

CHAPTER 6

LEGAL CRITERIA GOVERNING REORGANIZATION PROPOSALS

This chapter discusses the requirements of *Education Code* Section 35753 in detail and how the State Board of Education would apply the conditions of Section 35753. Both the State Board of Education and county committees on school district organization are required to evaluate a reorganization proposal and make determinations that the conditions are substantially met. The chapter will be of particular value to members of county committees to assist them in understanding the legal conditions governing reorganization proposals.

NOTES:

The guidance in this handbook is not binding on local educational agencies or other entities. Except for statutes, regulations, and court decisions that are referenced herein, the handbook is exemplary, and compliance with it is not mandatory (see California *Education Code* Section 33308.5).

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A. Statutory Conditions in *Education Code Section 35753*

1. The State Board of Education may approve proposals for the reorganization of districts, if the board has determined, with respect to the proposal and the resulting districts, that all of the following conditions are substantially met:
 - (a) The reorganized districts will be adequate in terms of number of pupils enrolled.
 - (b) The districts are each organized on the basis of a substantial community identity.
 - (c) The proposal will result in an equitable division of property and facilities of the original district or districts.
 - (d) The reorganization of the districts will preserve each affected district's ability to educate students in an integrated environment and will not promote racial or ethnic discrimination or segregation.
 - (e) Any increase in costs to the state as a result of the proposed reorganization will be insignificant and otherwise incidental to the reorganization.
 - (f) The proposed reorganization will continue to promote sound education performance and will not significantly disrupt the educational programs in the districts affected by the proposed reorganization.
 - (g) Any increase in school facilities costs as a result of the proposed reorganization will be insignificant and otherwise incidental to the reorganization.
 - (h) The proposed reorganization is primarily designed for purposes other than to significantly increase property values.
 - (i) The proposed reorganization will continue to promote sound fiscal management and not cause a substantial negative effect on the fiscal status of the proposed district or any existing district affected by the proposed reorganization.
 - (j) Any other criteria as the board may, by regulation, prescribe.
2. The State Board of Education may approve a proposal for the reorganization of school districts if the board determines that it is not practical or possible to apply the criteria of this section literally, and that the circumstances with

respect to the proposals provide an exceptional situation sufficient to justify approval of the proposals.

B. Regulations and Recommendations to Implement the Statutory Conditions

In considering proposals for district reorganization, county committees and the State Board of Education must determine whether the nine conditions in *Education Code* Section 35753(a) are substantially met. Those conditions are further clarified by *California Code of Regulations (CCR)*, Title 5, Section 18573. By its own terms, *Education Code* Section 35753 provides that, if the conditions set forth in subdivisions (a)(1) through (10) are met, the State Board of Education (and the county committee) "may" approve a proposal for the reorganization of a district.

The term "may" denotes discretion. Thus, the conditions in *Education Code* Section 35753 constitute a minimum threshold, which must be met before the State Board of Education or county committee is even vested with discretion to act. There is no requirement of approval when the conditions have been met. Similarly, there is no requirement of disapproval when the conditions have not been met. (*Hamilton v. State Board of Education (1981) 117 Cal. App. 3d 132; Burch v. State Board of Education (1998) Los Angeles Superior Court Case No. B5034463*). Subdivision (b) of Section 35753 gives the State Board of Education authority to depart from the conditions when it determines that exceptional circumstances exist.

1. Number of Pupils. The reorganized districts will be adequate in terms of number of pupils enrolled.

Regulations: This condition is governed by *CCR*, Title 5, Section 18573(a), which states that each affected school district shall have the following projected enrollment on the date that the proposal becomes effective:

Elementary District	901
High School District	301
Unified District	1,501

2. Substantial Community Identity. The districts are each organized on the basis of a substantial community identity.

Regulations: This condition is addressed by *CCR*, Title 5, Section 18573(a)(2), which should be reviewed together with the following guidelines.

No single factor is likely to determine that community identity exists. The county committee probably will need to examine several attributes of the population and the makeup of the territory in question to make a judgment on this condition. Some indicators that the committee might study include

types of housing, parks and recreation facilities and programs, sports activities, transportation patterns, geopolitical factors, and shopping patterns.

- a. Similarity of architecture, size, and style of homes can create a sense of community identity. A homogeneous housing development would likely generate a sense of community among the residents.
 - b. The usage patterns of parks and school facilities for recreation programs and sports activities for youth can indicate a community identity.
 - c. Traffic patterns and public transportation systems and routes may have an impact on community identity.
 - d. Geopolitical factors such as topography and city council, county supervisor, and special district electoral districts might also create a sense of community among the citizens of an area. Post office names and zip code areas also could contribute.
 - e. Neighborhood and regional shopping patterns are often well defined and play a part in the way people see themselves.
 - f. There is no legal necessity that school district boundaries match city boundaries.
3. Division of Property. The proposal will result in an equitable division of property and facilities of the original district or districts.

Statutes and Regulations: This condition is addressed by State Board of Education regulations in CCR, Title 5, Section 18573(a)(3).

In reviewing the aspects of proposals dealing with school facilities, county committees should request longrange facilities plans from the affected school districts.

Those plans should include:

- a. Demographic studies showing both current and projected student population data;
- b. Development of “study area” maps showing census tracts, boundaries, current and proposed zoning, and current and projected residential and commercial/industrial development;

- c. An evaluation and report of the utilization, capacity, and condition of existing school facilities; and
- d. Development of a “comparison analysis” considering both existing and proposed divisions.

There are additional related *Education Code* provisions for the division of funds, property, and obligations. In particular, refer to *Education Code* sections 35560, 35564, and 35570 through 35579. If a dispute arises concerning the division of funds, property, or obligations, *Education Code* Section 35565 provides for binding arbitration of the dispute.

- 4. Discrimination or Segregation. The reorganization of the districts will preserve each affected district's ability to educate students in an integrated environment and will not promote racial or ethnic discrimination or segregation.

Pursuant to state law, local educational agencies have a constitutional obligation to prevent racial and ethnic segregation and to alleviate the harmful effects of segregation. (*CCR* Title 5 18573[a][4]) To determine whether the new districts will promote racial or ethnic discrimination or segregation, the effects of the following factors will be considered:

- a. The current number and percentage of pupils in each racial and ethnic group in the affected districts and schools in the affected districts, compared with the number and percentage of pupils in each racial and ethnic group in the affected districts and schools in the affected districts if the proposal or petition were approved.
- b. The trends and rates of present and possible future growth or change in the total population in the districts affected, in each racial and ethnic group within the entire district, and in each school of the affected districts.
- c. The school board policies regarding methods of preventing racial and ethnic segregation in the affected districts and the effect of the proposal or petition on any desegregation plan or program of the affected districts, whether voluntary or court ordered, designed to prevent or alleviate racial or ethnic discrimination or segregation.
- d. The effect of factors such as distance between schools and attendance centers, terrain, and geographic features that may involve safety hazards to pupils, capacity of schools, and related conditions or circumstances that may have an effect on the feasibility of integration of the affected schools.

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

The following types of data are examples of relevant information that may be submitted in support of a petition: the district(s) enrollment statistics that specify the percentages of various ethnic groups; the district(s) enrollment statistics that specify the percentages of the various ethnic groups in each individual school; the district(s) enrollment statistics that specify the grade and ethnic groups of students; the type of attendance area served by a school (rural, suburban, or urban); and the trends in the district(s) total population and percent distribution by race.

The information noted above may be obtained from the following agencies: local school boards (e.g., board policies and procedures), U.S. Bureau of the Census (e.g., latest decennial federal census), California Department of Finance (e.g., California Statistical Abstracts), California Department of Education (e.g., CBEDS), or other state or federal agencies.

- 5. Cost to State. Any increase in costs to the state as a result of the proposed reorganization will be insignificant and otherwise incidental to the reorganization.

Regulations: There are no current regulations on this subject; however, some guidelines are presented that may assist the county committee in its review of proposals.

The following factors should be considered in evaluating this condition:

- a. Whether implementation of the proposal would change one or more of the affected districts' basic aid status.

A change in basic aid could increase the amount of state apportionment funds required for either the proposed new district or one or more of the remaining districts.

- b. Additional state costs for school facilities.
- c. Other state special or categorical aid programs and any increased state costs if students transferring would qualify in the gaining district and not in the losing district.
- d. The additional costs to the state if costs per student for special or categorical programs are higher in the gaining district.

- e. The effect on the districts' home-to-school and special education transportation costs and state reimbursements.
- f. Increased costs resulting from additional schools becoming eligible for "necessary small school" funding pursuant to *Education Code* sections 42280 through 42289.

Note that any increase in state funding due to recalculation of the Local Control Funding Formula entitlements as required by *Education Code* sections 35735 and 35735.1 does not apply to the analysis of this condition.

- 6. Educational Programs of Existing and Proposed Districts. The proposed reorganization will continue to promote sound education performance and will not significantly disrupt the educational programs in the districts affected by the proposed reorganization.

Regulations: Please review CCR, Title 5, Section 18573(a)(5) and the following guidelines.

Although it is difficult to accurately predict the changes that would occur in the educational program as a result of district reorganization, there are indicators that would be helpful to consider in making a decision on reorganizations.

- a. Most elementary schools, all middle schools, and 20 percent of California's high schools take part in a program quality review once every three years.
- b. Most high schools participate in an accreditation review conducted at least every six years by the Western Association of Schools and Colleges. These reviews culminate in a comprehensive report that compiles information on student achievement and on school-wide concerns such as planning, school climate and culture, and governance. Although these are peer reviews that provide primarily qualitative data, they are especially effective in judging program quality when viewed in concert with quantitative data. Such data include the School Accountability Report Card (required as a result of the passage of Proposition 98), which is produced by the school district, and the Academic Performance Index (API) and Adequate Yearly Progress (AYP) reports produced by the California Department of Education.
- c. In making a determination about program quality, a committee would do well to consider a wide array of data. For high schools

these indicators range from the number of Advanced Placement courses offered by the district to the dropout rate.

- d. Although past performance does not always predict future achievements, the academic track record of a district should certainly be considered when making a decision about reorganization. If a district has failed to perform over a significant period of time, it would be questionable to give a district responsibility for educating more students. However, if reorganization provides for a richer curriculum, more course offerings, and greater resources, the likelihood that educational performance will increase is enhanced.

- 7. School Housing Costs. Any increase in school facilities costs as a result of the proposed reorganization will be insignificant and otherwise incidental to the reorganization.

Regulations: No regulations have been adopted on this subject; however, a good plan should provide a concise analysis of the availability of school facilities to house the pupils in the portion of the district being reorganized.

If the reorganization is creating a new school district, the school facilities must be adequate to serve all grade levels. If an elementary school district is unifying, there should be a plan for secondary school facilities. Formerly plans have been approved in which the newly unified school districts phase in secondary school programs. When the reorganization is a territory transfer, the plan should address whether the school district receiving the new students has adequate facilities to house them. If new facilities are required in either of the above cases, the plan should address how the facilities will be funded.

The following areas should also be addressed:

- a. Local bonding capacity. It should be determined whether the territory transfer reduces the assessed valuation of a district to a point where the bonding capacity might be impaired.
- b. Developer fees. An analysis should be made of how income from developer fees might be affected. Whether developer fees have already been paid, whether they have increased or decreased because of the district losing or gaining the territory, and the impacts of the territory transfer should be determined.
- c. School property. If there is school property in the area to be transferred, the impact on each district should be determined. If a school is to be transferred, it should be determined how the district

losing the school will compensate for the loss of facilities. If school sites are involved, it should be determined how each district's facility plan will be affected.

- d. School capacity. The analysis should take into consideration whether the schools are operating on traditional, single track, or multi-track schedules.
 - e. Condition of existing facilities. The analysis should distinguish between permanent and portable buildings, the age of the facilities, whether or not they have been well or poorly maintained or modernized, whether they have had technological upgrades, and the conditions of the mechanical systems on the school site (e.g., HVAC).
 - f. State School Facilities Program. It should be determined how the loss and gain of pupils will affect school districts' eligibility for state building funding.
8. Property Values. The proposed reorganization is primarily designed for purposes other than to significantly increase property values.

Regulations: There are no regulations on this subject; however, the rationale given in the petition for the territory transfer should be analyzed. If the petitioners' rationale for the transfer appears questionable or not compelling, the county committee should at least consider whether increased property values might be the primary reason for the petition. The county tax assessor's office or local real estate firms could be consulted for advice on whether territory transfers might have an impact on property values.

9. Fiscal Management or Fiscal Status. The proposed reorganization will continue to promote sound fiscal management and not cause a substantial negative effect on the fiscal status of the proposed district or any existing district affected by the proposed reorganization.

Regulations: There are no regulations on this subject; however, the criteria and standards adopted by the State Board of Education pursuant to *Education Code* Section 33127 (Chapter 1462, Statutes of 1988) and published in *CCR*, Title 5, sections 15440–15466, are recommended for evaluation of the financial condition of school districts affected by any proposed reorganization.

The criteria and standards review process is designed to evaluate how the reorganization will affect the school district's fiscal status for the current

and succeeding years. The county committee should review and consider any potential revenue gains or losses resulting from community redevelopment agency agreements or other pass-through agreements, loss of incremental taxes, Mello-Roos Community Facility District funds, parcel taxes, certificates of participation, basic aid, tax overrides, mitigation agreements with developers, and any other categorical or specialized funds (e.g., Public Law 874 funds and Timber Reserves).

The best way to determine the fiscal management of the school district is to use the criteria and standards review process used by county superintendents. This process employs state-adopted standards and criteria to evaluate the fiscal health of a district. It is recommended that the county committee work closely with the staff of the county superintendent responsible for reviewing district budgets.

- a. School districts and county superintendents use the California Department of Education's Criteria and Standards Review Form to review the district's budget for conformance with *Education Code* and *CCR*, Title 5, "*Criteria and Standards*," for developing and managing their budgets. This review is repeated annually; therefore, relatively current data would be available to assist in analyzing whether the district reorganization fiscal management condition would be met if a reorganization proposal were approved.
- b. Other sources of information include the affected school districts' annual audit reports completed by independent auditors.

C. Exceptional Situations

In considering proposals for unification, the State Board of Education must determine whether the conditions in *Education Code* Section 35753(a) are substantially met. However, subdivision (b) of that section of the law also gives the State Board of Education the authority to depart from the conditions under certain conditions. Specifically, the board may determine that it is not practical to apply the conditions literally and that an exceptional situation exists that warrants approval of the proposal.

California Code of Regulations, Title 5, Section 18573, states that the minimum size for a unified school district is supposed to be 1,501 students. In sparsely populated areas, however, it is often difficult to reach that number of students. The State Board of Education has considered such factors as distance, weather conditions, geography, and topography in deciding whether to waive the size condition.

D. Comparison of Statutory and Regulatory Requirements

Criteria Used by the State Board of Education

To Consider Matters Relating to School District Organization

<i>Education Code Section 35753</i>	<i>California Code of Regulations, Title 5, Section 18573</i>						
<p>35753. Approval by the State Board of Education; Conditions</p> <p>(a) The State Board of Education may approve proposals for the reorganization of districts if the board has determined, with respect to the proposal and the resulting districts, that all of the following conditions are substantially met:</p> <p>(1) The reorganized districts will be adequate in terms of number of pupils enrolled.</p>	<p>18573. Criteria for Reorganization of School Districts</p> <p>(a) The analysis of the proposal or petition by the California Department of Education shall state findings of fact and recommendations as to whether each district affected by the proposed reorganization substantially meets the following criteria and standards:</p> <p>(1) It is the intent of the State Board of Education that direct service districts not be created that will become more dependent upon county offices of education and state support unless unusual circumstances exist. Therefore, each district affected must be adequate in terms of numbers of pupils, in that:</p> <p>(A) Each such district should have the following projected enrollment on the date that the proposal becomes effective or any new district becomes effective for all purposes:</p> <table data-bbox="1213 1068 1671 1182"><tr><td>Elementary District</td><td>901</td></tr><tr><td>High School District</td><td>301</td></tr><tr><td>Unified District</td><td>1,501</td></tr></table> <p>(B) The analysis shall state whether the projected enrollment of each affected district will increase or decline and the extent thereof.</p>	Elementary District	901	High School District	301	Unified District	1,501
Elementary District	901						
High School District	301						
Unified District	1,501						

Education Code Section 35753

*California Code of Regulations,
Title 5, Section 18573*

- (2) The districts are each organized on the basis of a substantial community identity.
- (3) The proposal will result in an equitable division of property and facilities of the original district or districts.

- (2) To determine whether the new district is organized on the basis of substantial community identity, the State Board of Education will consider the following criteria:
- (A) Isolation
 - (B) Geography
 - (C) Distance between social centers
 - (D) Distance between school centers
 - (E) Topography
 - (F) Weather
 - (G) Community, school, and social ties, and other circumstances distinctive about the area.
- (3) To determine whether an equitable division of property and facilities will occur, the California Department of Education will determine which of the criteria authorized in *Education Code* Section 35736 shall be applied. It shall also ascertain whether the affected school districts and the county office of education are prepared to appoint the committee described in *Education Code* Section 35565 to settle disputes arising from such division of property.

Education Code Section 35753

*California Code of Regulations,
Title 5, Section 18573*

- (4) The reorganization of the districts will preserve each affected district's ability to educate students in an integrated environment and will not promote racial or ethnic discrimination or segregation.

- (4) To determine whether the new districts will promote racial or ethnic discrimination or segregation, the State Board of Education will consider the effects of the following factors:
- (A) The current number and percentage of pupils in each racial and ethnic group in the affected districts and schools in the affected districts, compared with the number and percentage of pupils in each racial and ethnic group in the affected districts and schools in the

affected districts if the proposal or petition were approved.

- (B) The trends and rates of present and possible future growth or change in the total population in the districts affected, in each racial and ethnic group within the entire school district, and in each school of the affected districts.
- (C) The school board policies regarding methods of preventing racial and ethnic segregation in the affected districts and the effect of the proposal or petition on any desegregation plan or program of the affected districts, whether voluntary or court ordered, designed to prevent or to alleviate racial or ethnic discrimination or segregation.
- (D) The effect of factors such as distance between schools and attendance centers, terrain, and geographic features that may involve safety hazards to pupils, capacity of schools, and related conditions or circumstances that may have an effect on the feasibility of integration of the affected schools.

Education Code Section 35753

*California Code of Regulations,
Title 5, Section 18573*

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

- (5) Any increase in costs to the state as a result of the proposed reorganization will be insignificant and otherwise incidental to the reorganization.
- (6) The proposed reorganization will continue to promote sound education performance and will not significantly

(No implementing regulations)

- (5) The proposal or petition shall not significantly adversely affect the educational programs of districts affected by the proposal or petition. In analyzing the proposal or petition, the California

disrupt the educational programs in the districts affected by the proposed reorganization.

Department of Education shall describe the districtwide programs and the school site programs in schools not a part of the proposal or petition that will be adversely affected by the proposal or petition.

- (7) Any increase in school facilities costs as a result of the proposed reorganization will be insignificant and otherwise incidental to the reorganization.
- (8) The proposed reorganization is primarily designed for purposes other than to significantly increase property values.
- (9) The proposed reorganization will continue to promote sound fiscal management and not cause a substantial negative effect on the fiscal status of the proposed district or any existing district affected by the proposed reorganization.

- (No implementing regulation.)
- (No implementing regulation.)
- (No implementing regulation.)

- (10) Any other criteria as the board may, by regulation, prescribe.
- (b) The State Board of Education may approve a proposal for the reorganization of school districts if the board determines that it is not practical or possible to apply the criteria of this section literally and that the circumstances with respect to the proposals provide an exceptional situation sufficient to justify approval of the proposals.

(No implementing regulation.)

- (b) The board may waive the criteria specified in subsections (a) (1) through (a) (5) of this section and may approve a proposal, petition, or decide an appeal under *Education Code* Section 35710.5 or 35711 if the board determines that circumstances with respect to the proposal, petition, or appeal provide a sufficient exceptional situation.