

UNITED STATES COMMISSION ON CIVIL RIGHTS
WASHINGTON, D. C. 20425



STAFF DIRECTOR

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OCT 19 1978

Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
Washington, DC 20530

Dear

Earlier this year, the Commission directed its regional offices to survey selected local school districts to determine the nature, extent and effect of recent school desegregation efforts. Topeka, Kansas, Unified School District No. 501, the successor to the defendant in Brown v. Board of Education, was one of the districts surveyed by our Kansas City regional office.

As regional staff looked into the Topeka situation, they were surprised to learn that the Federal District Court there still retains jurisdiction over the district's desegregation efforts. This jurisdiction has been used by the district to forestall administrative efforts by OCR/HEW to bring the district into compliance with Title VI of the 1964 Civil Rights Act.

Our understanding is that in 1973, after a private suit (_____ U.S. District Court, Kansas District, No. T-5430) alleged that OCR had never performed its Title VI compliance duties in the Topeka school district, OCR undertook a compliance review. In January 1974, the OCR regional office issued a letter of noncompliance to the school district. This was followed on June 10, 1974, by HEW's notice of deferral of Federal funds. It also initiated administrative enforcement proceedings against the district.

Almost two months later, the district filed suit against HEW for declaratory judgment and a preliminary injunction (Unified School District No. 501 v. Weinberger, U.S. District Court, Kansas District, No. 74-160-C5). The district contended that HEW had no jurisdiction to initiate administrative proceedings against Topeka because the district was in compliance with the court order in Brown.

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Judge _____ of the Federal District Court in Kansas, in his Memorandum of Decision and Finding of Facts and Conclusions of Law (filed August 23, 1974), said that the "Plaintiff school district is entitled to a preliminary injunction enjoining the defendants....The findings and conclusions herein announced are deemed notice to the parties to the action."

In his decision Judge _____ requested defendants (HEW, et al.) to submit evidence which would allow the court to determine whether there has been full compliance with Brown.

From August 23, 1974, to October 1976 the parties in _____ requested and were granted several continuances to the trial.

During this time period no action had been taken on the administrative proceedings. This may have been due to Judge _____'s Memorandum of Decision. However, on October 18, 1976, Administrative Law Judge _____ dismissed the administrative proceedings, stating:

It appearing to the undersigned that the Respondent School District adopted a plan to remedy the violation...it is therefore ordered that the above entitled matter be dismissed without prejudice.

The Federal District Court two days later (October 20, 1976) entered a Stipulation of Dismissal as agreed upon by the plaintiff and defendants.

This, however, did not end HEW's concern with this case. On November 17, 1976, then director of OCR _____ wrote to your predecessor, _____ outlining the facts of the case against the school district. Mr. _____ told the Justice Department that in the opinion of OCR/HEW the school district failed to comply with the substantive requirements of Title VI and that appropriate steps should be taken to resolve the noncompliance in the Federal Courts.

In May of this year, our regional office staff contacted Justice Department attorney who had represented HEW in _____. Mr. _____ I understand, said the Civil Rights Division reviewed Mr. _____ letter in light of the facts of the case and decided that pursuit of a remedy under Brown would not be the best use of the Division's limited resources. I am also advised that in May 1978, Judge Templer informed Commission regional staff that he had expected the government to take further action after issuance of his Memorandum of Decision filed on August 23, 1974.

At present, the school district maintains it does not have a desegregation plan and OCR regional officials indicate they have not conducted a Title VI review in the school district since January 1974.

In any case, the current status of a landmark school desegregation case is, at best, very cloudy. In an effort to clarify the situation, I would appreciate knowing your understanding of Justice Department action on the Topeka, Kansas, Unified School District No. 501. Specifically, we would like a copy of your Department's reply, if any, to the letter of November 17, 1976, and any subsequent correspondence on this matter between your Department and the Department of Health, Education and Welfare. Finally, please let me have your assessment of the need for and likelihood of further Justice Department action in this case.

Thank you for your attention to this complex matter.

Sincerely,

Acting Staff Director

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