

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.)
))

RESPONSE OF UNIFIED SCHOOL DISTRICT NO. 501 TO REQUEST
FOR PRODUCTION (SECOND) OF INTERVENING PLAINTIFFS

In response to intervening plaintiffs' request for production of documents (second) for inspection, Unified School District No. 501, pursuant to Rule 34 of the Federal Rules of Civil Procedure, advises the intervening plaintiffs as follows:

Request No. 1

"All reports to the Office of Civil Rights of the Department of Education or its predecessor which identify the number and/or race of all students suspended or disciplined annually by school."

Response to Request No. 1

Intervening plaintiffs' participation in this case commenced on August 22, 1979, when they filed their motion for an order commanding compliance with the Supreme Court mandate to desegregate the schools in the case of Brown v. Board of Education of Topeka, 349 U.S. 294, 75 S.Ct. 753 (1955) (Brown II). In its decision granting intervention, the Court

identified the nature of intervening plaintiffs' claims and the manner in which it was alleged that the School District had failed to comply with the Supreme Court's mandate in Brown II as follows:

- "1. The School District has established school attendance zones which perpetuate racially segregated schools;
- "2. The facilities, equipment, curriculum and instruction provided in those schools with disproportionately high Black enrollment are substantially inferior to those provided for the schools where there is a disproportionately high White enrollment;
- "3. Black teachers, counselors and other Black personnel are assigned to schools where Black enrollment is disproportionately high. White teachers, counselors and other White personnel are assigned to schools where White enrollment is disproportionately high;
- "4. The School District has adopted and implemented an open enrollment policy which will continue to perpetuate racially segregated schools; and
- "5. The long range facilities plan adopted and implemented by the School District further perpetuates the racially segregated schools." Brown v. Board of Ed. of Topeka, Shawnee County, 84 F.R.D. 383, 391-392 (D.Kan. 1979).

In June of 1982, intervening plaintiffs filed an amended complaint which makes the same identical allegations regarding the School District.¹

The documents sought by Request No. 1 are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence regarding any of the five enumerated claims of the intervening plaintiffs. In addition, Unified School District No. 501 does not understand what entity intervening plaintiffs mean by referring to the predecessor of the Office of Civil Rights of the Department of Education.

¹ Although presented in a somewhat different order, compare paragraphs 9-13 of intervening plaintiffs' motion for order commanding compliance with paragraphs 7-11 of their amended complaint.

Request No. 2

"All 'EEO-5' reports filed by the School District with the Office of Civil Rights and/or the Equal Employment Opportunities Commission."

Response to Request No. 2

The "EEO-5" reports sought by this request contain equal employment opportunity and hiring information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence regarding any of the issues in this case. This case has never contained an allegation of discriminatory hiring practices. Moreover, in view of the status of the intervening plaintiffs and the class which they represent,² the intervening plaintiffs would lack standing to present any justiciable claim of employment discrimination against Unified School District No. 501. Also see response to Request No. 1 set forth above.

Request No. 3

"Any and all statements, pamphlets, memoranda, and/or other communications prepared any/or issued by U.S.D. 501 to students, parents, teachers, and/or administrative personnel relative to policies, practices, and procedures of the School District concerning the rights, responsibilities or discipline of students."

Response to Request No. 3

The same objection as that stated in response to Request No. 1 above.

Request No. 4

"All correspondence between the School District and HUD or any of its predecessor agencies, including the Public Housing Administration."

²See the Court's order filed June 13, 1980, defining the class as "all Black students enrolled now or in the future in defendant Unified School District No. 501 schools."

Response to Request No. 4

Unified School District No. 501 objects to attempting to identify which entities the intervening plaintiffs mean by the phrase "predecessor agencies" of HUD. Unified School District No. 501 is willing to produce for inspection the correspondence between the School District and U. S. Department of Housing and Urban Development which the School District still possesses, at its Administration Building located at 624 West 24th Street, Topeka, Kansas, upon reasonable advance notice to counsel for Unified School District No. 501 of the date and time on which intervening plaintiffs' counsel desire to inspect such documents. With respect to correspondence between the School District and agencies other than HUD, the intervening plaintiffs should specify to which agencies they are referring.

Request No. 5

"All correspondence between the School District and the Topeka Housing Authority."

Response to Request No. 5

Any such documents which are in the possession of Unified School District No. 501 will be made available for inspection by intervening plaintiffs' counsel at the administrative offices of Unified School District No. 501, 624 West 24th Street, Topeka, Kansas, upon reasonable advance notice to counsel for Unified School District No. 501 of the date and time on which intervening plaintiffs' counsel desire to inspect such documents.

Request No. 6

"All correspondence between the School District and the U. S. Department of Education or its predecessors, relating to compliance with federal civil rights laws and/or requests for federal funds for desegregation related purposes.

Response to Request No. 6

Unified School District No. 501 has made no request for federal funds for desegregation related purposes and, therefore,

no such documents exist. Unified School District No. 501 objects to Request No. 6 insofar as it seeks correspondence unrelated to the five enumerated claims set forth in intervening plaintiffs' amended complaint. Unified School District No. 501 is subject to several "federal civil rights laws" which have nothing to do with the subject matter of intervening plaintiffs' amended complaint. As drafted, Request No. 6 is overly broad and vague, seeking information which is irrelevant and not calculated to lead to the discovery of admissible evidence regarding any issue in this case. Unified School District No. 501 is willing to produce for inspection the correspondence in its possession between the School District and the U. S. Department of Education and the U. S. Department of Health, Education and Welfare (presumably the predecessor to which the request refers) involving the subject matter covered by any of the five enumerated claims of the intervening plaintiffs for the time period beginning with the 1950-51 school year. Such documents will be made at the Administration Building of Unified School District No. 501 located at 624 West 24th Street, Topeka, Kansas, and upon reasonable, prior notice to counsel for Unified School District No. 501 of the date and time for such inspection.

Request No. 7

"All correspondence with the Kansas Commission on Civil Rights, the Topeka Human Relations Commission, the Equal Employment Opportunities Commission, the U. S. Department of Justice or the Kansas Attorney General's Office, relating to desegregation, segregation, student transfers, student discipline, teacher/administration hiring, firing, assignment or transfer, or allegations of civil rights violations."

Response to Request No. 7

Unified School District No. 501 objects to providing correspondence related to student discipline, the hiring and firing of teachers and administrators, for the reasons set forth in response to Request Nos. 1 and 2. Any correspondence which the School District possesses relating to desegregation,

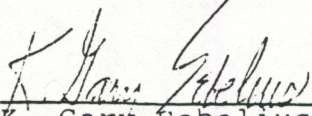
segregation, student transfers and the assignment or transfer of teachers and administrators for the agencies enumerated will be produced at the Administration Building of Unified School District No. 501, 624 West 24th Street, Topeka, Kansas, upon reasonable advance notice to counsel for the School District of the time and date on which counsel for intervening plaintiffs desire to inspect such documents.

Request No. 8

"All senior high school yearbooks from 1940 to the present."

Response to Request No. 8

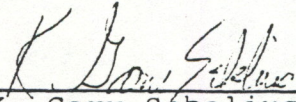
Unified School District No. 501 is willing to permit inspection of high school yearbooks at a mutually agreeable time as follows: consonate with the decision of Judge Sam A. Crow dated October 6, 1980, limiting discovery to the period beginning with the 1950-51 school year, high school yearbooks of Topeka High School will be made available. Highland Park High School was annexed into the School District in 1959 and high school yearbooks beginning with that year to the present will also be made available. Topeka West High School opened in the school year of 1961-62 and yearbooks beginning with that year to the present will be made available for inspection at a mutually agreeable time.



K. Gary Sebelius
of Eidson, Lewis, Porter & Haynes
1300 Merchants National Bank Bldg.
Topeka, Kansas 66612
(913) 233-2332
Attorneys for Unified
School District No. 501

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing RESPONSE OF UNIFIED SCHOOL DISTRICT NO. 501 TO REQUEST FOR PRODUCTION (SECOND) OF INTERVENING PLAINTIFFS was served upon attorneys for intervening plaintiffs by depositing same in the United States mail, first class postage prepaid, this 24 day of September, 1982, addressed to Richard Jones, 605 S.E. Quincy, Suite 1, Topeka, Kansas 66603.



K. Gary Sebelius