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CALIFORNIA STATE BOARD OF EDUCATION

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July 12, 1973

The EQUAL EDUCATIONAL OPPORTUNITIES COMMISSION presented the attached report to the State Board of Education at its July 12 meeting. The following action was taken:

That the State Board of Education receive "Affirmative Action, A Design to Promote and Improve Minority Hiring Practices" as a progress report and anticipates the Commission's completion of a final draft.

It was recommended that State Board of Education members send any comments and suggestions regarding the report to the Equal Educational Opportunities Commission.

DRAFT

AFFIRMATIVE ACTION

A Design to Promote and Improve Minority Hiring Practices

EQUAL EDUCATIONAL OPPORTUNITIES COMMISSION

San Francisco, California
June 7, 1973

This Commission is solely responsible for the material contained therein

PREFACE

This plan was developed by staff for the Department of Education with advice and assistance from the Committee on Affirmative Action of the Equal Educational Opportunities Commission and is presented as a recommendation to the State Board of Education by this Commission.

Committee on Affirmative Action

Mr. Stewart Yee, Chairman

Mr. James O. Lewis

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A. NEED FOR AFFIRMATIVE ACTION PROGRAMS

The most recent racial and ethnic survey of California public schools (fall, 1971) indicates that 10.6 percent of all professional staff positions are held by members of racial and ethnic minority groups, while nearly 29 percent of all students are members of those groups. Comparison with data collected in a similar survey taken in fall, 1967, shows a continuing lag in the representation of minorities at the professional staff level. Minority students increased from 25 to 29 percent during that period (1967-1971), while minority teachers and other professional staff increased only from 8.6 to 10.6 percent.

Not only is there a lag in staff representation of minorities in general, but for some minority groups any change in representation is relatively insignificant. For example, while White majority-group teachers changed from a ratio of 1:22 to a ratio of 1:20 with respect to White students, Black teachers changed from 1:50 to 1:46 with respect to Black students, and Spanish-surnamed teachers only from 1:165 to 1:152 with respect to Spanish-surnamed students.

The largest minority group in the student population, those of Spanish surname, with 16 percent of all students, in 1971 had 2.6 percent of classroom teachers and 2.7 percent of all professional staff in the state. Blacks comprised 9.3 percent of all pupils in the student population, however, they accounted for 5.1 percent of the teachers and only 5.2 percent of the professional staff in the state. Asians, the third largest minority group, provided the only example of parity with 2.2 percent of all pupils and the same percent of teachers, although with relatively few principals (0.6 percent). American Indians, together with Filipinos and other Nonwhites, comprised 1.5 percent of the pupil population and 0.6 percent of professional school staff.

Schools in a few metropolitan counties reported most of the minority professional staff in the state, with one of the larger counties alone reporting 59 percent of all Blacks, 46 percent of all Asian staff, and 35 percent of all Spanish-surnamed staff.

The California public school system, with few exceptions, employs a disproportionately small number of teachers, counselors and administrators who are members of racial and ethnic minority groups. Discriminatory hiring and promotional practices in the past, and to some extent at present, are responsible for this situation. The limited availability of minority certificated personnel also contributes to the problem. Although many school districts conduct in-state and out-of-state recruiting, they generally have not increased their minority staff levels.

A number of school districts have expressed a need for a more effective plan through which minority staff can be obtained. From information based on consultation with the personnel officers of these districts, it is evident that the adoption of anti-discriminatory policies alone cannot

assure a racially and ethnically representative staff. Such policies must be accompanied by a planned set of activities through which the candidates with the best combination of training and ability can be selected for district service.

The problem of inadequate representation and underutilization of minorities and women in leadership roles in California public schools is seen not only as an example of career discrimination, past and present, but as a denial of educational resources and opportunities for all students in the system. This is particularly true in terms of minority-group students who would benefit from the presence of role models who could make a significant contribution to motivation, improved self-image, empathy and understanding of the culture, heritage and learning problems of minority-group children.

B. AUTHORITY FOR AFFIRMATIVE ACTION PROGRAMS*

On June 13, 1968, the California State Board of Education approved a "Position Statement on Assignment of Teachers of Different Racial and Ethnic Groups." In that statement, the State Board of Education pointed out the educational value of racial and ethnic minority staff. It also urged "...aggressive state and nationwide efforts by California school districts to seek out and employ racial and ethnic minority teachers."

On September 23, 1971, Governor Ronald Reagan issued the "Code of Fair Practices for the State of California." It stated in part, "Justice demands that every citizen consciously adopt and accentuate a personal commitment to affirmative action which will make equal opportunity a reality." The statement continued, "The Board (State Board of Education) shall provide incentive and encourage the recruitment of quality administrators and teachers who will accept employment and private residence in those school districts where quality education is most critically needed. The Board shall also pursue programs promoting fair employment practices for certificated teachers...."

Title VII of the Civil Rights Act of 1964 as amended by the Equal Employment Act of 1972, specifically forbids employment discrimination on the basis of race, color, religious creed, national origin and sex. Further, California Education Code Sections 13274 and 13732 prohibit discrimination on the basis of race, color, religious creed or national origin in the employment of certificated and noncertificated staff. Presidential Executive Order 11246 as amended by 11375 and federal regulations prohibit recipients of federal contracts from discrimination in employment on the basis of race, color, religion, sex or national origin. Revised Order No. 4, which implements and supplements Executive Order 11246, requires that a contractor maintain a written affirmative action plan. It also requires a contractor to determine whether minorities and women are underutilized in its present work force, and if that is the case, to develop as part of its affirmative action program specific goals and timetables designed to overcome

*See Appendices A and B

that underutilization. The guidelines also call for affirmative steps to be undertaken to attract more minority and women applicants for employment consideration.

The Civil Rights Act, Title VI, July 2, 1964, forbids discrimination on the grounds of race, color or national origin (not sex) in federally assisted programs, by way of grant, loan or contract (but exempting employment practices except where a primary objective of federal financial assistance is to provide employment).

The Higher Education Act of 1972, Title IX, prohibits sex discrimination in federally assisted educational programs and activities in schools of all types and at all levels.

C. WHAT IS AFFIRMATIVE ACTION

Affirmative action programs are those planned activities designed to actively and aggressively seek and hire persons of minority racial and ethnic backgrounds and women. It is a conscious step taken by a hiring authority to assure equal employment opportunity.

Affirmative action requires school districts to do more than ensure employment neutrality with regard to race, color, religion, sex, and national origin. As the phrase implies, affirmative action requires the employer to make additional efforts to recruit, employ and promote qualifiable and qualified members of groups formerly excluded, even if that exclusion cannot be traced to particular discriminatory actions on the part of the district. The premise of the affirmative action concept is that unless positive action is undertaken to overcome the effects of systemic institutional forms of exlusion and discrimination, a benign neutrality in employment practices will tend to perpetuate the status quo ante indefinitely.

Affirmative action requires the elimination of all existing discriminatory conditions, whether purposeful or inadvertent. A district must carefully and systematically examine all of its employment policies to be sure that they do not operate to the detriment of any persons on grounds of race, color, religion, sex or national origin. The district must also ensure that the practices of those responsible in matters of employment, including all administrators and supervisors, are nondiscriminatory.

It requires imaginative, aggressive and sustained action by a district's staff to devise recruiting, training and career advancement program that will result in increased minority and women representation so as to more closely reflect the representation of minorities and women in each of the areas served. This effort shall be directed at all levels of responsibility in the district. Such programs assume a district's commitment to comply in good faith with all state and federal laws, rules and regulations, including the California Code of Fair Practices.

This concept is not new. It was further developed in the rules and regulations of the Office of Federal Contract Compliance in the U. S. Department of Labor published May 28, 1968. These rules and regulations, commonly known as Revised Order No. 4, contain the procedures to implement the policy statements of Executive Order 11246 as amended by Executive Order 11375; Title VII of the Civil Rights Act with 1972 Amendments.

In order to systematize future hiring and promotional practices and remedy existing problems, school districts shall formally develop, adopt and implement a program of affirmative action to assure equal employment opportunities for minority-group persons and women.

D. ELEMENTS OF AN AFFIRMATIVE ACTION PROGRAM

An effective affirmative action program should contain the following:

1. Policy Statement

Effective affirmative action programs begin with a policy statement adopted by the district's board of trustees in which is set forth the board's commitment to equal employment opportunities. It must further authorize the development and implementation of a plan.

The policy statement should be action-oriented and should specify that every effort will be made to recruit, train and promote in such a way that qualified individuals from groups that have been victims of discrimination based on race, ethnic origin or sex will have special opportunity to be appointed to teaching, counseling and administrative positions as vacancies occur.

"Special opportunity" would include a revision of current employment practices that will facilitate the recruitment, training, employment and promotion of minorities and women. It is expected that emphasis will be placed on training and upgrading opportunities of those whose skills and attitudes are crucial to the ultimate success of the program.

The policy statement should be sufficiently definitive so as to prevent misinterpretation, yet flexible enough to allow for changes as new needs arise. As an extension of the policy, the board should direct the superintendent to develop administrative regulations and procedures to identify specific responsibilities. Such regulations should include the following concepts:

(a) Promote minority-group and women candidates to central office and building administrative positions as a means of demonstrating that the affirmative action program has upward movement at all levels;

(b) Assign minority-group persons to specialized assignments such as curriculum assistant, acting administrative positions, nonteaching administrative assignments and administrative internships.

2. Equal Employment Responsibilities and Duties

The board of trustees and superintendent have the final responsibility for assuring equal opportunity in recruitment, promotion, retention, compensation and training for improving minority representation.

A specific person with important administrative stature should be appointed as the coordinator of the affirmative action program and should be directed to implement the program in the district. In smaller districts, the person who handles personnel matters must be responsible for the development and implementation of the affirmative action program.

Specific responsibilities and duties for this position should be assigned and should include, but not necessarily be limited to, the following:

(a) Develop and implement a districtwide affirmative action program;

(b) Develop reporting procedures to assist in the identification of problems and to recommend solutions for overcoming deficiencies;

(c) Provide guidance to central office personnel and local site administrators and staff;

(d) Develop monitoring procedures to determine progress attained in achieving goals according to established timetables;

(e) Develop and execute result-oriented programs and procedures designed to eliminate utilization deficiencies in all areas where deficiencies exist;

(f) Establish procedures for continuing appraisal of equal employment opportunities activities, rules and regulations at the local, state and federal levels;

(g) Make district's policy known through establishing liaison with community groups, recruitment sources, minority organizations and educational institutions;

(h) Insure that promotions, transfers and other personnel transactions are carried out in keeping with the policy;

(i) Maintain an active file of information on agencies, organizations and academic institutions involved in the training of qualified and qualifiable minority and female personnel in order to determine the availability of such individuals for employment referrals for teaching, administrative and staff-support positions;

(j) Develop and implement training programs to prepare minority persons and women for employment and upward mobility throughout the system;

(k) Assist in the resolution of problems incidental to the implementation of the affirmative action program, process grievances and recommend settlement of conflicts and/or disputes.

(l) Insure a special condition requiring all persons, vendors, firms, or corporations supplying goods, material, equipment or services of any kind to school districts, to certify that each, as a contractor with the district, is an equal opportunity employer and has made a good-faith effort to improve minority and women representation in employment.

(m) Provide the board of trustees and superintendent with an annual report as to the racial and ethnic compositions of employees in the district and of the success of the program;

(n) Use the phrase "An Equal Opportunity Employer" on all job announcements.

3. Analysis of Staff--Identification and Delineation of Problem

An important step in developing an affirmative action program is to determine statistically the racial and ethnic composition of existing staff according to racial or ethnic and to sex identification. Every facet of employment should be examined including certificated and classified categories to see where and how the policy of affirmative action can be implemented. Such a review should extend beyond the collecting of statistical data and should involve the following proccesses:

(a) An analysis of all certificated and classified categories of employment (faculty, support staff and administration) to determine present utilization and underutilization of minorities and women in terms of the racial and ethnic population of the school district;

(b) A systematic and continuing review of special skills, qualifications and abilities of present minority and women employees to determine the possibility of upgrading or lateral movement into other job classifications to promote equitable distribution of staff;

(c) An examination of the entire selection process and of present standards and procedures to determine if minority and women applicants have been denied equal employment opportunities;

(d) A determination of the availability of prospective minority and women employees to meet the total needs of the district;

(e) A review of employment manuals and forms to make certain that statements, comments or questions which could be interpreted as discriminatory are eliminated; and that particularly where the application is concerned, an affirmative action statement is included. All of these must be viewed in light of the policy statement which the board of trustees has issued;

(f) Regular review of the activities of personnel office staff to assure that all persons carry out the intent of the policy.

4. Internal/External Dissemination of Policy

It is important that all administrative personnel be made aware of the board of trustees' policy and understand their direct responsibility and obligation to assure effective compliance. Toward this end the following activities should be initiated:

(a) Meet with all administrative, teaching, and support-staff personnel to explain the affirmative action program as well as individual responsibility for effective implementation, making clear the commitment of the board of trustees and superintendent;

(b) Post on bulletin boards in personnel office the policy of equal employment opportunity and federal and state posters prohibiting discrimination;

(c) Include in orientation material for new personnel the equal employment policy statement;

(d) Report to all administrators, supervisors and minority organizations the results of the affirmative action program;

(e) Publicize periodically in the district newsletter and other district media the equal employment policy;

(f) Submit announcement of the policy and the affirmative action program to all minority-group organizations; local, city and county human relations commissions; agencies of city-county government and local publications and media;

(g) Inform all recruiting sources in writing of the equal employment policy and program and solicit their assistance;

(h) Inform all statewide and local teacher organizations, placement offices of teacher training institutions, and other state and local employment agencies of the equal employment policy and program and request their cooperation.

5. Goals and Timetables

In order to guarantee and accelerate the employment and promotion of minority-group persons and to move affirmatively in an effort to correct imbalances of personnel in terms of racial, ethnic and sex identification, school districts should devise reasonable goals and timetables.

Goals are projected levels of implementation resulting from a personnel analysis of the district and a study of what can reasonably be done to remedy any deficiencies that may be found, given the availability of qualified and qualifiable minorities and women and expected turnover in the work force.

Goals are not and should not become "quotas" or rigid proportions. Neither should they prescribe any final number or percentage of minority or women employees. They should relate both to the qualitative and quantitative needs of the district. The following factors emphasize the importance of goals and timetables:

(a) Goals and timetables provide excellent tools by which the success of the affirmative action efforts can be measured;

(b) A timetable must be established as a factor by which success can be determined;

(c) Goals must be measurable and attainable within a specific period of time;

(d) Goals should be periodically reviewed and revised to meet the needs of the district;

(e) Goals should serve to inform the public and district personnel of the desire and need to increase minority employment.

6. Internal Audit Procedures

In an effort to assure the implementation of the equal employment policy and the success of the program, records of new hires, transfers, promotions and terminations should be monitored in the following manner:

(a) A tally should be maintained showing the ethnic, racial and sex identification of each applicant;

(b) A record should be kept of all hires in all component programs showing name, racial or ethnic and sex identification.

(c) A record should be kept of all promotions, job titles and pay rates;

(d) An exit interview should be held with all employees who terminate or request a transfer to determine the reason(s) for their actions;

(e) None of the above shall be used to discriminate against any person or group because of race, color, religion, sex or national origin. Affirmative action will be taken to ensure that applicants are employed and that employees are treated during employment without regard to these factors.

The audit will assure compliance with the objectives of the affirmative action plan and indicate the statistical progress toward realization of the program's goals.

7. Recruitment

In the area of recruitment, it is found that school districts cannot rely on conventional methods to create a fully integrated staff. The district cannot wait for minority applicants to appear. It must move out in affirmative recruitment programs, tapping all sources, to assure that men and women of all racial and ethnic backgrounds have an opportunity for employment.

Following are some of the specific aspects of a positive action program:

(a) All reasonable recruitment sources should be used to attract minority and women applicants. Such sources should include the news media, personal contact, out-of-district and out-of-state training institutions and organizations, and the Bureau of Intergroup Relations of the State Department of Education;

(b) Special recruiting efforts should be directed to minority-group organizations and to particular geographic areas where specific minority candidates are likely to be found.

Out-of-state recruiting for certificated personnel should be concentrated in those geographic areas such as the South and Southwest where minority candidates are known to be available.

(c) Visits should be made to universities and colleges with large numbers of minority candidates.

Many school districts will find that the best referral sources are minority persons currently employed by the district. A concerted effort should be made to tap this resource in order to keep a continual flow of minority and women applicants for administrative and teaching positions.

E. SUGGESTED PROCEDURE FOR DEVELOPING PLAN

The success of a school district's affirmative action program may be dependent in a large part upon the willingness and ability of the personnel department and staff to assist in its development and implementation. Therefore, the Equal Educational Opportunities Commission suggests that personnel administrators involve members of their faculties, supervisory personnel and representative members of the community in the process of developing an information base, determining potential employee availability, establishing goals and timetables, and monitoring and evaluating the effectiveness of the plan. A number of districts have successfully established faculty or joint faculty-staff advisory committees or task forces to assist in the preparation and administration of its affirmative action obligations. Particular attention should be given to the need to bring into the deliberative and decision-making process of those within and outside the academic community who have knowledge of and a responsibility in personnel matters.

APPENDIX A

GOVERNMENT RULES AND REGULATIONS

Until amended by the Equal Employment Opportunity Act of 1972, Title VII of the Civil Rights Act of 1964 did not apply to educational institutions. Between 1964 and 1972, however, Executive Orders 11246 and 11375 had already directed all federal contractors and those receiving federal assistance from HEW to "take affirmative action" to insure that employees are treated equally during employment without regard to race, color, sex, religion or national origin. The Labor Department was charged with enforcement of these executive orders and HEW was designated as the enforcer for educational institutions.

Title VII of the Civil Rights Act of 1964

The Equal Employment Opportunity Act, as amended by Congress in March, 1972, is now applicable to state and local agencies, including school districts. Federal courts have granted sweeping relief in Title VII cases to remedy the effects of past discrimination. Such court decrees have struck down every conceivable type of employee selection device which serves to discriminate against members of minority groups. Only tests and other personnel procedures which are validated, under guidelines of the Equal Employment Opportunity Commission, as being job related, have withstood court tests. Court orders have often included the adoption of stringent affirmative action programs. Even prior to the enactment of the recent amendments to the Equal Employment Opportunity Act, courts had held employment discrimination against minority teachers unconstitutional under the provisions of several 19th Century civil rights acts. 42 USC SS 1981 and 1983. See especially Armstead v. Starkville Municipal Separate School District, 325 F.Supp. 560 (D.C.Miss. 1971). The United States Supreme Court has approved the use of court-ordered racial ratios in faculty appointments as a means of remedying past discrimination. (United States v. Montgomery Board of Education (1969) 395 U.S. 225; see also United States v. Jefferson County Board of Education (5th Cir. 1966) 372 F.2d 836, 876; aff'd en banc (5th Cir.) 380 F.2d 385, cert. denied (1967) 389 U.S. 840; Board of Education v. Dowell (10 Cir. 1961) 375 F. 2d 158, 164.) Discrimination in hiring in public schools has been rendered even more constitutionally suspect by the recent California Supreme Court decision of Serrano v. Priest, 5 Cal.3d 584, 96 Cal.Rptr. 601 (1971), in which the court held that education is a fundamental right of all children.

These authorities provide abundant support for the proposition that all public schools are under a current duty to provide equal employment opportunity and to remedy the effects of past discrimination. The supremacy clause of the United States Constitution gives the federal statutes precedence over any conflicting state policies.

Executive Order 11246

On September 24, 1965, the President of the United States issued Executive Order 11246 which called for the institution of a program of equal employment opportunity in Government employment, employment by Federal contractors and subcontractors and employment under Federally assisted construction contracts regardless of race, creed, color or national origin.

Executive Order 11375

On October 13, 1967, the President amended Executive Order 11246 by issuing Executive Order 11375. Paragraphs (1) and (2) of Section 202 of Part II are quite significant. These paragraphs require nondiscrimination in employment by Government contractors and subcontractors as follows:

> (1) The contractors will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondicrimination clause.
>
> (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

Revised Order No. 4

Affirmative Action Programs were formally written into law in what was known as Order No. 4, on November 20, 1969. This law was later revised and is known by that name. "Revised Order No. 4" became effective on August 31, 1971.

APPENDIX B

CASE LAWS SUPPORTING USE OF STATISTICS AND PREFERENTIAL HIRING

The following are significant cases currently affecting enforcement of Civil Rights Statutes, equal employment opportunity and the use of statistical measures as a basis to improve hiring practices:

1. Penn v. Stumpf, 308 F. Supp. 1238 (N.D. Calif. 1970): Statistical discrepancy in Black percentage of workers and Black percentage in the community held to state a cause of action and provide significant evidence of unlawful discrimination.

2. Parham v. Southwestern Bell Telephone Co., 433 F. 2d 421 (8th Cir., 1970): Statistical population discrepancy held, as a matter of law, to establish a violation of Title VII.

3. Carter v. Gallagher, 452 F. 2d 315 (8th Cir. 1971): Held that statistical evidence can create a prima facie case of discrimination. (One Black for each two White ordered hired by respondent fire department.)

4. United States v. Allen, 4 E.P.D. 5619 (M.D. Ala. 1972): As in Carter v. Gallagher, statistics created a prima facie case. One-for-one hiring of Alabama state troopers and support staff was ordered.

5. United States v. Ironworkers Local 86, 443 F. 2d 544 (9th Cir. 1971), cert. denied 404 U.S. 984 (Dec. 7, 1971): Statistics created a prima facie case shifting the burden of proof to Respondent.

6. Rowe v. General Motors Corp., 4 E.P.D. 5702 (5th Cir. 1972): Statistics created a prima facie case shifting the burden of proof to Respondent.

7. Joyce v. McCrane, 320 F. Supp. 1284 (1970): Goals for minority hiring not in conflict with preferential treatment section (section 703 (i) of Title VII).

8. NAACP v. Allen, 4 E.P.D. 7669 (February 10, 1972): Statistical evidence creating presumption of unlawful discrimination in the employment by Alabama Department of Public Safety was so persuasive that court intimated they would not have believed any defense raised. One Black for one White hiring ordered.

9. Southern Illinois Builders v. Ogilive, 327 SUPP. (1971): Minimum ratios based upon race are constitutional and valid when adopted for affirmative action purposes.

10. Contractors Association v. Secretary of Labor, 311 F. Supp. 1002 (1970): Preferential hiring does not conflict with Title VII, Section 703(a) based on racial discrimination.

11. In Coppedge v. Franklin County Board of Education, 273 F. Supp. 289 (U.S.D.C., N.C., 1967) the court held that the defendant Board of Education "shall establish as an ultimate objective that each faculty contain the same approximate percentage of nonwhite teachers as there are in the entire system."

The primary basis for hiring minority personnel is to undo the effects of past discrimination. There are not definite guidelines that are helpful in determining the permissible extent of a stated quota. In cases where there was evidence of past discrimination in hiring which created a racial imbalance, the court ordered integration, but left details of effecting such integration to the element which was responsible for hiring, reserving the right, of course, to review. If a statistical analysis indicated there was discrimination which is now affecting a school system, the district would have a duty to hire more minorities to offset the imbalance.

12. Particularly pertinent are the findings in United States v. International Brotherhood of Electrical Workers, 428 F. 2d 144 (6th Cir. 1970): "Provisions of the Civil Rights Act against granting preferential treatment under the Act solely because of an imbalance in racial employment is not a ban on affirmative relief against continuation of effects of past discrimination resulting from present practices which are neutral on their face but which have practical effects of continuing past injustices."

13. Lee and the United States, et al. v. Macon County Board of Education, et al. U.S.D.C., M.D. ALA. Circuit Judge Rives, No. 604-E, September 17, 1969 ____ F. SUPP. _____

Pursuant to desegregation order for the Middle District of Alabama, March 22, 1967, the U.S. as plaintiff-intervenor, obtained an order requiring the state to prepare a plan to complete the disestablishment of a dual system of trade schools and junior colleges based on race. The plan subsequently submitted by Alabama was found deficient in three areas by the three-judge court. One of the deficiencies found was that the plan "was lacking in specificity as to when faculties and student bodies would be desegregated so as to eliminate the racial identifiability of the institutions." The court finally called upon HEW to formulate a plan by March 2, 1970, including provisions for "desegregation of the faculties and staffs of these institutions, the adoption of an affirmative program of minority race recruitment."

14. Public Schools, North Carolina (4th Circuit), Court of Appeals on January 19, 1970, ordered the Darlington and Greenville County School Districts to submit plans for unitary schools to the federal district court by January 23:

"which must include provisions for integrating the faculties so that the ratio of Negro and White teachers in each school will be approximately the same as the Negro - White faculty ratio in the entire system."

15. Manning v. Board of Public Instruction, Hillsborough County, 306 F. Supp. 497 (M.D. FLA. Aug. 18, 1969).

The court applied a similar standard as in Lee and the U.S. v. Macon County Board of Education. As to what constituted a "complete elimination of the dual school system," the district court ordered:

"Faculties in all schools are to be biracial in some degree in 1969-70, and to be integrated on a ratio of 82 percent White and 18 percent Negro (the approximate racial ratio of the students in the entire county) in 1970-71."

16. Williams v. Wyland and Hancock County Board of Education, W. VA., Human Rights Commission. No. PA 23-68, Jan. 14, 1971.

In an unusual type of proceeding, the Hancock County Board of Education was ordered to take action to desegregate its school system. The case marks one of the relatively rare instances in which a school desegregation order was handed down by a state human rights agency rather than a federal court, and in which the decision was based on rights guaranteed by a state civil rights statute rather than the Fourteenth Amendment or federal civil rights legislation. The complaint was filed with the West Virginia Human Rights Commission by the mother of four Black school children who were attending a predominantly Black elementary school in the county. The board contended that it did not come within the coverage of the state human rights act, since that legislation does not specifically refer to schools or school officials in any of its provisions. However, the commission ruled that under a proper liberal interpretation of the act, the board fell within the statutory definition of an "employer" and the school system fell within the definition of a "place of public accommodation." The evidence established that the Black students and teachers in the county, who constituted less than 5 percent of the total student population and less than 4 percent of the teaching personnel, were heavily concentrated in one school; that the student bodies and faculties in the other elementary schools were very predominantly White; that White students from White residential areas near the Black area in which the plaintiff lived were assigned to a White school and bused past the Black school to reach their school; and that the board had made no affirmative attempts to recruit Black teachers. The commission determined the board was guilty of "denying . . . Black students of Hancock County accommodations, advantages, facilities, privileges and services of the school system," in violation of the human rights act. Consequently, the board was ordered to cease discriminatory student assignment practices, to pair the predominantly Black elementary school with a predominantly White school located in the same part of the county, to cease establishing special education classes at the Black school, to take affirmative steps to recruit Black teachers, administrators and nonteaching personnel, and to file annual reports with the commission showing the racial composition of the faculties and administrative staffs of the various schools.

17. U.S. Justice Department filed against the Watson Chapel School District, State of Arkansas, in the Western District Federal Court on July 9, 1970.

The evidence indicated that the school district, which had a public school population of about 4,900 students, of whom about 55 percent were White, had been operating on a freedom-of-choice plan which had produced only limited desegregation in the six-school system. The Black elementary and high school complex continued to have only Black students enrolled, and one small rural elementary school had only White students, while two formerly all-White elementary schools and a formerly all-White high school still had very predominantly White student bodies. Three White teachers were assigned to the Black schools and one Black teacher was teaching in a predominantly White school. Judge Harris ordered the board to submit a plan for disestablishing the dual school system; but plans submitted on August 26 and October 16 involving attendance zoning based on the neighborhood school concept were ruled to be insufficient to meet constitutional requirements. In compliance with an earlier directive of the court, H.E.W. officials had filed two desegregation proposals, and on November 17, Judge Harris entered an order approving one of these plans as being "educationally, administratively and economically sound and feasible" as a means of eliminating the dual system. The board was ordered to implement the plan by the beginning of the second semester on January 18, 1971. Under it, the rural elementary school is to be continued for all students in grades 1 to 4 residing in the community in which it is located, with a projected enrollment of 75 Whites and 25 Blacks; the two predominantly White elementary schools are also to be operated for students in grades 1 to 4, each with its own geographical attendance zone; all students in grades 5 to 8 are to be assigned to the complex which housed the Black schools; and all students in grades 9 to 12 are to be assigned to the formerly White junior-senior high school. Under H.E.W. projections, the enrollments in the latter four schools would range from 53 to 56 percent White. The district court's order also required: that faculty and staff assignments be made so that the racial ratio of teachers and staff members in each school is approximately the same as in the entire school system; that no classroom or extracurricular activities be conducted on a segregated basis or in a manner which would exclude participation because of race; and that school construction, consolidation, and site selection be carried out in a manner designed to prevent recurrence of the dual school structure.

APPENDIX C

GLOSSARY OF TERMS

Affirmative Action Program : A comprehensive result-oriented personnel program designed to increase and upgrade the employment of minorities and upgrade the level of employment for women.

Affirmative Action Program Coordinator : Affirmative Action Program Coordinator (Assistant Superintendent-Personnel Services). He has primary responsibility to monitor all personnel actions affecting minority and female applicants and employees as well as maintain records, prepare audits and reports on minority and female employment.

Inservice : Education dealing with the history, culture and current problems of minorities.

Job Classification : One or a group of jobs having similar content, wage rates and opportunities.

Qualified : In the certificated service, teaching applicants must possess appropriate certification qualifications. Administrative/special service applicants must either hold full certification authorization for particular positions or possess sufficient training to qualify for an appropriate internship credential. Those applicants who can gain admission to an approved State College/University Internship Program prior to filling a particular vacancy shall be deemed qualified.

In the classified service, applicants must meet minimum qualifications specified within the job descriptions which have been adopted by the Board of Education. In the area of selective recruitment, the qualification of being bilingual/bicultural may be specified if deemed to be job related for a particular position.

Minority Personnel : Persons of the following ancestry are identified in the California State Department of Education's school racial and ethnic distribution survey of pupils and staff:

American Indian: Persons considered by themselves, by the school or by the community to be of American Indian origin

Black: Persons considered by themselves, by the school or by the community to be of African or Negroid origin

Oriental: Persons considered by themselves, by the school or by the community to be of Chinese, Japanese or Korean origin

Spanish and Portuguese surname: Persons considered by themselves, by the school or by the community to be of Mexican, Puerto Rican, Central American, Cuban, Latin American, Portuguese or other Spanish-speaking origin

Filipino and other minorities: Persons considered by themselves, by the school or by the community to be of Filipino, Polynesian, Aleut, Eskimo or Asian origin (other than Chinese, Japanese or Korean)

NOTE: Other terms used in this paper to denote minority personnel include: racial and ethnic minorities, minorities, minority employees, minority applicants. For purposes of this document the term "minority" will include women, especially when the context has reference to women at the administrative level. Otherwise the term "minorities" refers to racial and ethnic minorities as indicated above.

Special Opportunity : "Special opportunity" may be given to members of under-represented groups on grounds of unique fitness for the employment or educational role in question. This type of preference is justifiable under the general principle that distinctions made along these lines of employment characteristics are not invidious.

Under-representation : Those cases wherein there are significantly fewer persons of a particular grouping (minorities, women, men, etc.) serving at a particular job level or holding a particular kind of position than might be expected when compared to the distribution of the general population.

Underutilization : Those cases wherein the number of minorities or women employed is significantly fewer than would be reasonably expected based on their availability for employment or promotion.