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Mr. Don Anderson
Executive Officer
State Allocation Board
1025 P Street, Room 112
Sacramento, California

Dear Mr. Anderson:

We have been contacted by a group of parents who have children attending racially imablanced schools which have been designated as structurally unsafe. As you are no doubt aware, the Education Code provides for the allocation of funds to school districts to be used for the rehabilitation and reconstruction of structurally unsafe schools. The parents who have contacted us are concerned that these funds will be used to reconstruct the schools their children attend on their present sites. They fear this will perpetuate the racial imbalance within the districts. It is my understanding that the funds are allocated to a district by the State Allocation Board upon approval of application by the district. I also understand that the Allocation Board has not yet adopted any policy regarding applications to reconstruct schools on their present site, when so doing results in reinforcement of racial and ethnic imbalance. I am writing to request that your office take certain steps to guarantee that the funds provided by AB 92 not be used to construct schools which will be racially and ethnically imbalanced.

It is our feeling that the Board has both a constitutional and statutory duty to refuse to provide funds to any school district for the purpose of reconstruction of a school on its present site which, after reconstruction, will be racially or ethnically imbalanced unless the district has shown that there is no reasonably feasible manner to avoid or alleviate the racial and ethnic imbalance.

The Board's constitutional duty is derived from the equal protection clause of the Fourteenth Amendment. It is well settled that state action which results in segregated schools is violative of the equal protection clause. For the Board to allocate funds for the purpose of construction of a

racially and ethnically imbalanced school would appear to be a clear violation of the Fourteenth Amendment.

The Board's statutory duty is derived from Education Code Sections 5002 and 5003, which require any person or agency which is responsible for the establishment of schools to prevent and eliminate racial or ethnic imbalance. The Sections specifically require that high priority be given to the elimination of racial and ethnic imbalance in all decisions relating to school sites.

In 1966, legislation was enacted to provide $35,000,000 to school districts for the acquisition of school facilities in districts maintaining compensatory education programs. Chapter 106, 1966 First Extraordinary session. The State Allocations Board was given the duty of approving applications for the funds. Shortly after the legislation was enacted, the Attorney General was requested to give an opinion on the following question:

> "Does this law require that these capital outlay funds be expended in such a way as to promote racial integration in the schools of an eligible district ... ?"

The Attorney General, relying upon 5 Calif. Admin. Code §2010 (which was later repealed and re-enacted in stronger language as Education Code §5002) and Jackson v. Pasadena School Dist., 59 Cal. 2d 876 (1963), concluded that the law did require that the funds be expended so as to promote racial integration. He found that the Director of Compensatory Education "must determine that a proposed project will not sanction, perpetuate or promote the racial or ethnic segregation of pupils in the public schools." 48 Att. Gen. Op. 54, 61 (1966) (Emphasis added.)

The situation with which we are now confronted is clearly analogous to that discussed in the Attorney General's opinion. While the sources of the funds are different, Education Code 5002 and Jackson v. Pasadena School Dist. are still applicable.

In order to carry out its constitutional and statutory duty, it is imperative that the Board, as part of its application process, obtain information concerning the probable racial and ethnic balance of any school which is to be constructed with funds the Board allocates. If the information indicates that the proposed school will be racially imbalanced, the information could be provided to the Department of Education's Bureau of Intergroup Relations for a study and deter-

mination of how the applicant could prevent the school from becoming racially and ethnically imbalanced upon construction. The Bureau could then make recommendation to the Board regarding the application. These recommendations may advise that the school be located on an alternate site, or, that the district take whatever steps are necessary to prevent the school from becoming racially or ethnically imbalanced. It would then be the Board's duty to approve the application only after determining that the proposed project will not promote or perpetuate racial or ethnic segregation.

Because of the urgency of the situation, we would appreciate hearing from you regarding your intentions in this matter at the earliest possible date.

Yours very truly,

MAURICE JOURDANE
Attorney at Law

MJ/td

cc: Hon. Dixon Arnett
Hon. Leroy Green
Mr. Vernon Orr
Dr. Wilson Riles
Mr. Lawrence Robinson
Hon. Albert Rodda
Mr. Richard Rudolf