" to the federal government on May 8, 1973 to qualify the district for grants of Emergency School Aid Act funds for 1973-74 under Title VII of Public Law 92-318 (29 U.S.C. 1601 et seq.). The essence of the "Desegregation Plan" is Plan "A" previously adopted by the board. The Emergency School Aid Act provides federal funds for school districts that are in the process of desegregation. The district has applied for grants totaling \$524,742 for special educational programs designed to aid school children in overcoming the educational disadvantages of minority group isolation.

To be eligible to obtain these grants, the district must have a plan to eliminate or reduce minority group isolation. The district must provide satisfactory assurances and information that such plan has been adopted and implemented, or will be adopted and implemented if assistance is made available.

Documents submitted by the district in applying for the grants clearly implied that Plan "A" was going to be followed including the reassignment and busing of students based upon ethnic considerations.

The district superintendent, however, said that no students were going to be assigned to or bused to a school because of race, color or creed. At present, Plan "A" is not being followed. In the future, he did not expect that students would be bused for ethnic reasons, other than voluntarily, even if Proposition 21 was declared unconstitutional.

A copy of a letter of May 14, 1973 from the superintendent to the Office of Civil Rights was provided us to demonstrate that the federal government was advised that the district was not going to follow Plan "A". The letter stated in part:

"This plan has not at any time been revoked by the Board, but changes in timing have occurred, as well as considerations as required by the Wakefield Amendment. These changes have been administrative decisions on the part of my staff and I, and have been communicated to the Board. As you know, a large part of the plan revolved around the major school construction program in the district. Construction delays have had an influence on the plan's implementation thus, necessitating these changes. The primary approach to eliminate racial isolation has been through the redrawing of attendance boundaries and in strategically locating new facilities."

"... The busing, as presented in March, 1972, was not implemented in February of 1973, because the new Fremont School was not constructed at that time due to extreme delays in acquiring property as well as the effect of the Wakefield Amendment."

The letter also refers to exhibits which were enclosed. These exhibits consisted of newspaper articles, some of which depicted Proposition 21 as unconstitutional and having no effect on the district's desegregation plan.



ATTENDANCE AREA CHANGES AND PLANNED BUSING

Attendance area changes and planned busing will help to improve racial balance.

Exhibit III shows the district's racial and ethnic count as of October 1972.

Exhibit IV shows the attendance areas for the 1973-74 school year.

RACIAL AND ETHNIC COUNT  
as of October 6, 1972

ELEMENTARY

School	Spanish Surname	Other White	Black	Oriental	American Indian	Total
Adams	234 (21.47%)	608 (74.13%)	37 (3.39%)	11 (1.01%)	0	1090
Diamond	215 (42.57%)	264 (52.28%)	24 (4.75%)	2 (.40%)	0	505
Dia. Annex	141 (40.40%)	180 (51.58%)	23 (6.59%)	4 (1.14%)	1 (.29%)	349
Edison	596 (74.97%)	190 (23.90%)	5 (.63%)	2 (.25%)	2 (.25%)	795
Franklin	223 (79.93%)	12 (4.30%)	44 (15.77%)	0	0	279
Fremont	362 (78.53%)	52 (11.28%)	45 (9.76%)	2 (.43%)	0	461
Harvey *	19 (27.53%)	48 (69.57%)	1 (1.45%)	1 (1.45%)	0	69
Hoover	64 (17.30%)	300 (81.08%)	0	4 (1.08%)	2 (.54%)	370
Jackson	189 (20.72%)	623 (68.31%)	85 (9.32%)	14 (1.54%)	1 (.11%)	912
Jefferson	36 (4.44%)	768 (94.70%)	2 (.25%)	4 (.49%)	1 (.12%)	811
Lincoln	304 (39.90%)	113 (14.83%)	333 (43.70%)	11 (1.44%)	1 (.13%)	762
Lowell	470 (69.94%)	168 (25.00%)	29 (4.32%)	5 (.74%)	0	672
Madison	242 (36.45%)	400 (60.24%)	15 (2.26%)	6 (.90%)	1 (.15%)	664
Martin	286 (33.93%)	514 (60.97%)	30 (3.56%)	12 (1.42%)	1 (.12%)	843
Mitchell*	45 (40.54%)	56 (50.45%)	8 (7.21%)	1 (.90%)	1 (.90%)	111
Monroe	366 (90.82%)	33 (8.18%)	2 (.50%)	2 (.50%)	0	403
Monte Vista	417 (37.57%)	140 (12.61%)	553 (49.82%)	0	0	1110
Muir	146 (73.00%)	50 (25.00%)	4 (2.00%)	0	0	200
Roosevelt	413 (63.44%)	230 (35.33%)	6 (.92%)	2 (.31%)	0	651
Santiago	249 (25.10%)	664 (66.94%)	66 (6.65%)	12 (1.21%)	1 (.10%)	992
Sierra	177 (29.40%)	408 (67.77%)	13 (2.16%)	3 (.50%)	1 (.17%)	602
Spurgeon	167 (45.26%)	192 (52.03%)	4 (1.08%)	6 (1.63%)	0	369
Wilson	377 (51.79%)	323 (44.37%)	23 (3.15%)	5 (.69%)	0	728
Taft	85 (10.52%)	657 (81.31%)	40 (4.95%)	26 (3.22%)	0	808
	235 (21.03%)	750 (76.92%)	8 (.82%)	11 (1.13%)	1 (.10%)	975
	6026 (36.61%)	7943 (51.14%)	1400 (9.01%)	146 (.95%)	14 (.09%)	15531

\*Special education schools (handicapped)

INTERMEDIATE

Lathrop	597 (63.38%)	311 (33.01%)	24 (2.55%)	8 (.85%)	2 (.21%)	942
McFadden	271 (21.64%)	909 (72.60%)	37 (2.96%)	31 (2.48%)	4 (.32%)	1252
Smedley	391 (38.15%)	271 (26.44%)	314 (30.63%)	18 (1.76%)	31 (3.02%)	1025
Willard	199 (27.60%)	485 (67.27%)	25 (3.47%)	12 (1.66%)	0	721
	1458 (37.01%)	1976 (50.15%)	400 (10.15%)	69 (1.75%)	37 (.94%)	3940

SENIOR HIGH

Santa Ana Hi	1051 (41.48%)	1353 (53.28%)	101 (3.95%)	23 (.90%)	10 (.39%)	2558
Valley	558 (27.27%)	1033 (50.49%)	436 (21.31%)	16 (.78%)	3 (.15%)	2046
Saddleback	783 (29.38%)	1794 (67.32%)	66 (2.48%)	19 (.71%)	3 (.11%)	2665
Teen Mother	18 (31.58%)	22 (38.60%)	16 (28.07%)	1 (1.75%)	0	57
tn. View	74 (34.10%)	92 (42.40%)	49 (22.58%)	1 (.46%)	1 (.46%)	217
	2494 (33.06%)	4304 (57.06%)	666 (8.85%)	60 (.79%)	17 (.23%)	7543

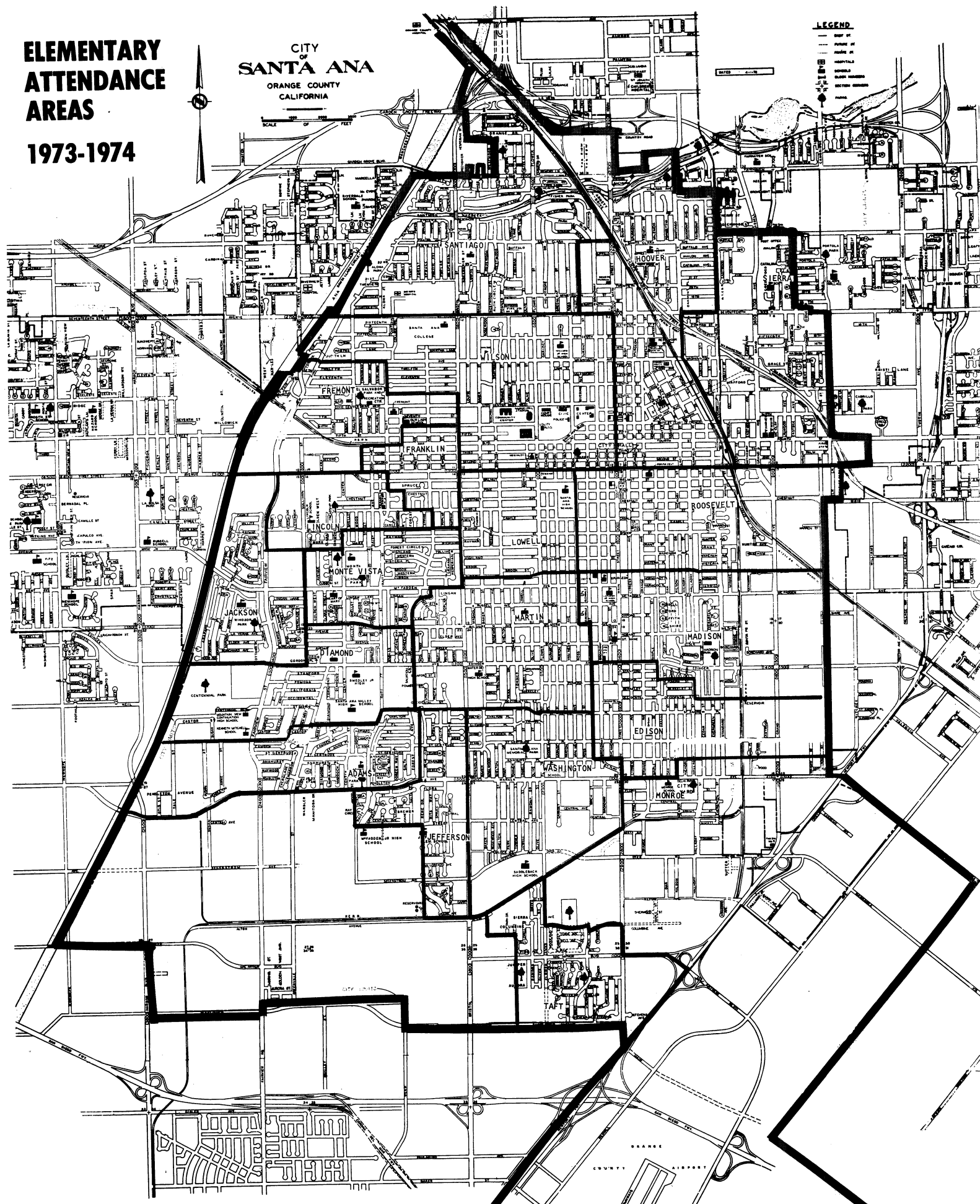
TOTAL

District	9980 (36.94%)	14223 (52.65%)	2468 (9.14%)	275 (1.02%)	68 (.25%)	27014
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# ELEMENTARY ATTENDANCE AREAS

1973-1974

CITY OF  
**SANTA ANA**  
ORANGE COUNTY  
CALIFORNIA



The elementary attendance area changes for 1973-74 will affect only the eastern half of the district. The only school site in the west scheduled to be closed (Franklin) will still be in operation during 1973-74.

Five of the 20 attendance areas (Hoover, Sierra, Roosevelt, Madison and Lowell) will change significantly as a result of the closing of three schools. Three attendance areas will change very slightly, i.e., a few blocks added or taken away (Wilson, Martin and Edison). Two schools in the southeast area are going to realign their boundaries (Taft and Monroe). The remaining 10 attendance areas (in the west) will remain unchanged from the boundaries of 1971.

The district projects that 1,778 students will be bused during the 1973-74 school year at an estimated cost of \$264,245. The students to be bused include two high school students, 564 junior high students and 1,212 elementary students.

The high school and junior high school attendance areas have not changed since 1971. The junior high school attendance areas will change in 1974 as a result of the construction of a new junior high school.

The vast majority of the 1,212 elementary students will be bused because of the construction or abandonment of schools in accordance with Plan "A" and the resulting decision involving the establishment of attendance areas. Elementary students will be bused from the following areas:

- Southwest part of district	427
- Fourth, fifth and sixth grade students of Fremont and Franklin elementary schools	313
- Taft attendance area	35
- Northern part of district	<u>437</u>
Total	<u>1,212</u>

## SOUTHWEST PART OF DISTRICT

Students from the southwest part of the district will be bused because there is no school in the attendance area. The area includes 427 students.

Although it was anticipated that the southwestern area would be the fastest growing area in the district, no provision was made for construction of a school in the area. Students from this area will be bused as far as four miles to four different schools. None of these students will be bused to the school nearest to their residence. One hundred and twenty (120) students will be bused to Roosevelt. Twelve other schools are closer to their residences. The superintendent stated that they will not be bused to the closer schools such as Jefferson, which is 94.5 percent other white, or Taft, which is 81.3 percent other white because these schools are already at capacity.

The students from the southwest part of the district are described by the superintendent as mixed but predominately other white. The area is a newly developing upper-middle income area. The students will be bused to schools in which the percentage of Spanish surname students ranges from 63 percent to 90 percent (Lowell, Roosevelt and Monroe). These schools are three of the six schools being rebuilt.

The superintendent advised us that these schools were planned, anticipating an increase in students throughout the district; now the projection is that enrollment will be declining. These schools are now expected to have more capacity than will be required even after redrawing the attendance areas. Therefore, these schools will absorb students from areas where the schools are not being rebuilt.

FOURTH, FIFTH AND SIXTH GRADE STUDENTS  
FROM FREMONT AND FRANKLIN ELEMENTARY SCHOOLS

Three hundred and thirteen (313) of the elementary students to be bused are fourth, fifth and sixth graders from Fremont and Franklin elementary schools. These schools will be operated as kindergarden through third grades for the 1973-74 school year.

Two hundred and eighteen (218) students will be from the Fremont area. The Fremont area is 79 percent Spanish surname, 11 percent other white, 10 percent black. One hundred and fifty eight (158) students will be bused to Santiago. Santiago is 25 percent Spanish surname, 67 percent other white, 7 percent black. Sixty (60) students will be bused to Hoover. Hoover is 17 percent Spanish surname, 81 percent other white, no blacks. Busing from the Fremont area will be discontinued when construction of the new Fremont school is completed.

Ninety five (95) students will be bused from Franklin to Lincoln. Franklin is 80 percent Spanish surname, 4 percent other white, 16 percent black. Lincoln is 40 percent Spanish surname, 15 percent other white, 44 percent black.

TAFT ATTENDANCE AREA

Thirty five (35) students living in what was previously the Taft attendance area have been assigned to Monroe. These students must be bused for safety reasons. The Taft area is 11 percent Spanish surname, 81 percent other white, 5 percent black, and 3 percent oriental. Monroe is 91 percent Spanish surname, 8 percent other white, and 1/2 percent oriental.

NORTHERN PART OF THE DISTRICT

Four hundred and thirty seven (437) elementary students will be bused for distance or safety reasons because of the way the attendance areas are drawn for 1973-74 in the northern portion of the district.

After the closing of Muir Elementary School and the reassignment of Muir students to Hoover and Sierra, 290 students will be bused because the Santa Ana freeway divides the new attendance areas. Students living on one side of the freeway, attending on the other side, must be bused for safety reasons.

One hundred and forty seven (147) students will be bused to Wilson for safety reasons. One hundred and twenty five (125) of the 147 students reside in an area which formerly was in the McKinley attendance area. The McKinley school has been abandoned and converted to a park.

The four northernmost elementary schools will have 655 students bused to school and yet still will be operating 153 students below capacity, accounted for as follows:

	<u>September 1973 Capacity</u>	<u>Projected Enrollment</u>	<u>Under Capacity</u>	<u>To Be Bused In</u>	<u>Under Capacity Without Busing</u>
Hoover	630	571	59	242	301
Sierra	600	568	32	108	140
Santiago	780	778	2	158	160
Wilson	<u>750</u>	<u>690</u>	<u>60</u>	<u>147</u>	<u>207</u>
	<u>2,760</u>	<u>2,607</u>	<u>153</u>	<u>655</u>	<u>808</u>

COST CONSIDERATIONS

The projected costs for busing the 1,778 students estimated for 1973-74 is:

Elementary	\$182,604
Junior High	<u>81,641</u>
Total	<u>\$264,245</u>

Upon completion of the Fremont elementary school, \$29,825 of costs will terminate. The balance of the busing costs will be ongoing. The completion of the remaining elementary school and the new junior high school, the continuing decline in students in the areas of school construction and the growth of outlying areas with no schools may require increased busing in future years.

Each of the five new schools to be in operation in September 1973 will have extra capacity, even after changing attendance over boundaries. Students will be bused to all five schools to use some of the extra capacity.

Had economy, rather than ethnic balance, been the district's primary concern, the vast majority of the cost of busing could have been saved. For example:

The Santa Ana freeway passes through the northeast corner of the district. Students living on one side of the freeway and attending school on the other side must be bused for safety reasons. The projected number of elementary students living north of the freeway for



1973-74 is 789 students. According to the district's administration, the most efficient and desirable school size is 700-800 students. The district had two schools north of the freeway, Sierra and Hoover. Hoover was damaged and had to be abandoned or rebuilt as a result of the 1971 earthquake. Economic consideration would indicate the Santa Ana freeway would be a logical area boundary.

In line with the district's desegregation plan, it was decided that Hoover would be rebuilt and the district would close Muir, a school located a few blocks south of the freeway. The Muir area would be divided and students bused to Hoover and Sierra. The area is predominately other white north of the freeway and predominately Spanish surname south of the freeway. Ethnic balance will be improved.

The projections for 1973-74 are that 350 students will be bused (242 to Hoover and 108 to Sierra). The schools will still be operating under capacity. The yearly cost of this busing is estimated at \$52,216.

In general, the district's plans, while emphasizing ethnic balance, included the economic consideration of constructing larger and thus more economic size schools. However, the economic advantages of the large schools are diminished or eliminated when their location requires continuing busing to utilize their capacity.

Busing will be required because the district is:

- Creating excess capacity in established and developed areas of the district,
- Providing no capacity in newly developing areas,
- Not following natural attendance area boundaries.

Capital and operating costs of alternatives would have to be considered for the district to determine exact net savings from reduced busing.



Walter J. Quinn  
Acting Deputy Auditor General

August 9, 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.

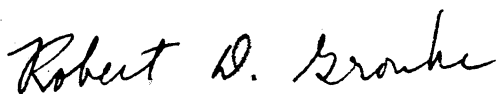
"(e) The State Board of Education shall adopt rules and regulations to carry out the intent of Section 5002 and this section."

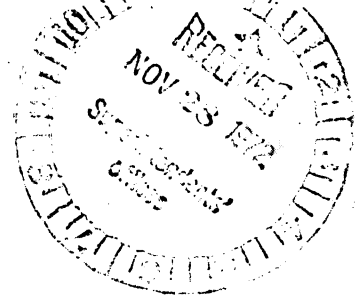
Since Section 5002 was limited to a declaration of legislative policy, it did not impose a requirement upon school districts to undertake any particular activity to eliminate racial imbalances.

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   
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November 27, 1972

FILE NO.: SS4-90

DEPUTIES

Board of Education  
Santa Ana Unified School District  
1405 French Street  
Santa Ana, California 92701

Attention: Charles F. Kenney, Ed.D.  
Superintendent

Re: Proposition 21

Gentlemen:

This is in response to the request made by the governing board at its meeting of November 14 for a formal opinion on the legal effect of the passage of initiative measure Proposition 21 at the general election held November 7, 1972, on the District's pupil assignment plan.

The measure added Section 1009.6 to the Education Code to provide as follows:

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

The proposition also repealed former Sections 5002 and 5003 of the Education Code and regulations commencing at Section 14020 of Title V of the California Administrative Code relating to attendance areas and practices.

We understand that legal action has been instituted in another county to test the constitutionality of Proposition 21. A definitive decision must of course await the outcome of that action.

However, in the meantime, it is our view that the provisions of Section 1009.6 are unconstitutional and therefore would have no effect on the District's school assignment program. Our reasoning is set forth below.

In the case of North Carolina Board of Education vs. Swann (1971) 28 L. Ed. 2d 586, the United States Supreme Court held unconstitutional a North Carolina Statute prohibiting assignment on the basis of race, since the prohibition would hamper the ability of local school authorities to fulfill their constitutional obligations of disestablishing a dual system.

While the Swann opinion was concerned only with de jure segregation (that created by governmental action), the California Supreme Court has indicated that at least in California the same reasoning will be applied with respect to de facto segregation.

In San Francisco Unified School District vs. Johnson, 3 Cal. 3d 937, (1971), the California Supreme Court refused to distinguish between de jure and de facto segregation. The holding of the case was that Education Code Section 1009.5, the so-called "anti-bussing statute" merely prohibited a student from being required to take any particular type of transportation but that if it were construed so as to require parental consent to the assignment of a pupil for the purpose of remedying de jure segregation it would violate the constitutional mandate. The Court further stated that it would be enormously difficult to determine the extent of de jure segregation, and refused to hold Section 1009.5 unconstitutional only as applied to de jure districts. It further stated that to the extent that that section lent support to de facto segregation, it could not be upheld constitutionally and that once the State undertakes to preserve de facto school segregation such State involvement transforms the setting into one of de jure segregation. 3 Cal. 3d 957-958.

We believe the holdings in the two cases lead to the conclusion that Education Code Section 1009.6 is unconstitutional. The fact that Section 1009.6 was an initiative measure does not change its substantive defect. An initiative which gave an owner of real property "absolute discretion" to convey his property to whomever he chose was held unconstitutional as State action to discriminate. Mulkey vs. Reitman (1966) 64 Cal. 2d 529. The California Supreme Court Opinion was upheld by the United States Supreme Court. Reitman vs. Mulkey (1967) 18 L. Ed. 2d 830.

Finally, a statute which conflicts with the constitution is to that extent void and has no force or legal existence. Reclamation



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District vs. Superior Court (1916) 171 Cal. 672, 677. It is therefore our conclusion that Proposition 21 adding Section 1009.6 to the Education Code has no effect on the District's pupil assignment plan.

Very truly yours,

ADRIAN KUYPER, COUNTY COUNSEL

By Iryne C. Black  
Iryne C. Black, Deputy

ICB:sb