

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

OLIVER BROWN, et al., )  
Plaintiffs, )  
and )  
CHARLES and KIMBERLY SMITH, minor )  
children, by their mother and next )  
friend, LINDA BROWN SMITH, et al., ) No. T-316  
Intervening )  
Plaintiffs, )  
vs. )  
BOARD OF EDUCATION OF TOPEKA, )  
SHAWNEE COUNTY, KANSAS, )  
et al., )  
Defendants. )

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POSITION STATEMENT OF UNIFIED SCHOOL DISTRICT  
NO. 501 REGARDING THE OPPRESSIVE AND UNDULY  
BURDENSOME NATURE OF ATTEMPTING TO COMPILE ANSWERS  
TO INTERVENING PLAINTIFFS' INTERROGATORIES - FIRST SET  
FOR THE 1940-1950 TIME PERIOD

On November 5, 1982, the Court issued its Memorandum and Order, reversing and remanding for further proceedings the decision of then Magistrate Sam A. Crow which had denied intervening plaintiffs' motion to compel Unified School District No. 501 to answer the previously propounded interrogatories seeking information for the ten year period prior to the 1950-51 school year. In the November 5, 1982 order, the Court indicated that before making a final decision regarding whether the interrogatories must be answered, further proceedings were deemed necessary to weigh the relevance and burdensomeness of the interrogatories. As a result, the Court has scheduled a hearing on this matter for December 3, 1982. A copy of the interrogatories in question are attached to intervening plaintiffs' Motion for Review of Order Limiting Discovery filed October 16, 1980. (Doc. #113).

The School District recognizes that a general objection asserting that interrogatories are burdensome and require a party



to research and compile data is insufficient. "The objection must make a specific showing of reasons why the interrogatory should not be answered." 4A MOORE'S FEDERAL PRACTICE, §33.20, at 33-106 (1981). A claim that interrogatories submitted are burdensome and oppressive may be supported by affidavits or evidence offered revealing the nature of the burden. See Wirtz v. Capitol Air Service, Inc., 42 F.R.D. 641, 643 (D.Kan. 1967), wherein Judge Templar determined that plaintiff's interrogatories in that case were not unduly burdensome since plaintiff had offered the services of an investigator to audit the records, compile the data and furnish defendant's counsel with a full recapitulation of all information obtained by the investigator.

To determine the burdensomeness of Intervening Plaintiffs' Interrogatories-- First Set, School District personnel responsible for answering those interrogatories for the time period beginning with the 1950-51 school year were requested to review their files, identify potential sources of information, and estimate the time which would be required to research potential sources, to compile responses and to prepare such responses in final form. The overall estimate of time which would be expended by School District personnel in attempting to answer the interrogatories at issue for the ten year period prior to the 1950-51 school year is recapitulated in the attached affidavit of Don R. O'Neil, Associate Superintendent, Management Services, for Unified School District No. 501. According to the estimates prepared by staff personnel who supervised and directed the preparation of responses to Intervening Plaintiffs' Interrogatories--First Set, the total time estimated to prepare responses to these interrogatories for the ten year period prior to the 1950-51 school year would require in excess of 4,120 hours.

By way of comparison, in answering Intervening Plaintiffs' Interrogatories --First Set for the time period beginning with the 1950-51 school year has required the expenditure of 5,734 hours. Employee salaries attributable to the expenditure of time



in compiling those answers of the First Set total \$41,408.46. (See attached affidavit of Don R. O'Neil at paragraph 5). It is respectfully submitted that, in their totality, intervening plaintiffs' interrogatories seeking information for the ten year period prior to the 1950-51 school year are unduly burdensome and oppressive.

In the November 5, 1982 order, the Court also suggested that in making its final decision, it would weigh the relevance and the burdensomeness of each interrogatory. As a result, set forth below is a summary of the estimates made by School District personnel as they relate to individual interrogatories or groups of interrogatories which are at issue, the source of such estimates and explanations contained in the attached affidavits of School District personnel:

<u>Interrogatory No.</u>	<u>Information Sought</u>	<u>Time Estimate</u>	<u>See Affidavit of:</u>
5	District boundary additions	210 hours	W. Wayne Warner, Asst. Superintendent, Business Services, at P3
9 [a-o, s-t]	Names and dates of opening/closing schools; grades served; enrollment; attendance zones/feeder pattern; student transfers	330 hours	Michael D. Tribbey, Asst. Superintendent of Program Audit/Planning, at P4
9 [p,q,r]	Faculty experience, educational achievement and assignment by school	2,430 hours	Frank Ybarra, General Director of Personnel, at P4-6
10, 11, 18, 26-28 (answered collectively originally)	Optional zones; transfer policies; transfers by school; racial impact of optional transfers	200 hours	Gerald A. Miller, Director of Demographic Services, at P3
12, 13, 14 (information from audit reports)	Revenue sources; district budget and expenditures	540 hours	W. Wayne Warner, Asst. Superintendent Business Services, at P4
19, 20, 24, 25	Long range plans; capital expenditure plans; impact of construction plans; transportation policies	320 hours	Michael D. Tribbey, Asst. Superintendent of Program Audit/Planning, at P3
21	Segregation policies re student assignment	90 hours	W. Wayne Warner, Asst. Superintendent Business Services, at P5
TOTAL:		<u>4,120 hours</u>	

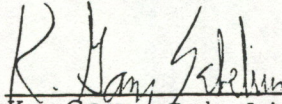


In addition to the interrogatories listed above, intervening plaintiffs' Motion for Review sought discovery for the ten year period prior to the 1950-51 school year for Interrogatory Nos. 15, 17, 22 and 40. Based upon estimates prepared by School District personnel regarding the time required to attempt to respond to these interrogatories, it does not appear that the time required to research, compile and prepare responses will involve unduly burdensome activity, if the interrogatory requests are viewed individually. Further, as indicated in the answer of Unified School District No. 501 to Interrogatory No. 16, it was concluded that the information sought for years prior to 1970 cannot be located and are believed to no longer exist.

This Court has noted that the present policies and practices of the School District with regard to faculty, staff, transportation, extracurricular activities and facilities are "among the most important indicia of a segregated system," citing Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 18 (1971) (see order filed November 5, 1982, at page 3). This Court has also stated previously that this proceeding entails intervening plaintiffs' application to this Court to review and mandate compliance with the Supreme Court decisions in Brown I and Brown II, decided in 1954 and 1955. See Brown v. Board of Ed. of Topeka, Shawnee County, 84 F.R.D. 383, 391 (D.Kan. 1979). It is respectfully submitted that whatever relevancy the information regarding Topeka Public Schools prior to 1954 possesses is extremely limited, at best, in determining whether the School District has complied with the mandates of Brown I and Brown II. In view of the estimates requiring the expenditure of extraordinary amounts of time and expense, it is respectfully submitted that the balance weighs in favor of not compelling the School District to attempt to respond to Intervening Plaintiffs' Interrogatories--First Set as it relates to the ten year period prior to the 1950-51 school year.



Respectfully submitted,



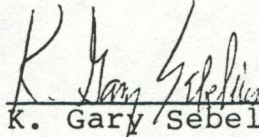
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District No. 501

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document was served upon attorneys for intervening plaintiffs by hand delivering same this 3rd day of December 1982, to Richard Jones and Jon C. Dubin.



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K. Gary Sebelius