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., Intervening Plaintiffs, vs. BOARD OF EDUCATION OF TOPEKA, SHAWNEE COUNTY, KANSAS, et al., Defendants.	)	No. T-316

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW SUBMITTED BY DEFENDANT UNIFIED SCHOOL DISTRICT NO. 501

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I. PROPOSED FINDINGS OF FACT.

A. As of 1950-51 school year.

1. Pursuant to §72-1724 of the General Statutes of Kansas 1949 relating to public schools in cities of the first class, in 1950 the Topeka Public Schools No. 23 maintained a segregated system of schools for kindergarten through 6th grade. During the 1950-51 school year, the Topeka Public Schools maintained four elementary schools for black children and 18 elementary schools for white children. Black children were permitted to attend any one of the four schools established for them. The choice of schools to be attended by the children or their parents. (See

Finding of Fact No. III of the Findings of Fact entered herein on August 3, 1951).

2. In the 1950-51 school year there was no material difference in the physical facilities in the black elementary schools and in the white elementary schools and such facilities in the black schools were not inferior in any material respects to those in the white schools. (Finding of Fact No. IV).

3. In the 1950-51 school year the educational qualifications of the teachers and the quality of instruction in the black elementary schools were not inferior to but were comparable to those of the white elementary schools. (Finding of Fact No. V).

4. In the 1950-51 school year the courses of study prescribed by the state law were taught in both the black schools and in the white schools. The prescribed courses of study were identical in both classes of schools. (Finding of Fact No. VI).

5. In the 1950-51 school year transportation to and from school was furnished black children in the segregated schools without cost to the children or their parents. No such transportation was furnished to the white children in the segregated schools. (Finding of Fact No. VII).[1]

6. Prior to the filing of the original action in 1950, the Board of Education of Topeka eliminated separate extracurricular activities. On September 26, 1949, the Board of Education adopted a policy requiring that the extracurricular activities be

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[1] Proposed Findings of Fact Nos. 1-5 are also embodied in the original published opinion herein, Brown v. Board of Education of Topeka, 98 F. Supp. 797, 798 (D. Kan. 1951).

integrated in the high school. (Def. Ex. 1070, Topeka School Board minutes, hereafter TSBM, 9/26/49; testimony of Dr. Owen Henson, Tr. 1431-1432).[2]

7. In 1950-51 school year, there was only one high school in Topeka, Topeka High School, which was attended by all school students within Topeka without regard to race. (Testimony of Dennis Payne, Tr. 2418-2419).

8. The junior high schools in Topeka were desegregated at the beginning of the 1941-42 school year. (Testimony of William Lamson, Tr. 473-475; Def. Ex. 1006; testimony of F. S. Jack Alexander, Tr. 1086, 1089; testimony of Dr. Owen Henson, Tr. 1431; testimony of Joe Douglas, Tr. 2458). See also Graham v. Board of Education of the City of Topeka, 153 Kan. 840 (1941).

9. In 1950, the non-elementary grade levels of the public schools in Topeka were operated on a "nonsegregated basis". Brown v. Board of Education of Topeka, 347 U.S. 483, 486 n. 1, 74 S.Ct. 686, 687 (1954) (hereafter "Brown I").

B. Prior to Brown II decision (1952-1955).

10. On September 8, 1953, the first step in termination of segregation in the Topeka elementary schools was presented and adopted. Segregation was terminated in the Southwest and Randolph Elementary Schools. Black children living in those school districts would be permitted to continue at Buchanan if they desired, but transportation to Buchanan School would be discontinued. (Def. Ex. 1073, TSBM 9/8/53).

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2 "Tr." references are to the transcript of trial before this Court from October 6 through October 31, 1986.

11. On January 20, 1954, the second step in termination of segregation in Topeka elementary schools was presented and adopted by the Board of Education of the Topeka Public Schools. In addition to Southwest and Randolph Elementary Schools, segregation was terminated in 12 additional formerly all-white elementary schools. (Def. Ex. 1074, TSBM 1/20/54).

12. As of the beginning of the 1954-55 school year, there were only five schools which were not integrated (Lafayette, Lincoln, Lowman Hill, Parkdale and Van Buren). (See Pl. Ex. 8J, summary of four-step plan contained in Answer to Interrogatory No. 9[h 2-4, l, m & n], First Set).

13. On February 23, 1955, the Board of Education of Topeka adopted the third step in termination of segregation in Topeka elementary schools which had been presented on February 7, 1955. The third step provided as follows:

(a) That segregation be terminated in all remaining buildings.

(b) That McKinley Elementary School be closed, and placed on a stand-by basis for the coming year.

(c) That Buchanan, Monroe and Washington Schools be assigned to districts within the general framework of elementary school districts according to the maps presented.

(d) That any child who is affected by the changes in district lines recommended be given the option of finishing elementary grades in the school which he or she attended in 1954-55, McKinley excepted.

(e) That entering kindergarten children in 1955-56, who are affected by the change in school boundaries as recommended, be given the opportunity of attending the same school in 1955-56 that they would have attended in 1954-55 if they had been old enough to enter.

(f) That no transportation be provided in 1955-56 or thereafter.

(Def. Ex. 1076, TSBM 2/7/55; Def. Ex. 1077, TSBM 2/23/55).

14. Of the four formerly all-black elementary schools (Buchanan, McKinley, Monroe and Washington), McKinley was closed at the end of the 1954-55 school year. (Pl. Ex. 8H, Answer to Interrogatory No. 9(e-k), First Set).

15. On May 17, 1954, the United States Supreme Court in Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed.2d 873 (1954) (Brown I) expressly found that with respect to Topeka, the non-elementary grade levels of the public schools were operated on a "non-segregated basis". Id., 347 U.S. at 486, n. 1. Further, the court did not disturb the finding by the district court of substantial equality "with respect to buildings, transportation, curricula, and educational qualifications of teachers". Id.

C. Post-Brown II - immediate results (1955-1957).

16. At the request of the United States Supreme Court in April, 1955, a map showing the establishment of District boundaries within the City to be effective at the beginning of the 1955-56 school year, as well as a breakdown showing a percentage

of anticipated black-white enrollment for that year, was provided. (Def. Ex. 1128; 1129; Pl. Ex. 223). Possessing that specific information, on May 31, 1955, the United States Supreme Court in Brown v. Board of Education, 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083 (1955) (Brown II) noted that "substantial progress" had been made in Kansas toward the transition "to a system of public education freed of racial discrimination." Id., 349 U.S. at 299. The case was then remanded to the U. S. District Court to carry out the mandate of Brown II.

17. On September 15, 1955, the School District presented Steps I, II and III of its previously adopted plan to terminate segregation in Topeka elementary schools to this Court for its approval. The court upheld the overall plan then under consideration; however, the court was critical of the temporary option contained in Step III, pertaining to kindergarten children entering school in 1955-56. The court retained jurisdiction of the cause for the purpose of entering the final decree at such time as the court felt there had been full compliance with the mandate of the United States Supreme Court. (Brown v. Board of Education of Topeka, 139 F. Supp. 468 (D. Kan. 1955).

18. On December 21, 1955, Step IV in the gradual and systematic termination of racial segregation in the public schools of Topeka was presented to the School Board for its consideration. Superintendent Wendell Godwin recommended that Step IV become effective on September 1, 1956 in compliance with the mandate of the United States Supreme Court and order of the U. S. District Court. To be in compliance, Superintendent Godwin stated that Step IV must include the following elements:

(a) That the expiring "option e" in Step III which permitted entering kindergarten children in 1955-56 who were affected by the change in school boundaries outlined in Step III, to exercise the option of attending the school located in the district in which they resided or to attend the school which they would have attended in 1954-55 if they had been old enough to enter, be allowed to expire. This means that the kindergarten children who exercised that option in 1955-56 would not have the option to exercise in 1956-57 or thereafter. (Nine Negro children who exercised the option in September 1955 to enter schools which were formerly segregated for Negro children only, would not be permitted to attend the school of their present attendance in September 1956, unless they should move into the proper attendance district. Eleven white children who exercised the option in September 1955 to enter schools which were formerly segregated for white children only, would not be permitted to attend the school of their present attendance in September 1956, unless they should move into the proper attendance district.)

(b) That all children moving into any Topeka elementary school district which is not designated as an optional district between two or more elementary schools (or having moved into such district on or after June 1, 1955) be required to attend the elementary school of the district in which they reside, subject only to be traditional exceptions that have prevailed in Topeka for many years. The traditional exceptions are as follows:

1. A kindergarten or first grade child whose parents reside in Topeka and are both employed, may be granted permission to attend the kindergarten or first grade located in the district in which the adult who cares for the child during the day resides.

2. A child whose parents move into a different elementary school attendance district during the school year, may finish the year in the school he has been attending.

3. A child who has finished the fifth grade in an elementary school, and whose

> parents move into a different Topeka school attendance district may attend the sixth grade of the school he attended in the fifth grade.
>
> 4. A crippled child may be given permission to attend an elementary school which is suitable in view of the nature of his handicap.
>
> 5. Pupils who are eligible for any phase of our special educational program which is not housed in the school district in which they reside may be asked to attend the school which does house that particular part of our program which meets the needs of those particular individuals.
>
> Note: This recommendation leaves unchanged the "option d" of Step III which went into effect September 1, 1955. That option is as follows:
>
> (d) "That any child who is affected by the changes in district lines as herein recommended, be given the option of finishing elementary grades in the school which he attended in 1954-55, McKinley excepted."
>
> This, to, like "option e" referred to earlier, is an expiring option. Sixty-two Negro children and seventy-eight white children exercised this option in September, 1955. As they gradually move through the schools they are now attending, the option will pass out of existence. This is considered to be an orderly procedure in terminating the practice of segregation.

(Def. Ex. 1078, TSBM 12/21/55; also see Pl. Ex. 8J, summary of School Board actions contained in Answer to Interrogatory No. 9 [h 2-4, l, m & n], First Set).

19. Counsel for the plaintiffs, Mr. Scott, was present at the School Board meeting on December 21, 1955, during the presentation of Step IV of the proposed desegregation plan and voiced opposition to its optional feature. Action on Step IV was de-

layed by the Board until January 18, 1956, in order to hear any suggestions that may be presented by people of the community. In response to questioning regarding any further steps in desegregation, the superintendent replied that Step IV brought the Topeka Public Schools into full compliance with the law. (Def. Ex. 1078, TSBM 12/21/55; also see Pl. Ex. 8J, summary of School Board action regarding Steps I, II, III and IV contained in answer to Interrogatory No. 9 [h 2-4, l, m & n], First Set).

20. On January 18, 1956, after discussion, including comments by the President of the local chapter of the NAACP, Step IV in the gradual and systematic termination of racial segregation, as recommended by the superintendent, and in compliance with the mandate of the United States Supreme Court and the United States District Court was adopted by the School Board. (Def. Ex. 1079, TSBM 1/18/56).

21. Although counsel for plaintiffs were specifically aware of the adoption of Step IV, no action was ever taken to enjoin or modify its implementation. Further, no appeal was ever taken from the United States District Court's October 28, 1955 order and decision approving the Board's desegregation plan.

22. The kindergarten option (over which this Court voiced minor concern) was abolished by the adoption of Step IV. Only "option d" of Step III was retained, permitting school children who were affected by the changes in district lines at the beginning of the 1955-56 school year the option of finishing elementary grades in the school which they attended in 1954-55. This expiring option passed out of existence at the end of the 1960-61

school year when those children who were in kindergarten in Topeka in 1954-55 had completed sixth grade. While records regarding the racial composition of schools did not exist for the time period 1957-58 through 1965-66, it is clear from School Board minutes that this expiring option could have been exercised by no more than 62 black children and 78 white children at any time subsequent to September, 1955, as that was the total number of children exercising the option for the 1955-56 school year. (Def. Ex. 1078, TSBM 12/21/55).

23. The School Board's desegregation plan, including Steps I-IV, was carried out and fully implemented by the School District without modification. The dual system was dismantled and a unitary system was fully in place, under the then current standards. By the beginning of the 1956-57 school year, all elementary school children attending Topeka public schools attended their neighborhood school without regard to race (excepting only those few who may have exercised "option d" of Step III). As early as the 1955-56 school year, black school children, attending their neighborhood school, were present in 18 of the 23 elementary schools of Topeka. This was also true for the 1956-57 school year. (Def. Ex. 1078, TSBM 12/21/55; Pl. Ex. 8J, Answer to Interrogatory No. 9 [h 2-4, 1, m & n], First Set; Def. Ex. 1008A & 1008B).

24. By the 1956-57 school year, there was a wide dispersion of blacks throughout the Topeka Public Schools. Within one year of the mandate in Brown, nearly 60% of the black students of Topeka Public Schools were dispersed to the formerly all white

elementary schools. (Testimony of William Lamson, Tr. 520-521; Def. Ex. 1008A & B).

25. In response to the Brown decision, the State of Mississippi removed and disassociated itself with the provision of public services, including public education. It closed public recreational facilities, public lakes, public beaches--every instance where the state might be underwriting an opportunity for people of different races to mix. Just last year, for the first time since the Brown decisions, the State of Mississippi reestablished mandatory school attendance for school age children. The State of Virginia also abolished its public school system in response to the mandate of Brown. (Testimony of William Lamson, Tr. 358-359; testimony of Dr. Gordon Foster, Tr. 721).

D. 1957-1965 - a period of dramatic city growth and other non-School District actions.

26. From the beginning of the 1950-51 school year until passage of the School Unification Law, K.S.A. 72-6734, et seq., effective July 1, 1965, all additions to the geographical boundaries of Topeka Public Schools No. 23 were solely dependent upon expansion of the city limits of the city of Topeka. The territory of the Topeka school system was enlarged by virtue of expansion of the City of Topeka's corporate boundaries through annexation. Topeka Public Schools had no control over the situation. As the boundaries of the City of Topeka expanded, the School District was required to educate school age children living within the annexed areas. (Pl. Ex. 8D, Answer to Interrogatory No. 5, First Set; testimony of Dennis Payne, Tr. 2413).

27. The annexation of territory to the City of Topeka after 1955 substantially changed the School District from what it was prior to 1955. This change brought in a substantial number of people. It fundamentally changed the school system. Boundary changes in the 1950's are so attenuated from today that they are not particularly critical. (Testimony of Dr. William Clark, Tr. 2359, 2399).

28. From January 1, 1955, until July 1, 1963, the City of Topeka experienced tremendous growth through annexation, more than doubling in size. No further annexations were experienced between January 1, 1964 and July 1, 1965, at which time, pursuant to state law, the boundaries of the School District were locked in by the passage of the School Unification Acts.[3] (Testimony of Kris Abrahamson, Tr. 2094; Def. Ex. 1009, map of Topeka, with city annexation overlays; testimony of William Lamson, Tr. 408; Def. Ex. 1001, at p. 2).

29. Set forth below is a summary of the territorial expansions of the corporate boundaries of the city of Topeka through annexation which modified the geographical boundaries of Topeka Public Schools No. 23 between 1950 and July 1, 1965:

a. On January 2, 1950, the City of Topeka annexed the situs of Seabrook Elementary School located at 1901 Mission Avenue. (Ord. No. 7947). The school had been operated by Seabrook School District No. 88.

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[3] K.S.A. 72-6779 was adopted in 1965, providing that "No annexation by any city governing body shall affect any change in the boundaries of any unified district or other school district."

b. Through a series of annexations extending over two years, the City of Topeka annexed a significant part of the territory of Washburn Rural High School District No. 3. (Ord. Nos. 7947, 1-2-50; 7960, 2-11-50; 7981, 4-19-50; 8134, 6-5-51; 8170, 8-31-51; 8212, 12-28-51; and 8243, 3-24-52). The situs of the school building used by the Washburn Rural District at 19th & Hope Streets was annexed by the City of Topeka on April 19, 1950. (Ord. No. 7981). However, pursuant to an agreement dated July 16, 1952 between the Board of Education of the City of Topeka and the Washburn Rural District, the Washburn Rural District was permitted to continue to use and occupy the annexed school building until June 15, 1953. The school building was subsequently used by the Topeka School District as Capper Junior High School. The territory annexed by Ordinance No. 8170 included the future situs of Crestview Elementary School which opened in 1954.

c. On December 18, 1952, the City of Topeka annexed a portion of the territory of Avondale School District No. 97 (Ord. No. 8349).

d. Territory and school buildings of Highland Park Elementary School District No. 35 and Highland Park Rural High School District No. 10 were annexed by the City of Topeka through a series of ordinances dating January 29, 1957 through June 24, 1959. (Ord. Nos. 9038, 1-29-57; 9172, 10-7-57; 9206, 12-4-57; 9252, 1-16-58; 9263, 2-6-58; 9269, 2-27-58; 9290, 3-27-58; 9568, 1-15-59; 9570, 1-22-59; 9630, 6-24-59). The effective date of the Highland Park annexations for school purposes was June 30, 1959.

e. The situs of the school buildings of Avondale School District No. 97 were annexed by the City of Topeka on January 29, 1957. (Ord. No. 9038). The buildings encompassed by the annexation were Avondale East, Avondale Southwest, and Avondale West. The effective date of the Avondale annexations for school purposes was June 30, 1959.

f. On December 4, 1957, the City of Topeka annexed property encompassing the situs of the elementary school building of Pierce Common School District No. 14. (Ord. No. 9206).

g. On December 4, 1957, the City of Topeka annexed territory which included the situs of the elementary school building of Belvoir School District No. 61. (Ord. No. 9206). The annexation became effective for school purposes on June 30, 1960.

h. Through a series of annexations commencing December 4, 1957, the City of Topeka annexed territory encompassing the school building of Rice Common School District No. 8. (Ord. Nos. 9206, 12-4-57; 9252, 1-16-58; 9568, 1-15-59; 9570, 1-22-59; 9630, 6-24-59; and 9935, 4-18-60). The effective date of the annexations for school purposes was June 30, 1960.

i. Through a series of ordinances commencing December 4, 1957, the City of Topeka annexed territory which included the school building used by East Indianola School District No. 42 and territory within Seaman Rural High School District No. 5. (Ord. Nos. 9206, 12-4-57; 9252, 1-16-58; 9263,

2-6-58; 9269, 2-27-58; 9290, 3-27-58; 9568, 1-15-59; and 9570, 1-22-59). Pursuant to an agreement dated April 30, 1959, the affected school districts extended the date of the annexations for school purposes to June 30, 1965. Pursuant to an agreement dated January 6, 1964, the school districts further extended the effective date of the annexations for school purposes to June 30, 1970.

j. On March 27, 1958, the City of Topeka annexed territory which included the situs of the elementary school building operated by Dawson School District No. 92. (Ord. No. 9290). The annexation became effective for school purposes on June 30, 1960.

k. Pursuant to Ordinance No. 9568 (1-15-59) and No. 9570 (1-22-59), the City of Topeka annexed territory encompassing the school building of Lyman School District No. 59 and part of the territory of Seaman Rural High School District No. 5. On February 27, 1961, the affected school districts entered into an agreement delaying the date of the annexations for school purposes from June 30, 1961 to June 30, 1962. Pursuant to an agreement dated May 17, 1967 between U.S.D. No. 345 (Seaman) and U.S.D. No. 501, the districts agreed that territory annexed by the City of Topeka pursuant to Ordinances Nos. 9568 and 9570 would be transferred to U.S.D. No. 345. The May 17, 1967 agreement became effective June 15, 1967 pursuant to an order of the Kansas State Department of Public Instruction dated June 2, 1967. A total of 179 students were affected by the transfer.

l. On January 22, 1959, the City of Topeka annexed territory which included the situs of the school building of Kaw Valley School District No. 87. (Ord. No. 9570). Pursuant to an agreement between the affected school districts, the date of the annexation for school purposes was extended until June 30, 1966.

m. On July 16, 1962, the City of Topeka annexed a portion of the territory of Washburn Rural High School District No. 3. (Ord. No. 10693). The area comprised 665 acres of property.

(Pl. Ex. 8D & 8E, answers to Interrogatory Nos. 5 & 6, First Set).

30. Effective July 1, 1966, Unified School District No. 501, Shawnee County, Kansas was created, replacing then-existing Topeka Public Schools No. 23. (Pl. Ex. 8A, answer to Interrogatory No. 2, First Set).

31. Further city annexation did not affect the responsibilities of Unified School District No. 501. See K.S.A. 72-6779.

32. Buchanan Elementary School, one of the four black elementary schools in the 1950-51 school year, was closed in 1959. (Def. Ex. 1083, TSBM 1/21/58).

33. Between 1960 and 1970, in west Topeka there was overall growth, while in east Topeka there was decline. Looking specifically at the inner city, there was much greater decline in east Topeka than west Topeka and the decline in east Topeka extended to the middle city tracts. While all of the outer city tracts had growth between 1960 and 1970, the growth was much greater in

the outer city tracts in west Topeka. (Testimony of Dr. William Clark, Tr. 2295; Def. Ex. 1114A, map of inner, middle and outer city tracts; Def. Ex. 1114, Clark report at p. 7-10).

34. Between 1970 and 1980, while there was overall population decline, it was much greater in east Topeka, and population was lost in both the inner and mid-city tracts. This pattern of decline in inner city areas is very typical of North American cities in the 1970's. However, the outer city tracts in west Topeka continued to grow. (Testimony of Dr. William Clark, Tr. 2295).

35. Between 1960 and 1980, there was decline in population in east Topeka, but very substantial growth in the west, to the extent of almost doubling the population in the western tracts of Topeka during this period. (Testimony of Dr. William Clark, Tr. 2295-2296).

36. At the beginning of the 1961-62 school year, Topeka West opened as a senior high attendance center (grades 10-12) in the rapidly growing, expanding southwest area of the City of Topeka. It was not built exclusively for white children. The decision to build Topeka West High School was prompted by the fact that Topeka High School was exceeding its capacity. As of that time, the central part of Topeka was served by Topeka High School, and the eastern area was served by Highland Park High School. The Highland Park attendance area had been annexed by the City of Topeka and made a part of the School District beginning with the 1959-60 school year. (Testimony of Dr. Owen Henson, Tr. 1432-1434; testimony of Dennis Payne, Tr. 2413-2414;

Pl. Ex. 8H, Answer to Interrogatory No. 9 [e, f, h, i, j & k], First Set; Pl. Ex. 9G, Answer to Interrogatory Nos. 7, 8 & 9, Second Set).

37. The placement of Topeka West High School in the western part of the School District was a reasonable and thoughtful decision, given the growth occurring in the western part of the city and knowing that there was a central high school in the inner city area and the addition of Highland Park High School when the Highland Park district was annexed. (Testimony of Dr. William Clark, Tr. 2296-2297).

38. Washington Elementary School, one of the four black elementary schools in the 1950-51 school year, was closed in 1962. Lincoln Elementary was also closed at the same time. (Def. Ex. 1084, TSBM 2/5/62).

39. In addition to the changes brought about by annexations by the City of Topeka, the demographics of the attendance areas for the Topeka Public Schools were altered by other governmental actions over which the School District had no control. Between 1960 and 1970, a number of federally subsidized housing projects were developed within the City of Topeka. Set forth below is a summary of those federally subsidized housing projects which were constructed for family occupancy (as opposed to occupancy by the elderly) (derived from Def. Ex. 8R, Answer to Interrogatory No. 17, First Set; also see Def. Ex. 1009 & 1009A, maps of annexations and federally subsidized housing projects with the map location key):

17c Year of Const.	17a Name and Address of Housing Project	17b School Attendance Zones for Project	17f Number and Type of Units
1961	Eastboro Apartments 400 Winfield	Lafayette/Rice; East Topeka Jr. High; Highland Park High School (HPHS)	28 units, family
1962	Eastboro Apartments 400 Winfield (28 more units) and 400 Arter (48 units)	Lafayette/Rice; East Topeka; HPHS	76 units, family
1963	Pine Ridge 2701 East 10th St.Rd.	Belvoir; East Topeka; HPHS	210 units, family
1965	Trail Ridge 2000 East 12th	Belvoir; East Topeka; HPHS	148 units, family
1965	Colonial Townhouses 2501 East 25th (26 units), 2502 Colonial Drive (13 units) and Golden (98 units)	Hudson; Eisenhower; Jr. High; HPHS	137 units, family
1967	Highland Park Apts. 2301 Belleview	Hudson; Eisenhower HPHS	200 units, family
1970	Ripley Park Apts. 300 block of Lime (54 units) and 200 block of Lawrence (48 units)	Lafayette; East Topeka; Topeka High School (THS)	102 units, family
1970	Deer Creek 2435 East 25th	Hudson; Eisenhower; HPHS	92 units, family
1970	Western Plaza 1300 Western	Polk (presently Quinton Heights); Crane Jr. High (presently Robinson Middle School); THS	22 units, family

40. The federally funded urban renewal projects for downtown Topeka displaced not only businesses but also residents in the downtown Topeka area in 1963. The construction of Interstate 70 in the early 1960's had an effect on the demographics of the City of Topeka. Condemnation of the right-of-way for Inter-

state 70 through east Topeka began in January, 1963. Demographic changes are also attributable to the effects of the tornado experienced in Topeka in June of 1966. (Def. Ex. 1009A, list of federal projects and schools; testimony of Dr. William Clark, Tr. 2295, 2327; Def. Ex. 1114, Clark Report at p. 10-11; also compare Def. Ex. 1115A, Map- 1960 census data, depicting percentage of black population by block; testimony of William Lamson, Tr. 427, 462).

41. Effective August 5, 1963, a specific, formal policy was adopted by the School District, requiring that there "shall be no discrimination in the recruitment and selection of employees as to race, creed, color, or national origin." (Def. Ex. 1135, Policy No. 5200; testimony of Dennis Payne, Tr. 2428-2429).

42. As early as the 1950-51 school year, optional attendance zones for the elementary schools were in existence in the Topeka Public Schools. Approximately 20 such optional zones were in existence in the 1950-51 school year solely between the white elementary schools. (Testimony of William Lamson, Tr. 111, 130; Pl. Ex. 218A, 1950 Topeka census map, with Pl. Ex. 217A & B, overlays of 1952 school boundaries with optional zones identified).

43. By the beginning of the 1963-64 school year, a substantial number of optional attendance zones existed in the Topeka Public Schools. 36 optional areas existed involving the elementary schools; 18 optional areas involving the junior high schools; and 2 involving the high schools. As a result, the Topeka School Board directed that the administration conduct a

study of the optional attendance zones to determine which optionals should be retained and which should be abolished. (See Pl. Ex. 8T, "A Study in the Reduction of Optional Areas: Topeka Public Schools" dated December 12, 1963).

44. The Study regarding reduction of optional attendance zones was completed and presented to the Board on January 6, 1964. The stated purpose of the Study was to reduce the number of optional areas in the Topeka Public Schools. The stated reasons for reducing the number of optional areas were that (a) some optional areas were apparently obsolete; and (b) the rising enrollment made it imperative that the number of variables (one variable being students living in the optional areas) should be reduced so as to make estimated enrollment figures more concrete for more efficient use of building facilities. The basic assumptions used in making recommendations for the reduction of optional areas were that: (a) the Topeka Public Schools would adhere to the neighborhood school concept; and (b) pupils would be assigned to school without regard to race. The criteria used to determine what optional areas should remain and what optional areas should be changed were: (a) access to the school building (streets and walks); (b) travel distance from home to school (this distance is always estimated from the center of the optional area); (c) most efficient use of school building (a deliberate effort to not overcrowd any given building and at the same time to effectively use every available classroom); (d) capacity (in every instance the maximum capacity of the building was determined to make sure that this maximum capacity would not be ex-

ceeded); (e) pupil safety; and (f) directional pattern of public transportation facilities. According to the Study, of all the children attending elementary school in Topeka during the 1963-64 school year, approximately 7.6% lived in the 36 optional areas. Of all the children attending junior high school in Topeka during the 1963-64 school year, approximately 9.2% lived in the 18 junior high optional areas. (See Def. Ex. 1087, TSBM 1/20/64; Pl. Ex. 8T, "A Study in the Reduction of Optional Areas: Topeka Public Schools", dated December 12, 1963).

45. Optional zones were not specifically designed to be coincident with concentrations of black households. There were optional zones throughout the School District. These optional zones were not just in areas that were undergoing racial transition. (Testimony of Dr. William Clark, Tr. 2304-2310).

46. Optional attendance zones involved a small portion of the total school population. The racial composition of the attendance areas was not significantly altered, regardless of the inclusion or exclusion of optional zones. (Testimony of Dr. William Clark, Tr. 2328).

47. Analysis of the optional attendance zones for the 11 elementary school attendance areas possessing the highest concentration of black residents discloses that the optional attendance zones for those areas between 1963 and their abolition did not have a segregative effect. (Testimony of Dr. William Clark, Tr. 2304-2305, 2307-2310; Def. Ex. 1114, Clark report at p. 11-14).

48. Over time, all optional attendance zones were abolished by the School Board. By the end of the 1974-75 school year, all

remaining elementary and junior high optional attendance zones were abolished. By the end of the 1976-77 school year, all remaining high school optional attendance zones were abolished. The elimination of optional attendance zones was a good decision. (Pl. Ex. 9G, Answer to Interrogatory Nos. 7, 8 & 9, Second Set; testimony of William Lamson, Tr. 480).

E. 1966-1975 era.

49. As a result of a policy adopted by the U. S. Department of Health, Education and Welfare (HEW), school districts were required to remove race data from student enrollment records for the time period prior to the 1966-67 school year. In response to a request by the U. S. Commission on Civil Rights, the School Board did authorize the administrative staff to provide a racial inventory of student enrollment for the 1966-67 school year. According to the racial inventory of U.S.D. No. 501 students requested by the State Department of Public Instruction, for the 1966-67 school year, minority students, attending their neighborhood schools, were present in 32 of the 35 elementary school attendance centers. Only Lyman, McEachron and Potwin Elementary Schools lacked minority students in the 1966-67 school year. (Testimony of William Lamson, Tr. 432; Def. Ex. 1088, TSBM 10/3/66; and letter dated October 18, 1966 to Mr. William L. Taylor from Merle R. Bolton, Superintendent of Topeka Public Schools--see letter and racial inventory contained in Pl. Ex. 8J, Answer to Interrogatory No. 9 [h 2-4, 1, m & n], First Set).

50. For the 1967-68 school year, there were 34 elementary schools. Lyman, which was temporarily a part of the School

District for two years, was de-annexed to the Seaman School District effective with the 1967-68 school year. As a result, only McEachron Elementary School was without minority students in the 1967-68 school year. (Pl. Ex. 8J, Answer to Interrogatory No. 9 [h 2-4, l, m & n], First Set; Pl. Ex. 8E, Answer to Interrogatory No. 6, First Set).

51. No systematic feeder pattern existed among elementary schools and the junior high schools between 1966 and 1979. Boundaries of the elementary schools were not consistently coterminous with a junior high school attendance area. In most instances, prior to 1979, no elementary school attendance area was assigned in toto to a single junior high school. In many instances, assignment was to three different junior high schools. (derived from Pl. Ex. 8H, Answer to Interrogatory No. 9 [e, f, h.1, i, j, k], First Set).

52. The School District's policy regarding nondiscrimination in extracurricular activities was further clarified on June 15, 1970, when the School Board approved a policy requiring that each school establish selection and/or election procedures that would insure representation of all racial and ethnic groups served by the school in any organization having a limited membership. Examples of such organizations included cheerleading, drill teams and student government. Procedures were not to apply to those activities where performance skills were the primary criteria for selection. That policy regarding nondiscrimination in the educational programs or activities provided by U.S.D. No. 501 is still in effect today. (Pl. Ex. 8P, Answer to Interroga-

tory No. 15, First Set; Def. Ex. 1041D, Non-discrimination Policy No. 8100; testimony of Dr. Owen Henson, Tr. 2696).

53. On September 10, 1973, an action was filed against the Board of Education of U.S.D. No. 501 and various state agencies and officials, principally alleging that the children in west Topeka and south Topeka received superior educational facilities and opportunities, including buildings, equipment, libraries and facilities than could be obtained by students in the areas of east Topeka and north Topeka, which contained higher percentages of minority students. See Johnson v. Whittier, U.S.D.C. Kan., Case No. T-5430.

54. The filing of the Johnson v. Whittier case spawned an investigation by the U. S. Department of Health, Education and Welfare (HEW) into the practices of the Topeka Public Schools regarding race discrimination. In November and December of 1973, HEW representatives conducted an investigation to ascertain whether U.S.D. No. 501 was in compliance with Title VI of the Civil Rights Act of 1964. U.S.D. No. 501 subsequently was notified that HEW believed that the School District was not in compliance with Title VI regarding certain elementary school student assignments, and certain elementary and junior high school facilities. (Pl. Ex. 228; also testimony of Wayne Stratton, Tr. 2485-2486).

55. In response, on February 8, 1974, the Board of Education of U.S.D. No. 501 adopted a resolution directing that a plan be developed and implemented for expanding educational opportunity to work toward achieving a more perfect unitary school system by use of one or more of the following means:

(a) Reassignment of students to schools;

(b) Redefining school attendance areas;

(c) Closing of certain schools, and reassignment of students to other schools;

(d) Additions to, or enlargement or remodeling of some school buildings or school facilities, including new construction or use mobile classrooms;

(e) Construction of new schools and facilities.

(Def. Ex. 1089, TSBM 2/8/74).

56. Although a tentative student assignment plan was developed by the School District's staff and presented to the Board at its April 30, 1974 meeting, after consideration of the effect the plan would have upon the quality of education in the District, on May 7, 1974, the School Board determined that the plan as submitted would not be in the best interest of the students of the School District. This action is reflected in a resolution adopted by the Board at its May 7, 1974 meeting, which also resolved that the District determine if inequality of educational opportunities exist, and if so, to take the remedial steps necessary to rectify them, retaining the neighborhood school concept wherever possible. (Def. Ex. 1090, TSBM 4/30/74; Def. Ex. 1091, TSBM 5/7/74; testimony of Wayne Stratton, Tr. 2494-2495).

57. Upon notification of School Board's action, on June 7, 1974, HEW initiated formal administrative proceedings to obtain compliance pursuant to Title VI of the Civil Rights Act of 1964. (See Pl. Ex. 252, Notice of Opportunity for Hearing, In re Topeka Unified School District No. 501, Shawnee County, Kansas, HEW Docket No. S-79).

58. On August 7, 1974, Unified School District No. 501 filed an action in federal court to enjoin HEW from holding the administrative hearing and to enjoin the cut-off of federal funds. (See U.S.D. No. 501 v. Weinberger, U.S.D.C. Kansas, No. 74-160-C5; and testimony of Wayne Stratton, Tr. 2486).

59. On August 23, 1974, Judge Templar granted U.S.D. No. 501's motion for preliminary injunction, finding that the court was the proper forum for adjudicating any claims that "legal requirements have not been met by the School District as it relates to racial discrimination condemned in Brown v. School Board." (See preliminary injunction order at p. 7).

60. Subsequent to Judge Templar's decision, further negotiations regarding resolution of the Title VI concerns were conducted and the deadline for appealing Judge Templar's decision was extended by mutual agreement of the parties several times. (See U.S.D. No. 501 v. Weinberger, U.S.D.C. Kansas, No. 74-160-C5).

61. For internal planning reasons and in response to HEW's investigation, the School District developed a Short-Range Facilities Plan (Pl. Ex. 258) in 1974 and, ultimately, a Long-Range Facilities Plan (Pl. Ex. 240) in 1976. (Testimony of Dr. Owen Henson, Tr. 1436-1437).

62. On September 3, 1974, the School Board requested that the staff prepare a comprehensive study of school facilities. A short-range facilities plan was completed and presented to the Board of Education on December 3, 1974. It resulted in the closing of two junior high schools (Crane and Curtis) and two

elementary schools (Clay and Monroe) at the end of the 1974-75 school year. (Pl. Ex. 258, Short-Range Facilities Plan; Def. Ex. 1092, TSBM 9/3/74; Def. Ex. 1093, TSBM 12/3/74; Def. Ex. 1094, TSBM 1/7/75; testimony of Dr. Owen Henson, Tr. 1436-1438).

63. Monroe Elementary School was the last of the four formerly all-black elementary schools to be closed. (Def. Ex. 1093, TSBM 12/3/74; Def. Ex. 1094, TSBM 1/7/75).

64. On May 29, 1975, the School Board adopted a resolution enumerating steps taken and to be taken regarding the closing of certain school facilities to promote changes in the racial composition of some of the schools. Included in the resolution was the School Board's commitment to create a Citizens' Advisory Committee on a permanent basis and the adoption of an affirmative action program to encourage employment of minorities. At that time, an affirmative action program and the District Citizens Advisory Committee were created and still operate today. (Testimony of Dr. Owen Henson, Tr. 1449, 1451; Pl. Ex. 371, TSBM 5/29/75; testimony of Wayne Stratton, Tr. 2487-2490).

65. The resolution also stated that the School Board was considering the development "specialized learning centers for intensive teaching of students, which learning centers shall be operated in a manner intended to encourage integration among minority and majority students." To this end, a learning center was established at the beginning of the 1975-76 school year which is known as the Adventure Center. (Def. Ex. 1095, TSBM 5/29/75; testimony of Dr. Owen Henson, Tr. 1451; testimony of Wayne Stratton, Tr. 2489).

66. The Adventure Center program involves all fifth grade students of Unified School District No. 501 who attend the Center for a two-week block of time. This program was implemented to improve racial interaction. Student groups are balanced by sex, race, geographical part of the city, and socio-economic level. There are two-day preview sessions for all third graders. Similar group composition and scheduling techniques are used. The curriculum is permeated by hands-on experience in a simulated society consisting of three areas of emphasis: finance; communications; and fine arts. In the society, all students become productive members by holding various salaried jobs. Students have opportunities for unique experiences in fine arts and technological enrichment. Curriculum and program modifications have been made on an annual basis. The Center is currently housed in the former Rice Elementary School building. (Testimony of Dr. Owen Henson, Tr. 2724-2726; testimony of Dr. Herbert Walberg, Tr. 2034, 2083-2085; testimony of George Rundell, Tr. 2106-2125, 2142-2144; Def. Ex. 1144, slide presentation of the Adventure Center; Def. Ex. 1045 & 1045A, Adventure Center brochures).

F. 1976-1981 - implementation of the Long-Range Plan.

67. On January 20, 1976, the school administrative staff presented its Long-Range Facilities Plan to the School Board. The Board directed the administrative staff to share the plan with the community and receive input with the understanding that the adoption, rejection, or modification of the Plan be made at the March 2 Board of Education meeting. (Def. Ex. 1097, TSBM 1/20/76).

68. On March 2, 1976, the School Board adopted its Long Range Facilities Plan which, due to budgetary limitations and other considerations, would require five years before it could be fully implemented. The five-year Long Range Facilities Plan in 1976 contemplated the construction of certain new schools and the closing of older facilities. It envisioned the redrawing of attendance boundaries, taking into consideration the anticipated effects on the racial composition of the schools. The 1976 Long-Range Facilities Plan (Pl. Ex. 240) was intended to accomplish three purposes. It was intended to bring about some educational efficiency; to improve the racial composition of the schools; and, to bring about certain economic improvements. (Testimony of Dr. Owen Henson, Tr. 1439).

69. Principal components of the plan were as follows:

> At the senior high school level: (a) maintenance of the present senior high school facilities as regular attendance centers, (b) elimination of the present optional attendance area, and (c) transfer of the ninth grade to the senior high schools effective at the beginning of the 1980-81 school year. At the junior high school level: (a) closure of Boswell, Capper, East Topeka, Highland Park, and Roosevelt Junior High Schools as regular junior high school attendance centers, (b) conversion of the present Central Park Elementary School facility to a middle school, and (c) construction of a new middle school on the Holliday-State Street site. At the elementary school level: (a) maintenance of the present K-6 grade configuration and (b) closure of Central Park, Grant, Parkdale, Polk, Rice and Sheldon Elementary Schools as regular elementary attendance centers.
>
> <u>1975-76</u>
>
> 1. Close Capper Junior High School as a regular attendance center at the end of the

school year with the present Capper attendance area divided between French and Landon Junior High Schools.

2. Begin the construction of an addition to the Landon Junior High School facility consisting of a media center, two classrooms, and rest rooms.

3. Begin the construction of an addition to the Quincy Elementary School facility consisting of a media center, small instructional spaces, and classrooms. Close Grant Elementary School when the addition to Quincy is completed at a time determined in cooperation with the parents of Grant students.

4. Begin the development of an adequate administrative, maintenance, and warehousing facility (remodel existing USD 501-owned facility, purchase a facility, or construct a new facility).

5. Make minor adjustments in the senior high school attendance areas to better equalize enrollments at the three schools. Eliminate the remaining optional attendance areas and establish a policy for phasing it out.

1976-77

1. Close Sheldon Elementary School as a regular attendance center at the end of the school year and convert to a special education facility.

2. In cooperation with the City of Topeka Park Department, begin planning the conversion of the Central Park Elementary School facility to a middle school and community recreational facility.

3. Begin planning the construction of a new middle school facility on the Holliday-State Street site.

4. Begin the construction of an addition to the Highland Park North Elementary School facility consisting of a media center and classrooms.

1977-78

1. Close Parkdale Elementary School as a regular attendance center at the end of the school year.

2. Begin the conversion of the Central Park facility to a middle school and the construction of a new Holliday middle school facility.

3. Construct an addition of several classrooms to the Quinton Heights Elementary School facility.

1978-79

1. Close Central Park and Polk Elementary Schools as regular attendance centers at the end of the school year.

1979-80

1. Close Boswell, East Topeka, Highland Park and Roosevelt Junior High Schools as regular attendance centers at the end of the school year.

2. Complete the conversion of the Central Park facility to a middle school and the construction of a new Holliday middle school facility.

3. Move the ninth grade to the senior high schools at the end of the school year.

1980-81

1. Close Rice Elementary School as a regular attendance center at the end of the school year if present enrollment trends continue.

(Def. Ex. 1098, TSBM 3/2/76; Pl. Ex. 240, 1976 Long-Range Facilities Plan).

70. On March 16, 1976, the School Board eliminated the remaining optional attendance zones for the high schools. The Board also adopted a revision in its pupil transportation policy so that the School District would provide transportation for those students who meet the following criteria:

(a) Whose place of residence is in a closed school attendance area, the area being defined in the year the school was closed; and

(b) Whose residence is one (1) mile for elementary and one and one-half (1½) mile for junior high pupils for the most direct, commonly used streets from their assigned attendance centers.

(Def. Ex. 1099, TSBM 3/16/76).

71. On April 9, 1976, the Board received the Capital Improvements Report for 1975-76 (Pl. Ex. 16, facilities planning study) which was developed by the administrative staff to address the facilities improvements as they relate to the previously adopted long-range plan. Section A of the 1975-76 Capital Improvements Report was approved (with one minor exception which needed further study). (Def. Ex. 1100, TSBM 4/9/76).

72. On April 21 and 22, Jerold Ward, Chief of the Elementary and Secondary Education Branch of HEW, Regional Office of Civil Rights in Kansas City, and David Leeman, HEW attorney, came to Topeka and discussed with School District administrators the Long-Range Facilities Plan, the Capital Improvements Plan, the District No. 501 Citizens Advisory Council, the Affirmative Action Plan, and the Adventure Center. In addition, copies of the Long-Range Facilities Plan adopted by the Board of Education on March 2, 1976, and the Capital Improvements Report received by the Board on April 9, 1976, were sent to Craig Crenshaw, Jr., Attorney, Education Section, U. S. Department of Justice and attorney of record for the HEW defendants in the Weinberger case,

U.S.D.C. Kansas, No. 74-160-C5. (Def. Ex. 1101, TSBM 5/4/76; Def. Ex. 1130, letter to Crenshaw from Charles Henson dated April 29, 1976).

73. On August 12, 1976, a conference was held in Washington, D.C., involving officials of the U. S. Department of Justice, HEW, School District personnel, and the School District's attorney. Proposals were discussed regarding resolution of the administrative citation issued by HEW against the School District which resulted in the injunctive suit by the School District (Weinberger). (Testimony of Dr. Owen Henson, Tr. 1446-1447, 1453-1457).

74. It was agreed that if the School District would implement the Long-Range Facilities Plan, HEW would dismiss its administrative enforcement proceedings, with assurances to the School District that no further proceedings under Title VI were contemplated by HEW on the basis of current facts and implementation of the Long-Range Facilities Plan. U.S.D. No. 501 agreed to review the Long-Range Facilities Plan annually, and if conditions warranted, implementation of the Plan, or portions of the Plan, may be accelerated. The parties also agreed that the injunction suit (Weinberger) would be dismissed by stipulation of the parties. By the beginning of the 1981-82 school year, the Long-Range Plan had been fully implemented. (Testimony of Dr. Owen Henson, Tr. 1456-1458; testimony of Wayne Stratton, Tr., 2490-2491; Def. Ex. 1131, letter dated August 25, 1976, addressed to Craig M. Crenshaw, Jr. from Charles N. Henson).

75. On September 9, 1976, HEW, by its attorney, David M. Leeman, filed its motion to dismiss the administrative enforcement proceeding against Unified School District No. 501, stating:

> That the Respondent School District adopted a plan to remedy the violations of Title VI of the Civil Rights Act of 1964 alleged in the Notice of Opportunity for hearing in this matter.

(Def. Ex. 1132).

76. On October 18, 1976, pursuant to the motion of HEW, the administrative enforcement proceeding was dismissed by the administrative law judge, who stated:

> It appearing to the undersigned that the Respondent School District adopted a plan to remedy the violations of Title VI of the Civil Rights Act of 1964 alleged in the Notice of Opportunity for hearing in this matter, it is therefore ordered that the above-entitled matter be dismissed without prejudice.

(Def. Ex. 1133).

77. On October 20, 1976, the Weinberger case was dismissed by stipulation of the parties. (Def. Ex. 1134).

78. After reviewing the potential effect of the current transfer policy and several of the alternatives suggested by patrons and staff, the School Board revised its transfer policy (No. 10300) on June 21, 1978. The policy provided that all written applications received by the School Board from June 22-August 1, 1978, would be automatically approved. On July 5, 1978, the Board adopted further amendment to Policy No. 10300, which stated that: "All students in regular grades kindergarten through grade 12, are required to attend the school to which they are assigned by the legal residents of their parent, legal guard-

ian or the day care provider of elementary students." These combined provisions of the amended policy became known as the "Open Enrollment Policy". (Def. Ex. 1102, TSBM 6/21/78; Def. Ex. 1103, TSBM 7/5/78; Pl. Ex. 8L, Answer to Interrogatory Nos. 10, 11, 18, 26-29, First Set).

79. The adoption of the Open Enrollment Policy was not motivated by segregative intent. The reasons for adopting these amendments and new provisions into Board Policy No. 10300 were:

> 1. The open enrollment policy was adopted on the belief that a child could do better in a school of his/her choice and that he/she could possibly find a program more suited to his/her needs at another school rather than the assigned neighborhood school serving the legal residence of his/her parents or legal guardian.
>
> 2. It was proposed that open enrollment would permit a student to transfer from a school where he/she was experiencing failure or other problems to another school that could provide a "fresh start", possibly preventing or reducing the number of student dropouts.
>
> 3. Due to the need for further school closings and adjustment of attendance boundaries in the future as the long-range facilities plan was implemented, it would seem that an open enrollment policy would provide a needed flexibility for those affected students and families, particularly for those who are dissatisfied with the neighborhood school to which they are assigned.
>
> 4. Many requests had been received by the Board from parents and day care providers to expand the policy which allowed students to attend the school in the area of the day care provider to include grades two through six without having to make an application to do so.

(Pl. Ex. 8L, Answer to Interrogatory Nos. 10, 11, 18, 26-28, First Set; testimony of Joe Douglas, Tr. 2441; testimony of Dr. Owen Henson, Tr. 2703-2704).

80. On March 7, 1979, the District Citizens Advisory Council's (DCAC) Task Force on Open Enrollment presented comments and recommendations to the School Board. While the Task Force recommended continuation of the open enrollment policy, the report requested continued monitoring of the policy's effect upon the racial balance of each District school; earlier designation of the "open enrollment" to facilitate better planning for students, parent and staffing needs; better publicity to inform the public regarding the provisions of the policy; further consideration of accessibility problems which may limit the transfer choices of certain students; granting of higher priority of approval to students making application to return to their current schools; and the establishment of a DCAC standing committee that would monitor the effects of the policy. (Def. Ex. 1104, TSBM 3/7/79; Pl Ex. 8L, Answer to Interrogatory Nos. 10, 11, 18, 26-28, First Set).

81. On May 21, 1979, Superintendent James Gray advised the Board of approval of all open enrollment applications for the 1979-80 school year. Upon recommendation of the Superintendent, the Board authorized referral of the open enrollment policy to the DCAC as a major topic of study for the 1979-80 school year to be examined not only in light of the reasons it was originally adopted, but also to accomplish the goal that "the open enrollment policy contributes to the overall improvement of the minority percentages of the schools of Unified School District No. 501." (Def. Ex. 1105, TSBM 5/21/79).

82. The open enrollment policy was monitored closely. During the second year of the operation of the open enrollment policy (1979-80), the School Board adopted a further limitation on the schools to which a student may transfer. While students could still make application to transfer from their neighborhood school to another attendance center, only those applications which enhanced integration would be approved beginning with the 1980-81 school year. This component is sometimes referred to as the minority-majority (M to M) transfer rule or policy. (Testimony of Joe Douglas, Tr. 2442-2443; Def. Ex. 1106, TSBM 4/2/80; Pl. Ex. 8L, Answer to Interrogatory No. 10, 11, 18, 26, 27-28, First Set; testimony of Dr. Owen Henson, Tr. 2699-2702; Def. Ex. 1104E, Enrollment and Assignment of Students, Board Policy No. 8025).

83. In the Spring of 1979, the Office of Civil Rights for the U. S. Department of Health, Education and Welfare received a patron complaint regarding the School District's proposed closing of Central Park Elementary School and its conversion to Robinson Middle School pursuant to the 1976 Long-Range Facilities Plan. HEW investigated the School District's implementation of the Long-Range Plan and the School District's open enrollment policy. (Def. Ex. 1136A, HEW letter dated April 25, 1979, addressed to Superintendent Gray; Def. Ex. 1136B, amendment to original complaint, alleging the District's implementation of the Long-Range Plan has increased segregation, signed by Dr. Richard Gellar).

84. The Office of Civil Rights for HEW, by letter dated August 31, 1979, found that the School District's pupil assign-

ment practices implemented pursuant to the adoption of its Long-Range Facilities Plan did not violate Title VI. Likewise, HEW concluded that the School District's open enrollment policy had not significantly affected the racial composition of its schools. (Def. Ex. 1136C, HEW letter dated August 31, 1979, addressed to Superintendent Gray).

85. The first year for which racial data regarding the effect of the School District's student transfer policies on the racial composition of school attendance areas is the 1977-78 school year. The School District's transfer policies were not adopted with a segregative intent. Moreover, analysis of the effect of the transfer policies from at least the 1977-78 school year to the present demonstrates that the School District's transfer policies did not have a segregative effect. The overall effect of the student transfer policies of U.S.D. No. 501 have been relatively neutral. (Testimony of Dr. David Armor, Tr. 2599; Def. Ex. 1119E-H; testimony of Joe Douglas, Tr. 2441).

86. The U.S.D. No. 501 Head Start program is an interdisciplinary child development program for four-year-old children, serving children from low income families. The racial composition of the students in the Head Start program is approximately 49% White, 39% Black, and the remainder are Hispanic, Indian, or Oriental children. (Testimony of Teresa Counts, Tr. 1726, 1730).

87. Through the Head Start program, the School District hopes to achieve the following: that children will have a better self-concept; that they will have learned some things that will

help them be better students in Kindergarten; and parents will develop better parenting skills. (Testimony of Teresa Counts, Tr. 1730).

88. The Topeka Head Start program was selected as the number one Head Start program in the nation in 1974. (Testimony of Teresa Counts, Tr. 1732).

89. Beginning with the 1979-80 school year, the Head Start programs which had been carried out in various attendance centers around the District were consolidated into one program. The Head Start program has been housed and operated in the former Polk Elementary School facility continuously since 1979 to the present. (Testimony of Teresa Counts, Tr. 1727).

90. In accordance with the Long-Range Plan, during the Fall of 1980, the School Board converted its junior high level of instruction to the middle school concept, moving ninth grade students to the high schools and retaining in the middle school seventh and eighth grade students only. In addition to the conversion to the middle school concept, five of the nine junior high school facilities were permanently closed (Boswell, East Topeka, Highland Park, Holliday and Roosevelt). In addition to the four remaining junior high schools (Eisenhower, French, Jardine and Landon), Chase Middle School was constructed and Central Park Elementary School was closed and renovated to become Robinson Middle School through additional construction, resulting in a total of six middle schools beginning with the 1980-81 school year. (Testimony of Dr. Owen Henson, Tr. 1440, 1444).

91. As a result of the conversion to the middle school concept in 1980, there were approximately 190 teachers whose assignments had to be changed. In anticipation of these events, in February, 1980, the School District developed a policy and procedure regarding the redistribution of staff members. One of the objectives of the policy was "to achieve a distribution of minority staff members which will comply with the requirements of law". (Pl. Ex. 8AA, Answer to Interrogatory Nos. 32 & 33, First Set). Several criteria were utilized to determine where these teachers were ultimately placed. The teacher had to be certified in the area in which he or she was to be assigned. Second, where there was a vacancy, each of the principals was directed to make selections that would improve the minority composition of their respective staffs. Assuming that it didn't conflict with these criteria, a teacher's preference or choice prevailed where two principals sought the same teacher. (Testimony of Dr. Owen Henson, Tr. 1445-1446).

92. By the beginning of the 1981-82 school year, the Long-Range Plan was fully implemented. The plan was designed to have and did have an integrative effect. (Testimony of Dr. Owen Henson, Tr. 1460-1461, 2719).

93. One example of the integrative effect of the decisions set forth in the Long-Range Facilities Plan was the consolidation of the attendance centers formerly occupied by Curtis Junior High School, Holiday Junior High School, and East Topeka Junior High School into one attendance center, which was the new Chase Middle School. East Topeka Junior High School had a fairly high minori-

ty composition and the two other attendance areas were much less, resulting in a much improved situation in terms of racial composition at the Chase Middle School. Another example would be the closing of Rice Elementary School which had a considerably lower minority composition than Lafayette or Belvoir Elementary Schools. The former Rice Elementary School attendance area was divided between Lafayette and Belvoir attendance centers, reducing the minority population in those two schools. Also, the closing of Crane Junior High School sent most of those students to Boswell. In turn, these attendance areas were then combined with that of Roosevelt in 1980 and all children were sent to Robinson Middle School, which had an integrative effect. (Testimony of Dr. Owen Henson, Tr. 1461, 2721-2723).

94. An analysis of the attendance boundary changes for those 11 elementary school attendance areas with the highest residential concentration of black residents (from 1963-64 through the 1985-86 school year) discloses that the boundary changes were not segregative. In all instances analyzed but one, the changes were either overall desegregative or generated by demographic trends. Given the declining white population and the increasing black population, any imbalances which exist are the result of the demographic forces and not the result of boundary changes. (Testimony of Dr. William Clark, Tr. 2310, 2338-2339; Def. Ex. 1114, Clark report at 22-35).

G. By 1981 - completion of the 1976 Long-Range Plan - unitary status achieved.

95. There is no evidence to suggest that minorities other than blacks were ever intentionally or purposefully discriminated against by Unified School District No. 501 or its predecessor at any time since 1950. (Testimony of William Lamson, Tr. 377).

96. All vestiges of the previously existing dual system of state-imposed racial segregation has been eliminated. There are no vestige schools in Topeka. (Testimony of William Lamson, Tr. 384, 452, 453; testimony of Dr. Gordon Foster, Tr. 623, 624).

97. Under the Brown decisions, the School District was obligated to desegregate its elementary schools. At least by the mid to late 70's, the School District complied with that duty.[4] By the end of the five-year implementation period of the Long-Range Facilities Plan, the School District had a very high degree of desegregation, with a couple of deviations outside an ideal range. (Testimony of Dr. David Armor, Tr. 2625, 2640-2641).

98. Although in effect prior to 1980, the most recent of the School District's Affirmative Action Policy is dated June 18, 1980, which requires:

> Equal recruitment and employment opportunities shall be assured for all applicants and

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[4] Defendant submits that it attained unitary status upon full implementation of the original four-step plan (Steps I-III approved by this Court) following the remand of Brown II, as set forth at length in the Trial Brief at pp. II-1 to II-14. Under the expanded standards enunciated by the U. S. Supreme Court in Green v. County Bd. of New Kent Co., Va., 391 U.S. 430, 88 S.Ct. 1689 (1968), and Swann v. Charlotte Mecklenburg Board of Education, 402 U.S. 1, 91 S.Ct. 1267 (1971), the School District has also met its duty.

> employees. The District will continue to identify and eliminate any personnel practices and policies that discriminate on the basis of race, religion, color, physical handicap, national origin, sex, age or political affiliation. All necessary action shall be taken to comply with the State and Federal laws prohibiting discrimination in employment. All contractors and vendors shall be requested to adhere to this policy.

(Def. Ex. 1041B, Affirmative Action Policy No. 4025; testimony of Dr. Owen Henson, Tr. 2695).

99. In addition to the Affirmative Action Policy, the version of School District has an administrative regulation which provides for an equal opportunity officer and a grievance procedure. This policy is administratively interpreted to require the School District to pay careful attention to the assignment of certified and classified individuals throughout the District. (Testimony of Dr. Owen Henson, Tr. 2695-2696, 2699; Def. Ex. 1041B; also Def. Ex. 1041C, Negotiated Professional Agreement, Article VIII, "Non-discrimination").

100. Dr. Gordon Foster, plaintiff's expert, has evaluated the recruitment policies of Unified School District No. 501 and it attempts to recruit minority faculty and has found no fault with the School District's actions. It is increasingly difficult to employ minority teachers because the pool is smaller and every employer is interested. (Testimony of Dr. Gordon Foster, Tr. 758-759, 769).

101. By the 1981-82 school year, with respect to faculty and staff assignments, even applying the very strict Singleton ratio (which is utilized in fashioning remedies), the School District was on target--the reassignment of approximately 24 to

26 faculty members was all that was needed to satisfy Dr. Foster.[5] Dr. Foster conceded that the ability to reassign teachers is based in part upon whether they are certified to teach in certain areas, and such transfers may not be possible. (Testimony of Dr. Gordon Foster, Tr. 664-666, 751, 775-776, 780).

102. If plaintiffs really wanted to study a comparison of School District facilities, Dr. Gordon Foster could have done that because he has a great deal of experience in that regard, but he made no such analysis. No evidence suggests there are any differences in the quality of schools. (Testimony of Dr. Gordon Foster, Tr. 723-724; testimony of William Lamson, Tr. 411; testimony of Dr. Owen Henson, Tr. 1462-1463).

103. With respect to the transportation policies of Unified School District No. 501, there is no basis for feeling that there was any discrimination in transportation. (Testimony of Dr. Gordon Foster, Tr. 683).

104. There is no reason to believe that any discrimination occurs in U.S.D. No. 501 with respect to extracurricular student activities. (Testimony of Dr. Gordon Foster, Tr. 684; Pl. Ex. 8P, Answer to Interrogatory No. 15, First Set, including School District policy regarding nondiscrimination in extracurricular activities, clarified June 15, 1970; also see Def. Ex. 1041D,

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[5] Defendant submits plaintiffs' attempts to demonstrate that faculty and staff are assigned in a manner so that their racial composition systematically evidence racial identifiability of the schools by resort to the Singleton ratio is inappropriate. See Trial Brief at pp. II-31 through II-34. Nevertheless, since U.S.D. 501, for all intents and purposes, has satisfied the Singleton ratio, the evidence is stated herein.

Non-discrimination Policy No. 8100; testimony of Dr. Owen Henson, Tr. 2696).

105. Upon complete implementation of the Long-Range Facilities Plan, at the beginning of the 1981-82 school year, Unified School District No. 501 has been a unitary, desegregated school district. (See Proposed Findings of Fact Nos. 95-104 above).

H. 1981-1986 - a period of stability - U.S.D. No. 501 remains a unitary, desegregated school district.

106. With one extremely minor exception, no boundary changes occurred between the 1981-82 school year and the end of the 1985-86 school year. All school attendance centers remained open and the grade configuration for K-6 (elementary), 7-8 (middle school), and 9-12 (senior high) remained the same. (Testimony of Dr. Owen Henson, Tr. 1503-1504).

107. At the end of the 1985-86 school year, Landon Middle School was closed. Its attendance center was reassigned to French Middle School, with the exception that 7th Graders would have the option of choosing between attending French and Robinson Middle Schools for the 1986-87 school year. (Def. Ex. 1107, TSBM 3/19/86; Def. Ex. 1127A-C. elementary middle school and high school attendance zone maps for U.S.D. No. 501).

108. Over this time period of 1981 through 1986, tremendous stability has remained in the racial composition of the student attendance centers. (Testimony of William Lamson, Tr. 478; see Pl. Ex. 8J, racial inventory for U.S.D. No. 501 students, 1981-82 through 1985-86).

109. The ultimate goal of the Brown case was to attain integration of students, not the attainment of some statistical or mathematical distribution of school percentage--but a meaningful opportunity for contact among black and white students. This kind of contact can be attained in a variety of different configurations other than a system that is strictly racially balanced. (Testimony of Dr. David Armor, Tr. 2570-2571).

110. Two statistical indicies have been developed by social scientists that are in wide use today and are recognized as the primary way to assess the overall or system-wide level of segregation or desegregation of the school system. (Testimony of Dr. David Armor, Tr. 2581).

111. The index of dissimilarity measures the departure of a school system from perfect racial balance. That is, the index value would be zero if every school was perfectly, racial balanced. If every school was totally segregated, the value would be 100 on a dissimilarity index. (Testimony of Dr. David Armor, Tr. 2581).

112. The second index is commonly called the exposure index and the one that is comparable to dissimilarity is the relative exposure index. The relative exposure index essentially measures the weighted average percent minority in white schools or the average percent black in white schools. In effect, the exposure index is a measure of interracial contact, placing less weight on departures from strict racial balance, placing more weight on the extent of the opportunities for interracial contact given the number of whites and blacks in the total system. The values on

these indicies also go from zero (total interracial contact) to 100 (total separation). These indicies can also be calculated by dividing the values by 100 and expressing them on a proportion scale from zero to 1.00. Zero corresponds in each case to total interracial contact or total integration, whereas the 100 or 1.00 is total separation. (Testimony of Dr. David Armor, Tr. 2582; testimony of Dr. William Clark, Tr. 2332-2335; Def. Ex. 116A & B, charts explaining the indicies).

113. As far as student assignment is concerned and the racial composition of schools, a dissimilarity index value less than 50 and an exposure index less than 30 would indicate a substantially desegregated district. The lower the index value below those points, the more desegregated it is. (Testimony of Dr. David Armor, Tr. 2649).

114. The better overall measure of desegregation in a system-wide analysis of a school district is the relative exposure index. This index tends to measure the amount of interracial contact which is what we were attempting to achieve in an integration case. The dissimilarity index gives too much weight for deviations from perfect balance. (Testimony of Dr. David Armor, Tr. 2582-2583).

115. By either the dissimilarity or the relative exposure index, between 1966 and 1985, there has been a very substantial decline in the level of segregation in the Topeka Public Schools measured by these indicies. By both measures, either racial balance or interracial contact, the School District experienced very substantial improvement in desegregation over that 20-year period. (Testimony of Dr. David Armor, Tr. 2586).

116. By the beginning of the 1981-82 school year, the calculation of the desegregation indicies for U.S.D. No. 501 is as follows (calculating the scale based upon values of 100 to 0):

DISSIMILARITY		RELATIVE EXPOSURE	
Elementary	40.8	Elementary	17.2
Junior High	39.1	Junior High	12.9
High School	34.7	High School	11.0
All Schools	38.8	All Schools	14.7

117. Desegregation indicies based on actual enrollment for the 1985-86 are set forth below:

DISSIMILARITY		RELATIVE EXPOSURE	
Elementary	36.6	Elementary	14.6
Junior High	32.1	Junior High	11.2
High School	30.1	High School	7.3
All Schools	33.6	All Schools	12.1

Although there is no hard and fast line for what constitutes desegregation for a whole school system, basically a value below 50 on a dissimilarity index and a value below 30 on a relative exposure index is a substantially desegregated system. Since 0 is perfect desegregation (and 100 is perfect segregation), it is clear that U.S.D. No. 501's 1985-86 relative exposure value of 12.1 in all schools is extremely good. (See Def. Ex. 1119A-D, charts and tables developed by Dr. David Armor; testimony of Dr. David Armor, Tr. 2586-2589).

118. Considering the increase in percent minority in the School District, had nothing been done since 1966, the indicies would either have risen or at least stayed at the same level they were in 1966. The reason why these indicies have declined and why desegregation has improved to this extent is due to the series of school closings and boundary changes. (Testimony of Dr. David Armor, Tr. 2589-2590).

119. From the demographics of residential housing patterns, it is known that when a minority population increases, it generally increases residentially in certain areas of the city--it does not increase uniformly throughout. In a situation where the percent minority is increasing and no affirmative steps to counter that, you would expect to see schools serving those minority areas becoming increasingly minority or increasingly black. To attain the very large increases in desegregation in Unified School District No. 501, as measured by the indicies, affirmative steps to counter minority growth had to have occurred. (Testimony of Dr. David Armor, Tr. 2604-2605).

120. Apart from the decline in indicies, during this same time frame, the percent minority rose significantly from less than 20% to about 26%. Although you had an increasing minority population, in fact, there were declining levels of segregation which is very significant. Basically from 1981, the schools of U.S.D. No. 501 were highly integrated by the standards used in this field. (Testimony of Dr. David Armor, Tr. 2586-2589).

121. U.S.D. No. 501 is a highly integrated school district offering a great deal of interracial contact between black and white students. (Testimony of Dr. David Armor, Tr. 2602-2603).

122. Although some schools are older than others, the schools and their grounds are well maintained. The climate is safe and orderly. (Testimony of Dr. Herbert Walberg, Tr. 2034; testimony of Dr. Marvin Edwards, Tr. 2509-2510). There is no evidence to suggest that there are any differences in the quality of schools. (Testimony of William Lamson, Tr. 411).

123. Unified School District No. 501 provides an equitable distribution of resources, equipment, supplies and staff to all of the schools across the District. (Def. Ex. 1028, slides depicting certain elementary, middle and high school facilities; testimony of Dr. Owen Henson, Tr. 1504; testimony of Dr. Marvin Edwards, Tr. 2517-2528; testimony of Gilbert Wehmeier, Tr. 1652; testimony of C. L. Kellogg, Tr. 1697; testimony of Dr. Patricia Pressman, Tr. 1760-1761; testimony of Pauline Muxlow, Tr. 1776-1777).

124. The faculty and staff assignments are not segregated. The faculty and staff are not assigned in a manner so that the racial composition could systematically evidence racial composition of the student population at the various attendance centers in the School District. The School District's policies require that it not discriminate on the basis of race in its employment practices which include its handling of the assignment of employees. (Testimony of Dr. Marvin Edwards, Tr. 2525-2527, 2544-2546; testimony of Dr. Gordon Foster, Tr. 758-759, 769; Def. Ex. 1122, Minority Staffing Report for 1986-87, includes administrative and certificated staff).

125. Extracurricular activities are conducted on a nondiscriminatory basis pursuant to official School Board policy. (Testimony of Dr. Marvin Edwards, Tr. 2528; testimony of Dr. Gary Livingston, Tr. 1638; Def. Ex. 1041D).

126. The transportation policies of the School District are nondiscriminatory. (Testimony of Dr. Marvin Edwards, Tr. 2528; testimony of Dr. Gordon Foster, Tr. 683).

127. Unified School District No. 501 sought an independent assessment of its educational programs. The program audit of the educational program was conducted by Peat, Marwick & Mitchell, commencing in 1981, with results reported to the School Board in 1982. The report indicated the School District was rich in resources for teachers, very adequate facilities, media centers, supplies for teachers to use in the classroom, and beginning steps in the documentation curriculum had been made. The report recommended continuing documentation of the curriculum. The School District has been involved in an intensive development effort of curriculum documents with clearly delineated goals and objectives for every course that is offered. These curriculum guides require uniform district-wide application, which is subject to ongoing monitoring by the School District. (Testimony of Dr. Owen Henson, Tr. 1462-1463; testimony of Dr. Gary Livingston, Tr. 1545-1546, 1551-1553, 1563-1564; see also summary of all curriculum syllabi, Def. Ex. 1061 and a representative group of the curriculum guides, Def. Ex. 1050A-L, 1057, 1037, 1037A-B).

128. Formalized curriculum guides given to the classroom instructor are of great assistance. They serve as a means to assure that children across the District are receiving the same kind of instruction. When students move from one school to another, the District knows by way of the syllabus that children have been through the curriculum with common, uniform goals and objectives. (Testimony of Glendyn Buckley, Tr. 1677).

129. Unified School District No. 501 began a concerted re-emphasis of the effective schools program with the 1980-81 school

year. Effective schools techniques are apparent in the Topeka Public Schools. Principals appear to be asserting strong instructional leadership and there is a strong emphasis on basic skills in the context of a balanced curriculum. (Testimony of Dr. Gary Livingston, Tr. 1639; testimony of Dr. Herbert Walberg, Tr. 2033).

130. A very conscientious effort is made by all of the U.S.D. No. 501 schools to have a high learning level, which meets the potential of each individual student at each of the particular buildings. There is no disparity in commitment to the concept or goal of effective schools in either the east or the west side of the School District. (Testimony of Gilbert Wehmeier, Tr. 1652-1654; testimony of Dr. Patricia Pressman, Tr. 1760-1761; testimony of Barbara Stanley, Tr. 1717-1718).

131. U.S.D. No. 501 has a multi-cultural education task force made up of teachers, administrators and patrons of the District who are interested in promoting multi-cultural education in the Topeka Public Schools. It was established in 1977. The overall goal is to promote multi-cultural education by implementing strategies that can be used by schools in their efforts to make the students more aware of the ethnic and cultural diversities and their contributions to the Topeka community. (Testimony of Dr. Patricia Pressman, Tr. 1758-1759).

132. The schools of Unified School District No. 501 provide a great deal of constructive parental involvement, including parenting skill groups, a symposium series on family issues, and homework tutoring and counseling centers for parents. (Testimony of Dr. Herbert Walberg, Tr. 2034).

133. The instructional programs of U.S.D. No. 501 are aligned with testing. The staff have high and uniform expectations for all students to achieve explicit requirements. (Testimony of Dr. Herbert Walberg, Tr. 2034).

134. An analysis was conducted by Dr. John Poggio, Center for Educational Testing and Evaluation, the University of Kansas, examining the achievement of students in U.S.D. No. 501 for the school years beginning 1979-80 to the present and the factors associated with achievement. Relative to the achievement status of students in U.S.D. No. 501:

(a) The racial composition of school buildings attended is not related overall to the level of achievement of students (Testimony of Dr. John Poggio, Tr. 1864-1869);

(b) The proficiency levels are not advantaged when a student moves from one school building environment to another having a different racial composition whether the students are black or white (Testimony of Dr. John Poggio, Tr. 1899); and

(c) In U.S.D. No. 501, a student's achievement is not accounted for by the child's race, the racial composition of the building attended by the student, or the unique combination of those two items. The factors which are linked to the achievement of students include: the expectations parents; the expectations of the student; the student's confidence in his or her own abilities; the educational level of the parents;

willingness of the student to work and succeed; the work habits of the student; the student's self-concept; the school climate; and teacher behavior. (Testimony of Dr. John Poggio, Tr. 1889-1892, 1908; Def. Ex. 1109, Poggio report, particularly at p. 1-2, 20-22).

135. Unified School District No. 501 is an excellent public school system, concentrating its resources on improving the education and achievement of all students in the system. Equal educational opportunities are being afforded to all students and all attendance centers, regardless of what the particular racial composition of that attendance center might be. (Testimony of Dr. Herbert Walberg, Tr. 2042-2043; testimony of Dr. Marvin Edwards, Tr. 2509-2510; testimony of Barbara Stanley, Tr. 1717-1718; testimony of Gary Livingston, Tr. 1632; testimony of Glendyn Buckley, Tr. 1686; testimony of Dr. Patricia Pressman, Tr. 1760-1761).

II. PROPOSED CONCLUSIONS OF LAW.

1. Prior to 1954, student assignments in the Topeka schools were segregated on the basis of race for grade levels K-6. The non-elementary grade levels of the public schools were operated on a "non-segregated basis". Brown v. Board of Education of Topeka, 347 U.S. 483, 486 n. 1, 74 S.Ct. 686, 98 L.Ed. 873 (1954) (hereinafter "Brown I"). The Topeka schools were equal "with respect to buildings, transportation, curricula, and educational qualification of teachers" at all grade levels. Brown I, 347 U.S. at 486.

2. The mandate to the United States District Court for the District of Kansas by the United States Supreme Court ordered the district court to "take such proceedings and enter such orders and decrees consistent with opinions of this Court as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to this case". Brown v. Board of Education of Topeka, Kansas, 349 U.S. 294, 301, 75 S.Ct. 753, 99 L.Ed. 1083 (1955) (hereinafter "Brown II").

3. By order dated October 28, 1955, a three-judge panel approved the desegregation plan already adopted and partially implemented by the Topeka schools, finding the "plan adopted by the Board of Education of the City of Topeka be approved as a good faith beginning to bring about compliance with desegregation". Brown v. Board of Education of Topeka, 139 F. Supp. 468, 470 (D. Kan. 1955). The order was not appealed.

4. By school year 1961-62, the plan approved by the three-judge panel, as amended by the fourth step of the plan, was fully implemented and therefore the dual system was dismantled and a unitary system fully in place, under the then current standards. Brown I; Brown II; Brown v. Board of Education of Topeka, 139 F. Supp. 468 (D. Kan. 1955).

5. Until the 1968 decision in Green, the United States Supreme Court decisions construing Brown I and Brown II focused upon "the constitutional rights of children not to be discriminated against in school admission on grounds of race or color". E.g., Cooper v. Aaron, 358 U.S. 1, 17, 78 S.Ct. 1401, 3 L.Ed.2d 5 (1958) (emphasis added).

6. During the second half of the 1950's and the 1960's, the defendant District fully complied with the obligation to establish and maintain a desegregated school system within the meaning of Brown I and Brown II as then construed.

7. Once a school system has become unitary upon compliance with racially neutral admission policies as mandated by Brown I and Brown II, such districts are not constitutionally required to make year-by-year adjustments of the racial composition of student bodies, even though it can be expected that such communities will not remain demographically stable. Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 31-32, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971) (hereinafter "Swann").

8. Prior to 1965, when the City of Topeka annexed territory for municipal purposes, the lands also came into Topeka for school purposes, unless the annexing authority (the City) provided otherwise. G.S. 72-1611; G.S. 72-1701; G.S. 72-5316; G.S. 72-5317; G.S. 72-1725b.

9. Upon the 1965 enactment of K.S.A. 72-6779, annexations by the city governing body no longer affected a change in boundaries of any unified school district.

10. Effective July 1, 1966, the Topeka schools, previously under the governance of the Board of Education of Topeka, became part of Unified School District No. 501 (hereinafter U.S.D. No. 501).

11. School districts are not charged with the responsibility to anticipate the future course of constitutional law. Procunier v. Navarette, 434 U.S. 555, 565, 98 S.Ct. 855, 55 L.Ed.2d 24 (1978).

12. Under the expanded doctrine of desegregation as enunciated in Green v. County School Board, apart from student assignment addressed by Brown I and Brown II, existing policy and practice with regard to faculty, staff, transportation, extracurricular activities, and facilities, are the most important indicia of a segregated system. Green v. County School Bd. of New Kent Co., Va., 391 U.S. 430, 435, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968).

13. The essential element of a system segregated in violation of the Equal Protection Clause of the Fourteenth Amendment is "a current condition of segregation resulting from intentional state action". Washington v. Davis, 426 U.S. 229, 240, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976).

14. In the context of a school desegregation case, the Equal Protection Clause is violated only if the school system is currently segregated and the current segregation is the result of intentional discriminatory action of the defendant board. Keyes v. School District No. 1, Denver, Colo., 413 U.S. 189, 93 S.Ct. 2686, 37 L.Ed.2d 548 (1973) (hereinafter "Keyes"); Milliken v. Bradley, 418 U.S. 717, 744-745, 94 S.Ct. 3112, 41 L.Ed.2d 1069 (1974) (hereinafter "Milliken I"); Dayton Board of Education v. Brinkman, 433 U.S. 406, 419, 97 S.Ct. 2766, 53 L.Ed.2d 851 (1977).

15. Plaintiffs in this school desegregation case have the "burden of proof to show (1) that segregated schooling exists,and (2) that it was brought about or maintained by intentional state action. Columbus Bd. of Ed. v. Penick, ___ U.S. ___, 99 S.Ct.

2941, 61 L.Ed. 666 (1979). This showing must be 'satisfactorily established by factual proof and justified by a reasonable statement of legal principles.' Dayton Board of Education v. Brinkman, 433 U.S. 406, 410, 97 S.Ct. 2766, 2770, 53 L.Ed.2d 851 (1977)." Brown v. Board of Education of Topeka, Shawnee County, 84 F.R.D. 383, 393 (D. Kan. 1979). (November 29, 1979 order granting plaintiffs' August 22, 1979 order to intervene in this litigation).

17. The constitutional requirement of intentional violation of the Equal Protection Clause is not satisfied by a showing of disparate impact, coupled with foreseeable consequences. Columbus Bd. of Ed. v. Penick, 443 U.S. 449, 464, 99 S.Ct. 2941, 61 L.Ed.2d 666 (1979). Foreseeability of segregative consequences does not make out a prima facie case of purposeful racial discrimination. Dayton Board of Ed. v. Brinkman, 443 U.S. 526, 536 n. 9, 99 S.Ct. 2971, 61 L.Ed.22d 720 (1979).

18. Discrimination in housing, whether public or private, cannot be attributed to school authorities. Austin Independent School District v. United States, 429 U.S. 990, 994, 97 S.Ct. 517, 50 L.Ed.2d 603 (1976) (Powell, J., concurring).

19. Shifts in population not attributable to segregative actions on the part of the defendants cannot be the basis for finding a presently unlawfully segregated system. Pasadena City Board of Education v. Spangler, 427 U.S. 424, 435-436, 96 S.Ct. 2697, 49 L.Ed.2d 599 (1976) (hereinafter "Pasadena"). See also Parent Ass'n of Andrew Jackson High Sch. v. Ambach, 598 F.2d 705 (2nd Cir. 1979).

20. There is no substantive constitutional right to a particular racial balance or mixing in the schools. Pasadena, 427 U.S. at 434.

21. The constitutional command to desegregate schools does not mean that every school within the school system must always reflect the racial composition of the school system as a whole. Swann, 402 U.S. at 24.

22. The existence of some small number of one-race, or virtually one-race, schools within a school district is not, in and of itself, the mark of a system that still practices segregation by law. Swann, 402 U.S. at 25-26.

23. Desegregation "does not require any particular racial balance in each 'school, grade or classroom.'" Milliken I, 418 U.S. at 740.

24. A school system is unitary with respect to faculty and staff when the district's current employment practices are nondiscriminatory and in compliance with constitutional standards, and the adverse effects of any earlier, unlawful employment practices have been adequately remedied. Fort Bend Indep. School Dist. v. City of Stafford, 651 F.2d 1133, 1140 (5th Cir. 1981).

25. Unitary status as to faculty and staff can be achieved even though the racial composition of the faculty and staff is not substantially equivalent to that of its student body. Fort Bend Indep. School Dist. v. City of Stafford, 651 F.2d 1133, 1138 (5th Cir. 1981), citing Hazelwood School Dist. v. United States, 433 U.S. 299, 97 S.Ct. 2736, 53 L.Ed.2d 768 (1977).

26. With respect to faculty and staff, it is the good faith effort to recruit minority faculty and staff, not compliance with specific ratios, which is the requirement for unitary status. Fort Bend Indep. School Dist. v. City of Stafford, 651 F.2d 1133, 1137 (5th Cir. 1981).

28. "An integrated school system does not mean--and indeed could not mean in view of the residential patterns of most metropolitan areas--that every school must in fact be an integrated unit. A school which happens to be all or predominantly white or all or predominantly black is not a 'segregated' school in an unconstitutional sense if the system itself is genuinely integrated one." Keyes, 413 U.S. at 226-227 (Powell, J., concurring). See also, Swann, 402 U.S. at 26; Riddick by Riddick v. School Bd. of City of Norfolk, 784 F.2d 521, 535 (4th Cir. 1986), cert. denied ___ U.S. ___ (1986).

31. A history of past segregation does not impose upon a school board the duty to justify all its actions. Riddick by Riddick v. School Bd. of City of Norfolk, 784 F.2d 521, 539 (4th Cir. 1986), cert. denied ___ U.S. ___ (1986).

32. The mere fact that certain schools are "racially identifiable", according to plaintiffs' theory, does not create a presumption that these schools are vestiges of a de jure segregated system which was dismantled over 30 years ago. Price v. Dennison Independent School Dist., 694 F.2d 334 (5th Cir. 1982). Under such circumstances, the court may not bypass the fact-finding and evidentiary process. Id., 694 F.2d at 364.

33. At some point in time the relationship between past segregative acts and present segregation may become so attenuated as to be incapable of supporting a finding of de jure segregation warranting judicial intervention. Keyes, 413 U.S. at 211.

35. U.S.D. No. 501 is an integrated school system which has eliminated all vestiges of the previously existing dual system of state-imposed racial segregation in grades K-6. Official acts of the defendant have dismantled, not perpetuated, the prior de jure system.

36. Even though Topeka schools were prior to 1954 segregated in grades K-6, the Keyes presumption cannot be used to support a finding of intentional segregation with respect to elementary schools annexed to the Topeka schools because such annexed schools were not under the same authority as the Topeka schools. U. S. v. Gregory-Portland Independent School Dist., 654 F.2d 989 (5th Cir. 1981).

37. With respect to the Topeka schools, the fact of past de jure segregation in pupil assignment in grades K-6 does not under the Keyes presumption give rise to a finding of intentional segregation as to student assignment in the upper grades or other aspects of the system.

38. The Keyes presumption does not give rise to a finding of a current system-wide constitutional violation because there is no showing of current intentional segregation in a "meaningful or significant segment" of the U.S.D. No. 501. Keyes, 413 U.S. 208-209.

39. U.S.D. No. 501 is not currently a segregated system.

40. U.S.D. No. 501 has not intentionally established or maintained a racially segregated school system.

41. A school system becomes unitary when it is free from racial discrimination with respect to six aspects: faculty; staff; transportation practices; extracurricular activities; facilities; and pupil assignment. Riddick by Riddick v. School Bd. of City of Norfolk, 784 F.2d 521, 532-534 (4th Cir. 1986), cert. denied, ___ U.S. ____ (1986).

42. Achievement of unitary status marks the end of de jure segregation in a system. Riddick by Riddick v. School Bd. of City of Norfolk, 784 F.2d 521, 539 (4th Cir. 1986), cert. denied ___ U.S. ____ (1986).

43. Upon implementation of the 1976 Long-Range Plan in school year 1980-81, and at the present, U.S.D. No. 501 achieved unitary status.

44. U.S.D. No. 501 has attained unitary status with respect to student assignment.

45. U.S.D. No. 501 has attained unitary status with respect to faculty and staff employment and assignments.

46. U.S.D. No. 501 has attained unitary status with respect to facilities.

47. U.S.D. No. 501 has attained unitary status with regard to its transportation policies.

48. U.S.D. No. 501 has attained unitary status with regard to its extracurricular activities.

49. The discrimination prohibited by Title VI, 42 U.S. §2000d, in any program or activity receiving federal financial

assistance is discrimination in the constitutional sense, a violation of the Equal Protection Clause. Regents of University of California v. Bakke, 438 U.S. 265, 98 S.Ct. 2733, 57 L.Ed.2d 750 (1978). Intentional discrimination is therefore required to establish a violation of Title VI. Id.

50. Private plaintiffs pursuing an implied cause of action for alleged violations of Title VI have the burden to prove violation of the Equal Protection Clause. Guardians Ass'n v. Civ. Serv. Com'n of City of N.Y., 463 U.S. 582, 103 S.Ct. 3221, 77 L.Ed.2d 866 (1983) (see Part II of the concurring opinion of Justice Powell, joined by the Chief Justice and Justice Rehnquist; the concurring opinion of Justice O'Connor; and the dissenting opinion of Justice Stevens, joined by Justices Brennan and Blackman).

51. Title VI itself directly reaches only instances of intentional discrimination. Alexander v. Choate, 469 U.S. 287, 105 S.Ct. 712, 716-717, 83 L.Ed.2d 661 (1985).

52. U.S.D. No. 501 is not intentionally discriminating with respect to race in any program or activity receiving federal financial assistance. U.S.D. No. 501 is not in violation of Title VI.

53. The state-imposed segregation condemned in Brown I and Brown II has been disestablished, and the court should therefore relinquish its jurisdiction over this case. Raney v. Board of Education of Gould Sch. Dist., 391 U.S. 443, 449, 88 S.Ct. 1697, 20 L.Ed.2d 727 (1968).

III. ARGUMENT AND AUTHORITIES.

Upon complete implementation of the 1976 Long-Range Facilities Plan, by the school year 1981-82 Unified School District No. 501 achieved unitary status. Since that time, to and including the present, tremendous stability has remained in the racial composition of the student attendance centers. The net result of School District actions, approved by the United States Department of Health, Education and Welfare, was to fully and completely integrate the schools of Unified School District No. 501 in accordance with current constitutional law. Unified School District No. 501 remains a unitary, desegregated school district.

The fundamental principle of Brown I, that separate schools are inherently unequal, laid the foundation of the unitary school doctrine. Implementation requires that a dual system, a system having separate schools for blacks and for whites, be replaced by a unitary system, an integrated system in which discrimination in neither practiced nor tolerated. Keyes, 413 U.S. at 226.

In Green, 391 U.S. at 430, the Supreme Court identified the factors to be evaluated in determining unitary status: student assignment; faculty and staff assignment; transportation policies; extracurricular activities; and equality of facilities. Green, 391 U.S. at 435. These factors alone determine unitary status. See Bradley v. Baliles, 639 F.Supp. 680 (E.D. Va. 1986). An evaluation of each of these factors, based upon the evidence, demonstrates that Unified School District No. 501 is entitled to a declaration of unitary status, determining that it is a desegregated school system over which this Court need no longer retain jurisdiction.

A. U.S.D. No. 501 has attained unitary status with respect to student assignment.

As stated succinctly by Dr. David Armor:

> The ultimate goal . . . the Brown case was trying to attain was the integration of students, not the attainment of some statistical or mathematical distribution of school percent, but a meaningful opportunity for contact among black and white students. That kind of contact can be attained in a whole variety of different configurations other than a system that is strictly racially balanced.

(Testimony of Dr. David Armor, Tr. 2570-2571).

Although the racial balance concept utilized by plaintiffs is not the proper standard to use in assessing or evaluating the level of segregation in school desegregation cases today (testimony of Dr. David Armor, Tr. 2566-2567), plaintiffs' own expert admitted that at no time were any of the Topeka high schools racially identifiable. (Testimony of William Lamson, Tr. 376, 396). And, by 1983, at the middle school level, four of the six middle schools are within plaintiffs' acceptable band and non-racially identifiable, with Eisenhower only three percentage points outside his acceptable band and Landon outside the band by approximately 23/100's of one percent. (Testimony of William Lamson, Tr. 477-478). None of the secondary schools are claimed to be vestiges of the dual structure. (See testimony of Dr. Gordon Foster, Tr. 623-624).

In addition, between the 1969-70 and 1985-86 school years, while school enrollment population in U.S.D. No. 501 decreased over 10,000 students and the minority percentage of that total enrollment increased from 17.3% to 26%, the number of stu-

dents enrolled in what plaintiffs contend to be racially identifiable schools decreased by nearly 50%. Plaintiffs' own expert concedes this is clear and definitive progress toward desegregation. (Testimony of Dr. Gordon Foster, Tr. 748-749). Further, deviations outside a target range do not prevent a school system from attaining unitary status. See Whittenburg v. School Dist. of Greenville County, 607 F. Supp. 289, 296 (D.S.C. 1985). (Also see Proposed Finding of Fact No. 97).

As of September, 1985, there were 2,784 black students in the school system. 10.3 percent of those 2,784--a total of 288 black students--attended two schools which were from 50 to 55 percent black in student enrollment. All other black students attended schools where the white student population was greater than the black student population. (See Pl. Ex. 8J, Answer of U.S.D. No. 501 to Interrogatory No. 9 [h2-4, l, m & n], 1985 Racial Inventory). Further, in 1985, 84 percent of black students attended majority white schools in Unified School District No. 501. (Pl. Ex. 8J, Answer to Interrogatory No. 9 [h2-4, l, m & n], First Set).

Plaintiffs have concentrated most of their efforts on evaluating the elementary level of instruction with regard to student assignment. The Constitution does not require any particular racial balance. See Milliken I, 418 U.S. at 717. A review of the black and white elementary student distribution for the 1985-86 school year discloses that no school possessed more than 9.5% of the total elementary black students. (See Def. Ex. 1120B, where the wide dispersal of black students throughout the elementary school system is graphically portrayed).

Racial statistics of U.S.D. No. 501 do not even come close to the "one-race" or "predominantly one-race" schools referred to in Swann, 402 U.S. at 1 (where two-thirds of black students attended schools which were 99% black), or from the racial imbalance noted in Dayton II, 443 U.S. at 526 (where schools which were 90% or more black in 1951-52 remain, for the most part, 90% or more black in 1972-73).

Comparing Unified School District No. 501 to the other 35 school districts with which Dr. David Armor has actually evaluated the data, Unified School District No. 501 is among the very most integrated in terms of student assignment policies. Not only is it among the most integrated on student assignment, but also it accomplished that without the use of mandatory busing. The policies utilized by Unified School District No. 501 are relatively more stable and more successful in the long run. U.S.D. No. 501 is a highly integrated school district offering a great deal of interracial contact between black and white students. (Testimony of Dr. David Armor, Tr. 2602-2603). The evidence clearly demonstrates the Unified School District No. 501 has attained unitary status with respect to student assignment.

B. U.S.D. No. 501 has attained unitary status with respect to faculty and staff assignments.

As recognized by the court in Fort Bend Indep. School District v. City of Stafford, 651 F.2d 1133, 1137 (5th Cir. 1981), it is the good faith effort to recruit minority faculty members, not compliance with specific ratios, which is a requirement for unitary status. Plaintiffs concede it is increasingly difficult

to employ minority teachers, because the pool is smaller and everyone is interested. (Testimony of Dr. Gordon Foster, Tr. 759). Plaintiffs have evaluated the School District's recruitment policies and its attempts to recruit minority faculty and have found no fault with the School District's actions. (Testimony of Dr. Gordon Foster, Tr. 758, 769).

Plaintiffs failed to provide any information regarding the racial composition of the relevant labor pool, including but not limited to the Topeka Standard Metropolitan Statistical Areas (SMSA). Defendant submits that the proper comparison would involve an evaluation of the qualified population in the relevant labor market. See Hazelwood School District v. United States, 433 U.S. 299, 322 n. 17 (citing Castaneda v. Partida, 430 U.S. 482 (1976)). Plaintiffs failed to analyze whether black faculty/staff were assigned in disproportionate numbers to schools with high black enrollment as alleged, pursuant to the proper legal standards. See, for example, Bell v. Board of Ed., Akron Public Schools, 491 F. Supp. 916, 938 (N.D. Ohio 1980), aff'd 683 F.2d 963 (6th Cir. 1982), citing Casteneda v. Partida, 430 U.S. 482 (1976).

Even under plaintiffs' very strict standard of analyzing staff and faculty assignments (the Singleton ratio), Unified School District No. 501 is on target at least by the 1981-82 school year. Plaintiffs concede that they would require the reassignment of only 24 to 26 faculty members out of over 900 to attain this strict standard. (Testimony of Dr. Gordon Foster, Tr. 751). Further, plaintiffs' analysis did not take into ac-

count whether such transfers were possible due to certification requirements. (Testimony of Dr. Gordon Foster, Tr. 664-666, 751, 775-776, 780).

The evidence shows that faculty and staff assignments are not segregated. Faculty and staff are not assigned in a manner so that their racial composition could systematically evidence the racial composition of the student population at the various attendance centers. U.S.D. No. 501 has attained unitary status with respect to faculty and staff assignments.

C. U.S.D. No. 501 has attained unitary status with respect to facilities.

Although plaintiffs' expert could have done a comparison of School District facilities, he made no such analysis. (Testimony of Dr. Gordon Foster, Tr. 723-724). Although the facilities of the School District vary in age, the schools and their grounds are well-maintained. There is no evidence to suggest that there are differences in the quality of schools. (Testimony of Dr. Herbert Walberg, Tr. 2034; testimony of Dr. Marvin Edwards, Tr. 2509, 2510; testimony of William Lamson, Tr. 411).

Further, Unified School District No. 501 provides an equitable distribution of resources, equipment, supplies and staff to all of the schools across the District. (See Proposed Finding of Fact No. 123 above). The evidence also shows that for every course of instruction, a curriculum guide has been developed and implemented, requiring uniform District-wide application, which is subject to ongoing monitoring practices of the District. Unified School District No. 501 possesses "equality in facili-

ties, instruction, and curriculum opportunities throughout the District." See Keyes, 413 U.S. at 226 (1973) (Powell, J., concurring). Unified School District No. 501 has attained unitary status with respect to this criteria.

D. U.S.D. No. 501 has attained unitary status with regard to its transportation policies.

The transportation policy of the School District is uniform and based upon the number of miles between the place of residence of the student to the attendance center designated for that location. (See, e.g., Def. Ex. 1009, TSBM 3/16/76). Plaintiffs admit there is no basis for feeling that there is any discrimination in the transportation policies of U.S.D. No. 501. (Testimony of Dr. Gordon Foster, Tr. 683).

E. U.S.D. No. 501 has attained unitary status with regard to its extracurricular activities.

Extracurricular activities have been and are being conducted on a nondiscriminatory basis pursuant to official Board policy. Plaintiffs are making no claims to the contrary. (Def. Ex. 1070, TSBM 9/26/49; Def. Ex. 1124A, Intervening Plaintiffs' Response to Defendant Unified School District No. 501's Interrogatory No. 19, First Set; Def. Ex. 1041D, Non-discrimination Policy No. 8100; testimony of Dr. Gordon Foster, Tr. 684; testimony of Dr. Owen Henson, Tr. 2696).

IV. CONCLUSION.

Unified School District No. 501 has an affirmative policy of promoting racial integration and has taken numerous steps to effectuate that policy. Prior to Brown I, the Topeka schools

initiated steps toward integration, not toward segregation. During the 1960's, a period in which Brown required only the absence of segregation, not the presence of integration, the Topeka schools were influenced by many factors outside its control: changes in state law; municipal annexations; federal housing; highway and urban renewal projects; as well as a devastating tornado. As the Supreme Court expanded constitutional standards during the 1970's, the School District responded. The most significant response was the adoption and implementation of the 1976 Long-Range Facilities Plan. At least by the complete implementation of that plan, if not sooner, by the 1981-82 school year, the schools were desegregated under the expanded Brown doctrine. Today, the evidence shows the schools are well integrated. Having attained unitary status at least by the beginning of the 1981-82 school year and having remained unitary thereafter, defendant Unified School District No. 501 respectfully submits that it is entitled to a finding by this Court that the school system is a unitary, fully desegregated school district. Defendant respectfully urges that this Court now relinquish its jurisdiction over Unified School District No. 501.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing **Proposed Findings of Fact and Conclusions of Law Submitted by Defendant Unified School District No. 501** was served by placing same in the United States mail, first class postage prepaid, on this 18th day of December, 1986, addressed to:

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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.,

Case No. T-316

Intervening Plaintiffs,

vs.

BOARD OF EDUCATION OF TOPEKA, SHAWNEE COUNTY, KANSAS, et al.,

Defendants.

POST-TRIAL BRIEF BY THE INDIVIDUALLY-NAMED DEFENDANTS ASSOCIATED WITH THE KANSAS STATE BOARD OF EDUCATION

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COME NOW the individually-named defendants associated with the Kansas State Board of Education, by and through their counsel, Dan Biles of Gates & Clyde, Chartered, Overland Park, Kansas, and respectfully submit their trial brief in the above-captioned matter.

INTRODUCTION

The complexity of this case makes difficult a presentation of proposed findings in a concise fashion. Therefore, these defendants have organized this post-trial brief as follows: (a) Introduction; (b) Summary of Proposed Findings; (c) Detailed Proposed Findings; and (d) Conclusions of Law. The summary findings focus on the conditions which exist today. The detailed proposed findings are chronologically arranged to the fullest extent possible. All page references are to the trial transcript.

SUMMARY OF PROPOSED FINDINGS

1. In terms of student assignment, USD #501 is highly integrated, offering its students a great deal of interracial contact. (Armor p. 2603; Armor Exhibits 1119A through 1119H, 1120A, 1120B).

2. This degree of interracial contact was achieved despite overall declining student enrollments and ever increasing percentages of Black and minority students within the overall student enrollment. (Armor p. 2603; Exhibit 8J). By way of illustration, total elementary school enrollment in the Topeka city school system in school year 1955-1956 was 8,900. Due to population growth and expansion by the city of Topeka, the total elementary enrollment in 1966-1967 was 14,576. In school year 1985-1986, the elementary enrollment was back down to 8,387 students. (Exhibit 8J).

3. The racial makeup of the elementary school population also has varied. In 1955-1956, Blacks comprised 10.08% (898 students) of the elementary population. In 1966-1967, Blacks were 12.05% (1757) of the elementary enrollment. For 1985-1986, Blacks were 19.91% (1670) of elementary students. (Exhibit 8J).

4. This high degree of interracial contact also was achieved despite tremendous expansion of the geographic territory served by the Topeka school system following the earlier litigation of this case in the 1950's and prior to statewide unification of local school districts in the mid-1960's. By virtue of annexations by the governing body of the city of Topeka, the Topeka school district territory grew from approximately 12.5 square miles at the beginning of the 1950-1951 school year to a total land area of 37.45 square miles by the end of 1963. (Exhibit 1009).

5. Topeka students do not consider themselves to be victims of segregation, or even believe there are segregated schools in USD #501. (Barbara Stanley, pp. 1720-1722).

6. USD #501 has received a number of national, regional and state awards for educational excellence. (Exhibits E-1 through E-7; Dr. Gary Livingston, pp. 1618-1623).

7. The number of awards received by the district in recent years demonstrates USD #501 is an educationally outstanding school system. (Dr. Herbert W. Walberg p. 2049, Exhibits E-1 through E-7). Several of the awards received by USD #501 have been for programs operated by the district in buildings targeted by plaintiffs as "inferior Black schools." (Exhibits E-1 through E-7). See, for example, the 1966 Demonstration Library grant for

Highland Park High School (Exhibit E-7); Eisenhower Middle School Chapter I Remedial Math Program, State Program of Excellence (Exhibit E-2).

8. Plaintiffs offer no evidence USD #501 today is racially segregated on the basis of its facilities or distribution of educational resources across the district. (Dr. Gordon Foster, pp. 683-684, 775).

9. Plaintiffs offer no evidence the Topeka school system today is racially segregated on the basis of its transportation policies. (Foster, pp. 683-684, 775).

10. Plaintiffs offer no evidence USD #501 today is racially segregated in any of its extra-curricular activities. (Foster, pp. 683-684, 775).

11. Plaintiffs concede there is no evidence any minorities other than Blacks were ever intentionally or purposely discriminated against by the Topeka school system at any time. (Lamson, p. 377).

12. Plaintiffs allege the Topeka school system is racially segregated solely on the basis of student assignment and faculty-staff assignment of Blacks.

13. There is no uniform standard by which schools are considered "racially identifiable." (Lamson, pp. 494, 220, 298, 361, 373, 374, 476, 487; Foster, pp. 549, 551, 553-554, 707, 784, 786). Plaintiffs' experts each offered a different standard of measure as to this allegation. (Lamson, pp. 365, 373; Foster, pp. 549, 553-554; Crain, pp. 1289-1291).

14. A "racially identifiable school" as defined by some of plaintiffs' witnesses, using a standard percentage measurement,

does not mean a school is segregated. (Foster, pp. 792-793). Therefore, just because one or more schools fall outside the plus or minus 15% band advocated by some of plaintiffs' witnesses does not mean there is segregation in USD #501. (Id).

15. Even using a plus or minus 15% off the district-wide average of Black enrollment for purposes of determining a "racially identifiable" school, none of the high schools in Topeka are racially identifiable Black during the 1985-1986 school year. (Exhibit 8J). The three Topeka high schools have never been racially identifiable Black using plus or minus 15% Black. (Lamson, pp. 376, 378; Exhibit 8J).

16. Of the six middle schools in operation in school year 1985-1986, only French (2.72% Black) and Eisenhower (42.86% Black) would fall outside the plus or minus 15% Black band advocated by some of plaintiffs' witnesses. (Exhibit 8J). Using this plus or minus 15% Black standard, only 44 middle school students out of the total middle school enrollment in 1985-1986 of 1,978 students take these two schools outside the band. This amounts to only 2.22% of the entire middle school enrollment in USD #501 in the 1985-1986 school year. (Exhibit 8J).

17. Of the 26 elementary schools in operation during school year 1985-1986, the total number of elementary students which cause 13 of these 26 schools to fall outside the plus or minus 15% Black band total only 190 students out of a total elementary enrollment of 8,387 students. This is only 2.26% of the entire elementary school enrollment. (Exhibit 8J).

18. System-wide, in the 1985-1986 school year, the total number of students which cause any Topeka school to fall outside

the plus or minus 15% Black range amounts to only 234 students out of a total district enrollment in USD #501 of 15,103 students. This is 1.54% of the total enrollment. (Exhibit 8J).

19. As to faculty/staff assignments, a shift of only 24 or 26 certificated teachers out of 911 teachers would bring USD #501 precisely to Dr. Foster's optimum standards. (Foster, pp. 764-765, 773). However, Dr. Foster conceded his calculation of the 24 to 26 teachers does not take into consideration whether teachers simply can be shifted to the other educational programs in light of their educational certifications. Also, Dr. Foster did not consider the relevant labor pool data for Topeka. (Foster, p. 768). Dr. Foster does find the school district's affirmative recruitment policies to be adequate. (Foster, p. 769).

20. There is no evidence of any complaint from any citizens concerning segregated schools or racial discrimination within USD #501 made to the Kansas State Board of Education (State Board) or the Kansas State Department of Education (KSDE).

21. The State Board has maintained since July, 1977, a regular monthly Citizens' Open Forum at its meetings in Topeka, during which any person may address the board on any subject. (Exhibits A-4, A-40, A-41). No citizen has ever appeared at this open forum to complain about alleged segregated schools or racial discrimination in Topeka schools, nor has any citizen ever requested at these forums the State Board take any action concerning the racial composition of Topeka schools, enrollment

policies, attendance boundaries, use of portable classrooms, or any of the complaints made by plaintiffs now in the current litigation.

22. There is no evidence that KSBE distributes any financial resources in any manner other than on a racially neutral basis.

23. As provided by state law, financial aid from the State is distributed to local school districts on the basis of a prescribed formula which takes into account the financial resources available locally to the district. (Dale Dennis, pp. 2757-2758; Exhibits B-2, B-3, B-5, B-9, B-10). The effect of the state aid formula is to make available more money to those districts which are financially poorer. (Id). USD #501 is a recipient of significant state aid under this statutory formula. (Exhibit B-2).

24. Distribution of financial resources on the basis of district wealth promotes equal educational opportunity statewide to all students regardless of the financial ability of the district in which the student resides. (Walberg pp. 2087-2088; Dennis p. 2757).

25. There are in operation today many non-mandated federal programs designed to concentrate additional financial and educational resources in districts with high numbers of low-income or low-achieving students. (Glendyn Buckley, pp. 1670-1688; Dennis pp. 2760-2761, 2754-2755; Exhibits B-7 and B-9; Exhibit 1054). Many of these programs were secured for the state of Kansas by state educational officials in the early 1960's when

these programs first became available to the states. (Exhibits A-20, A-21, A-22, A-24, A-26, A-27, A-28, A-30, A-32; B-7, B-9). USD #501 is a recipient of significant federal aid under many of these programs. (Exhibits B-1, B-4, B-6; 6; 5C; Dennis pp. 2748, 2753, 2761).

26. In order to participate in these federal programs, USD #501, through its appointed representatives, executes under oath, various assurances of compliance with federal laws, including prohibitions against racial discrimination. (Exhibit B-8).

27. There is no evidence the State Board or KSDE abused their authority pertaining to school building accreditation, teacher certification, or any other area within its jurisdiction to assist the Topeka school system to operate an inferior educational program or school facility for Black school children.

28. There is no evidence the State Board or any state official affirmatively acted in any manner to obstruct or discourage racial integration of schools following the Brown I ruling in 1954.

29. In each instance in which the State Board of Education was advised by the federal government of a complaint of racial discrimination against USD #501, the State Commissioner of Education was notified the complaint had no merit, or was successfully resolved by the federal government, with the district's cooperation. (Exhibits C-1 through C-10; Exhibits D-1 through D-12).

30. There have been no complaints to the U.S. Department of Education (or its predecessor H.E.W.) alleging racial

discrimination in pupil assignment practices in USD #501 since 1979. (Exhibits C-1 through C-10; D-1 through D-12).

31. In 1979, the Office of Civil Rights (OCR) of H.E.W. concluded the district's open enrollment policy had not significantly affected the racial composition of Topeka schools. (Exhibit C-5). Further, OCR found no basis to a complaint that implementation of a long-range facilities plan or the closing of Central Park Elementary School would result in resegregation of students. (Id). OCR stated it would continue to monitor the effects of the open enrollment policy in future years. (Id).

32. From its earliest beginnings as a body with constitutional authority, the State Board has adopted the following policy:

> "The State Board of Education is dedicated to the coordination and promotion of a statewide system of education which ensures educational opportunities for all persons to develop those individual capabilities needed to live productively in society, regardless of race, sex, national origin, geographic locations, age, socioeconomic status, or handicapping condition."

Exhibit A-1, State Board Policy #1300).

33. The State Board has in place today a variety of educational programs and policies which promote, on a statewide basis, equal educational opportunity on a non-discriminatory basis, including enhanced educational programs for low-income students, low-achieving students, and migrant students. (Exhibits A-12, A-15, A-16, A-17, A-18, B-7).

DETAILED PROPOSED FINDINGS OF FACT

34. This lawsuit commenced on February 28, 1951, as twenty Black elementary school students brought suit, through their parents. Among other claims, plaintiffs challenged the constitutionality of Ch. 72-1724 of the General Statutes of Kansas (1949).

35. On June 11, 1951, the state of Kansas, through the auspices of the Attorney General's Office intervened in this action, solely to defend the constitutionality of the state statute which authorized, but did not mandate, school districts in cities of the first class to elect to operate at the elementary level separate schools for Black and White school children. (All non-Black minorities at that time were considered White).

36. At the time of commencement of this action, Topeka Public School District #23 operated schools at the elementary, junior high and high school levels. Of the twenty-two elementary schools operated by the district, four were maintained for Black children and eighteen elementary schools were maintained for White (or non-Black) children. Black children were permitted to attend any of the four schools established for them, based upon the choice of the parents. The junior highs were integrated, as was the only high school serving the district. Graham v. Board of Education of the City of Topeka, 153 Kan. 840, 114 P.2d 313 (1941). The U.S. Supreme Court specifically found the

non-elementary grade levels of the Topeka public schools were operated on a "non-segregated basis." Brown v. Board of Education of Topeka, 374 U.S. at 486, N.1.

37. This case was tried to a three-judge court on June 25 and 26, 1951, and a decision rendered on August 3, 1951. The Court specifically found the evidence showed the schools for Black children and the schools for White children were comparable in facilities, curricula, courses of study and quality of teachers. (The findings of fact entered by the Court, numbers IV, V, VI. This finding was affirmed on appeal by the U.S. Supreme Court.)

38. On May 17, 1954, the U.S. Supreme Court unanimously reversed the legal conclusion of the Federal District Court of Kansas and ruled that segregation of the races was a per se violation of the Fourteenth Amendment. Brown v. Board of Education of Topeka, 774 U.S. 483, 494, 74 S. Ct. 686, 98 L.Ed. 873, 881 (1954) ("Brown I"). The Supreme Court ordered reargument on the issue of relief.

39. Prior to the Brown I ruling, however, the Topeka city school district decided, on September 8, 1953, without the necessity of court order, to abolish its dual school system. (Exhibit 1073).

40. The Topeka Board's voluntary decision to abolish its segregated elementary schools and the specific provisions of the Topeka desegregation plan were made known to the U.S. Supreme Court prior to the Court's consideration of relief. (Exhibits F-1, F-3; Brown v. Board of Education of Topeka, 349 U.S. 291, 75 S. Ct. 753, 99 L.Ed. 1083 (1955) ("Brown II")).

41. During oral arguments in the proceedings on relief, the Court received a full presentation of the Topeka plan. The Court even requested a map of the Topeka city school district, with school attendance zones shown, as well as an estimated percentage of Black and White pupils to be enrolled in the kindergarten through grade six. The Court was fully apprised of Topeka's use of the phased-in desegregation approach, as well as the district's use of so-called "grandfather" clauses, optional attendance zones, and that student transportation was not a part of the plan. The Court also was informed of the expected racial percentages in Topeka schools resulting from the plan, including the fact that some schools would remain all Black for a time, and that some schools on the outskirts of town would be all White. (Exhibits F-1, F-3).

42. In its order of remand, the U.S. Supreme Court in Brown II, specifically noted its consideration of the Topeka desegregation plan and stated:

> "The presentations also demonstrated that substantial steps to eliminate racial discrimination in public schools have already been taken, not only in some of the communities in which this case arose, but in some of the states appearing as amici curiae and in other states as well. Substantial progress has been made in the District of Columbia and in the communities in Kansas and Delaware involved in this litigation." (Emphasis Supplied).

349 U.S. at 299.

43. The three-judge panel reconvened in Topeka to consider the Topeka desegregation plan. Although plaintiffs objected to the plan because it was not immediately implemented in full, this

Court found the central principle of the plan was that, thereafter, except in exceptional circumstances, "school children irrespective of race or color shall be required to attend the school in the district in which they reside and that color or race is no element of exceptional circumstances warranting a deviation from this basic principle." Brown v. Board of Education of Topeka, 139 F. Supp. 468, 469 (D. Kan. 1955).

44. This Court further stated:

> "There are a number of respects in which we feel that the plan does not constitute full compliance with the mandate of the Supreme Court, but that mandate implies that some time will be required to bring that about. The elements that we feel do not constitute full compliance are mostly of a minor nature . . ." (Emphasis Supplied).

139 F. Supp. at 469.

45. The Court noted the "most serious objection" presented by the plaintiffs related to a provision in the rules permitting children reaching kindergarten age for the first time to elect whether they will go to the school in the district in which they reside or to a school in another district. The Court, however, noted the rule was a temporary one, having application only to that present school year, and "forming no part of the permanent school plan." 139 F. Supp. at 470.

46. The Court, then, continued to explain in reference to plaintiffs' objections:

> "We do not feel that it requires a present condemnation of an overall plan which shows a good faith effort to bring about full desegregation in the Topeka schools

and full compliance with the mandate of the Supreme Court . . ."

139 F. Supp. at 470.

47. Finally, this Court stated:

> "Desegregation does not mean that there must be intermingling of the races in all school districts. It means only that they may not be prevented from intermingling or going to school together because of race or color.
>
> "If it is a fact as we understand it is with respect to Buchanan school that the district is inhabited entirely by colored students, no violation of any constitutional right results because they are compelled to attend the school in the district in which they live."

139 F. Supp. at 470.

48. There was no appeal of this Court's 1955 ruling which laid the foundation for the future conduct by the parties.

49. This Court did not order the State of Kansas or any state official to take any specific action to assist implementation of the Topeka desegregation plan or to take any other additional action to implement the mandate of Brown. Plaintiffs' evidence fails to identify any action or inaction by any state official to obviate or thwart the Topeka desegregation plan.

50. The Topeka desegregation plan was fully implemented by the Topeka city school district. No further action was requested of the Court in this case for twenty-four years.

51. Prior to its voluntary decision to end segregation, Topeka Public School District #23 operated four elementary schools for Black school children -- McKinley, Buchanan, Washington, and Monroe. McKinley was closed permanently in the

spring of 1955, as a part of the desegregation plan. Buchanan was closed in 1959. Washington was closed in 1962, and Monroe was closed in 1975. (Exhibit 8H).

52. Following the historic decision in Brown I, Kansas state officials openly praised the ruling of the high court. For example, three days after the Brown I decision, Kansas Attorney General Harold R. Fatzer wrote to Chief Justice Earl Warren as follows:

> "I can personally say that I am well pleased with the Court's opinion because I think it is right on constitutional grounds. All citizens of the country should be permitted to stand equally before the law and have it administered upon them without discrimination."

(Exhibit F-5, See also Exhibits F-2 through F-9).

53. Prior to reargument on the relief issue, ("Brown II"), Kansas Attorney General Fatzer determined that those few school systems which had elected to operate dual elementary schools in Kansas pursuant to the statute were abandoning policies of segregation. For example, in a letter to U. S. Solicitor General Simon E. Sobeloff, dated August 7, 1954, the Attorney General said:

> "You may also be interested in knowing that pursuant to the decision of the Supreme Court announced last spring, all communities of Kansas where segregation has been maintained have formulated policies for the abandonment of segregation at the earliest possible time. We do not anticipate that there will be occasion for further litigation of this question in other Kansas communities."

(Exhibit F-3).

54. Assistant Attorney General Paul E. Wilson wrote to plaintiff's counsel, Robert L. Carter, on May 19, 1954,:

> "There are eight cities of the first class in Kansas other than Topeka which now maintain segregated schools. Two of these cities have indicated their intention of abandoning the practice at the beginning of the next school year. While there has been no indication of intent from the other cities, I am sure that in all Kansas communities the process of integration will be carried out with dispatch."

(Exhibit F-3).

55. On July 22, 1954, immediately after Brown I, Attorney General Fatzer wrote:

> "It is my belief that most, if not all, of the Kansas cities maintaining public systems of education have through their boards of education taken affirmative action to discontinue the practice [of racial segregation] within the immediate future."

(Exhibit F-6).

56. On October 14, 1954, Attorney General Fatzer wrote to Peter F. Caldwell, attorney for the Topeka Public School District #23:

> "In view of the very radical events which are occurring in the public schools in Delaware, Maryland and some of the southern states, I would like to have the state of Kansas on record as complying with the Court's decision holding unconstitutional our Kansas permissive statute which permits segregation in certain of our public schools, and it is my hope that your board will concur in my thinking in this respect. . . . It is my view that the state of Kansas and your board of education can agree with the attorney for the appellant on some sensible decree whereby the board of education can give reasonable assurance of compliance with the Court opinion and this office can secure similar commitments from other boards of education, it would be in the best

interest of our state and your school board, as well as having a quieting effect on racial unrest throughout the nation."

(Exhibit F-7).

57. On July 14, 1954, Attorney General Fatzer wrote:

"I am very frank to say that I am not disappointed when the Supreme Court decided against the constitutionality of the statute. Personally, I know of no justification for racial segregation in the public schools and I feel that its elimination will produce a more wholesome atmosphere in those communities where segregation has heretofore been maintained. I am pleased that most Kansas communities where segregation has been practiced are in the process of formulating new policies and plans for the discontinuance of segregation, without awaiting a more specific decree from the Supreme Court."

(Exhibit F-8).

58. Plaintiffs' counsel, Robert L. Carter, wrote to Paul E. Wilson, Assistant Attorney General, as follows:

"We are certain that your refusal to approach this question other than in a purely lawyer-like examination of constitutional power, unfreighted with emotions and demagoguery, help to embolden the court to make its courageous and statesmanlike declaration of May 17. However poorly stated, this is meant as a tribute to your honesty and integrity as a member of the bar and official of the state of Kansas."

Wilson, Paul, "Speech on Brown v. Board of Education," 30 Kan. L.Rev. 15, 25 (1981).

59. On July 6, 1954, Assistant Attorney General Paul Wilson wrote to Hunton, Williams Gaymore and Powell, of Richmond, Virginia, as follows:

"Boards of education in other Kansas communities where segregation has been practiced have adopted resolutions declaring their intention to integrate their elementary schools at an early date and have taken some affirmative steps in that direction. . . .Insofar as I know there has been scarcely a murmur of dissatisfaction among the Kansas people concerned."

(Exhibit F-9).

60. The Kansas Legislature repealed the permissive elementary school segregation statute in 1957, which was the next full session of the Legislature following the district court's 1955 order approving the Topeka desegregation plan. The Kansas Legislature also enacted the Kansas Act Against Discrimination (K.S.A. 44-1001, et seq.) and enacted criminal statutes against discrimination (K.S.A. 21-4003).

61. The actions of Kansas state officials stand in sharp contrast to efforts in other states to circumvent and openly defy the Supreme Court's ruling in Brown. Unlike other states, there were no efforts by Kansas state officials, for example, to close public schools, or provide tuition grants for White students to attend private schools. There were no efforts to preserve unconstitutional provisions promoting or mandating segregation nor did Kansas enact and preserve statutes authorizing withholding of state funds from local school boards which voluntarily adopt busing plans for desegregation. See Bradley v. School Board, 338 F. Supp. 67 (D.Va. 1976), Virginia General Assembly enacted laws to close public schools where White and Black children were enrolled, to cut off state financial aid to integrated schools, to provide tuition grants for White students to attend private schools, and to extend state retirement

benefits to teachers in newly created public schools.); Griffin v. School Board, 377 U.S. 218 (221, 84 S. Ct. 1226, 12 L.Ed. 2d 256 (1964); Little Rock School District v. Pulaski County Special School District #1, 778 F.2d 404, 417 (8th Cir. 1985), (Arkansas Officials, as recently as 1980, approved racially segregative school sitings in violation of district court decrees, and took the position that state law did not permit the state to assist local school boards in their desegregation efforts); Liddell v. State of Missouri, 731 F.2d 1294 (8th Cir. 1984) (State Constitution, until 1976, continued to mandate segregated schools at all grade levels); Kelly v. Metropolitan County Board of Education, 615 F. Supp. 1139, 1149 (Md. Tenn. 1985), (Tennessee Constitution continued to mandate segregation until 1978, and as late as 1985, state law authorized the governor to withhold all state funds from local school boards which voluntarily adopted busing plans to achieve desegregation). (See also Lamson, p. 359).

62. Plaintiffs have not shown any involvement by the State Board of Education in waiving state-imposed statewide educational standards in Topeka schools, ignoring or resisting pleas for substantial assistance in desegregating Topeka schools or in directly manipulating the authority of the state board to create or maintain segregation or deny equal educational opportunity to Topeka school children. See Reed v. Rhodes, 662 F.2d 1219, 1226 (6th Cir. 1981).

63. The Topeka school board's desegregation plan was carried out and fully implemented by the school district without modification. By the beginning of the 1956-1957 school year, all

elementary school children attending Topeka public schools attended their neighborhood school, without regard to race (except those few who may have exercised option D of Step 3). As early as the fall of 1955, Black school children, attending their neighborhood school, were present in eighteen of the twenty-three elementary schools of Topeka. This also was true for the subsequent school year. (Exhibits 1078, 8J, 8CC and 8EE).

64. During the latter part of the 1950's and throughout the 1960's, there was tremendous expansion of the student enrollment and geographic territories served by the Topeka school system, especially prior to statewide unification of local school districts. (Exhibits 8J, 1009).

65. Geographically, by virtue of annexations by the governing body of the city of Topeka, the Topeka school district territory grew from approximately 12.5 square miles at the beginning of the 1950-1951 school year to a total area of 37.45 square miles by the end of 1963. (Exhibit 1009).

66. The annexations following the Brown II decision brought in former school districts, including the Avondales, Highland Park, Belvoir, and many other schools now at issue in the current litigation. (Exhibit 1009).

67. None of the schools brought into the Topeka School District #23 by virtue of city annexations after the Brown decision were ever operated as a de jure system pursuant to the permissive state law allowing racially segregated elementary schools, because none were in cities of the first class and most had only one school within the district. (Exhibit 1009).

68. Although closed in 1959, the Pierce School was brought into the Topeka school district in 1957 by virtue of annexation (Exhibit 1009). The Pierce school district had only one school within its district, an elementary school serving first through eighth grades. (Exhibit G-4). The Pierce school, thus, never operated as a de jure dual school system.

69. The attendance boundaries for the Pierce school district were established in 1855. (Exhibit 292). Over the years, the one-school Pierce district served both Black and White school children in the first through eighth grades. (Exhibit G-4).

70. In terms of student enrollment, the tremendous expansion of school children was mirrored by a later substantial decline in enrollment during the 1970's and 1980's. (Exhibit 8J). By way of illustration, total elementary school enrollment in the Topeka city school system in the school year 1955-1956 was 8,909. Due to population growth and expansion by the city of Topeka, the total elementary enrollment in 1966-1967 was 14,576. In school year 1985-1986, the elementary enrollment was down to 8,387 students. (Exhibit 8J).

71. From 1961 through 1970, a number of federally-subsidized housing projects were developed within the city of Topeka and constructed for family occupancy. (Exhibits 1009 and 8R). These projects were located in school attendance zones now placed in controversy by plaintiffs. The school district, however, had no control over the location of these projects.

72. Plaintiffs have demonstrated no significant causal connection between the former dual elementary schools operated in the early 1950's and the racial composition of Topeka schools today.

73. There has been considerable spatial expansion in black residential development between the early 1960's and mid-1980's. (Dr. William A. V. Clark, p. 2299 and Exhibits 1115A-1115I). The changes in school enrollment were due to changing growth rates of White and Black populations and to their geographic locations and not to the year-to-year attendance area boundary shifts. (Exhibit 1114, p. 37). Given the declining White population and the increasing Black population, racial imbalances which exist today are the result of demographic forces. (Id).

74. Plaintiffs' own witnesses conceded the Topeka school system today has no physical vestiges of the past dual school system. When asked whether there were any vestiges of the former dual school system still in existence today, Dr. Foster replied, "In my opinion there are none physically, and specifically." (Foster, p. 623). As to secondary schools, Dr. Foster said, ". . . Secondary schools were mixed in any event, so physically there would be no vestiges of the dual structure." (Foster, p.623).

75. Mr. Lamson testified, vestiges are those schools which existed prior to 1954 in one condition (all Black or all White) and continue in the same condition afterwards. (Lamson, p. 452-453). Lamson illustrated, "Grant was an all white school

prior to 1954 and I'm alleging that Grant becomes a racially identifiable black school after 1954. So, it is not a vestige." (Lamson, p. 453).

76. The racial makeup of the elementary school population also has varied. In 1955-1956, Blacks comprised 10.08% (898) of the elementary population. In 1966-1967, Blacks represented 12.05% (1,757) of elementary enrollment. For 1985-1986, Blacks were 19.91% (1,670) of the elementary students. (Exhibit 8J).

77. Throughout the 1940's and 1950's and into the early 1960's, state officials embarked upon, and ultimately completed, the statewide process of unification of the school districts of Kansas. The push toward unification of school district was, in part, designed to provide equal educational opportunity to all students. (Exhibit G-1). Mr. George Keith, Director of Unification, told the State Board of Education that equal educational opportunity could not be extended to all students as long as schools were so spread out and good teachers could not be provided for all schools. (Exhibit A-23).

78. The struggle was difficult to unify the multitude of common school districts in Kansas. Each county superintendent was responsible for dividing a county into a suitable number of school districts. By 1896, there were 9,284 districts. Various efforts by the Legislature to reorganize all these districts met with mixed success. By March 1, 1947, there were still 8,102 elementary districts. Even by 1958, there were still 2,794 districts, with 237 of them operating both an elementary and high school program. By 1963, there were 1,840 school districts. The first of the present unification acts to be declared

constitutional was enacted in 1963. By 1967, the efforts of reorganization and unification left only 339 total districts in Kansas. By 1969, there were 311 school districts in Kansas, all unified and operating under the same set of laws. (Exhibits G-1, A-23). At present, there are 304 unified school districts across the state. (Exhibits B-3, B-4, B-5, B-6).

79. In the 1960's, state educational officials worked diligently to monitor and secure additional federal funding to provide upgraded instruction across the state of Kansas for low-income and other disadvantaged students, as well as remedial adult education programs. (Exhibits A-20, A-21, A-22, A-24, A-25, A-27). Efforts by the State Board persisted in the 1970's and 1980's to preserve and enhance these programs. (Exhibits A-30, A-31, A-34, A-37).

80. In November, 1966, the people of Kansas adopted a new constitutional article concerning education, creating an elected Kansas State Board of Education, effective January, 1969, and granting to local public schools constitutional recognition and autonomy. (Kan. Const. Article 6, Section 2(a) and Article 6, Section 5). The Legislature was instructed to provide for the establishment and maintenance of the public schools and related activities. (Kan. Const., Article 6, Section 1).

81. Immediately upon its formation as a constitutional body, the Kansas State Board of Education launched the State Educational Evaluation of Kansas (SEEK) project, which was conducted at the direction of the U. S. Department of Education, as a requisite for participating in Title III of the Elementary and Secondary Act of 1965. The three main purposes of this study

were to identify the educational needs of students in the state of Kansas from early childhood education through grade 12 and adult education, to develop a system the State Department of Education could employ to determine which identified needs were the most critical and to develop a continued assessment system for future evaluation of education in Kansas. (Exhibit A-8, Exhibit 7).

82. Project SEEK was conducted independently by staff of Emporia State University, from May 1, 1969 through April 1, 1970. In addition, implementation of the SEEK project included an ESEA advisory counsel composed of 17 persons broadly representing Kansas citizenry, the 25 Emporia State University staff members and a task force composed of 10 educators representing various educational levels to actually implement and do interview-survey work at the local school district level. (Exhibit A-8).

83. The report of the SEEK project identified a variety of educational goals and needs which it recommended to shape the educational agenda for the state of Kansas. These recommendations included programs for enhanced educational programs for low-achieving and low-income students, remedial programs, adult education programs and recommendations that the State Board set broad educational goals as a part of its constitutional function. (Exhibit A-8).

84. None of the panels comprising the SEEK project identified any school districts in Kansas as being segregated or as providing educational services in a racially-discriminatory fashion. Indeed, a portion of Project SEEK included an opinion survey of a broad cross-section of Kansas elementary and

secondary students, which included a battery of questions pertaining to racial discrimination at the school level. The survey of student attitudes by the Project SEEK group determined that most students did not feel they were subject to discrimination. A majority of students answered they did not agree that they would make better grades if they were of a different race; 81% felt that all students should definitely have equal educational opportunity and 92% stated that they would feel "comfortable" or "no different than with a person of my own race" when working with a person of another race. (Exhibit A-8, p. 9). The report further concluded that the opinions concerning discrimination were the same even when stratified by race. (Exhibit A-8).

85. In early 1970, at the earliest beginnings as a constitutional body, the State Board adopted as Policy #1300 its dedication to the "coordination and promotion of a statewide system of education which ensures educational opportunities for all persons to develop those individual capabilities needed to live productively in society, regardless of race, sex, national origin, geographic location, age, socioeconomic status, or handicapping condition." (Exhibit A-1). Implementation of these goals and statewide programs is demonstrated in a variety of State Board publications. (Exhibits A-5, A-12, A-13, A-14, A-15, A-16, A-17, A-18, 264-279).

86. In July, 1972, the State Board adopted a series of statewide goals for education in Kansas, which have as their theme the promotion of educational programs for all people in Kansas, to provide "continuous and successful acquisition of

skills and knowledge and attitudes which are appropriate and conducive to individual personal growth and development necessary for a productive and satisfying life in a changing society." (Exhibit A-5).

87. The goals stressed basic skills in mathematics, with specific subobjectives, basic skills in communications, preparation for a changing society, including the subgoal that "school age population of Kansas should develop an attitude of open-mindedness toward change, an understanding of the nature of social and institutional change and the appropriateness of alternative change strategies." (Exhibit A-5).

88. Additionally, goals of career preparation, continuing education, health, nutrition, values of citizenship "including the concern for the equal dignity of every individual," knowledge of every right and freedom of all individuals, a pride in the learner's own ethnic group, nation or culture, additional subgoal of social relations, self image, safety, consumer education, environmental education, arts and humanities, and science. (Exhibit A-5).

89. Another major goal was to have the Kansas educational system recognize disparities of educational opportunity afforded various segments of the population and the providing of specific programs to meet the needs of all individuals. Other goals were directed at dropouts, exceptional children, bilingual education, and economically disadvantaged. (Exhibit A-5, A-35).

90. Also in 1972, the State Board adopted as Policy Number 2100 for educational goals designed to promote equal educational opportunity and providing that the Kansas educational system

shall have programs specific to the educational needs of all groups. (Exhibit A-36).

91. The State Board also adopted a variety of policies in favor of equal educational opportunity as proposed by the National Association of State Boards of Education. (Exhibit A-37).

92. An affirmative action plan was adopted to ensure minority group representation on present advisory councils to the policy committee of the State Board of Education. (Exhibit A-38).

93. The Board adopted a policy endorsing the establishment of a task force to work on the revision of publications dealing with minority groups. (Exhibit A-38).

94. The implementation of these various goals have been accomplished throughout the seventeen year existence of the present State Board of Education. More recently, these programs have included minimum competency testing, teacher precertification exams, and internship proposals. (Exhibits 264-279; A-12, A-13, A-14, A-15, A-16, A-17, A-18; Walberg pp. 2043-2049; Exhibits A-42, A-44, A-39, A-40, A-45, A-47, A-48, A-51, A-52, A-53, A-54, A-55, A-57, A-58, A-59).

95. In 1970, the State Board created a civil rights liaison officer to work with the federal Department of Health, Education and Welfare and the Commission on Civil Rights. (Exhibit A-28).

96. As early as 1970, the State Board of Education sought to secure funding for technical assistance projects related to race and sex equity. (Exhibits A-28, A-32, A-43, A-46, A-49, A-50). These projects, which were designed to serve the state as a whole, sought federal funding for one or two staff persons,

along with clerical support. These projects were not designed as a support mechanism, nor could they be, under the federal funding eligibility requirements. They were designed to provide technical assistance to school districts requesting such help. (Exhibits 157, 256, 288, A-9, A-10 and A-11). The funding for this project was not approved in the appropriation process until early 1980. (Exhibit 6).

97. There is no evidence the failure of the Legislature to appropriate funds for the race and sex equity projects has in any way contributed to the alleged discrimination within the Topeka school district. (Brown v. Topeka Board of Education, Case No. T-316, (D. Kan. Oct 7, 1986) at p. 2).

98. The federal Office for Civil Rights of the U.S. Department of Health, Education and Welfare (now the U.S. Department of Education), since its creation, has been charged with responsibility for investigating complaints of discrimination against school districts receiving federal funds. (Civil Rights Act of 1964 (Pub.L.88-352; 78 Stat. 241 (1964)). USD #501 is such a district. In each instance in which OCR investigated an alleged complaint of discrimination against USD #501, the fact of the investigation and the ultimate conclusions were relayed to the state Commissioner of Education. (Exhibits C-1 through C-10, D-1 through D-12).

99. In 1974, based upon its conclusions of violations of Title VI of the Civil Rights Act of 1964, OCR began administrative proceedings against USD #501. (Exhibit D-1 through D-12). As part of these proceedings, the State Department of Education was directed by OCR to disallow approval

to USD #501 for federal funding. (Exhibit D-6). Ultimately, HEW resolved its complaint against USD #501 in 1976 and dismissed its administrative proceedings, stating specifically that, "The respondent school district adopted a plan to remedy the violations of Title VI of the Civil Rights Act of 1964 alleged in the notice of opportunity for hearing in this matter." (Exhibit D-11). The state Commissioner of Education and the State Board of Education were notified of this resolution of the complaint. (Exhibit D-11 and D-12). The original HEW complaint concerned student assignment policies of the district, quality of school facilities and allegations of racial segregation. The plan referenced by OCR was the 1976 long-range facilities plan adopted by USD #501 and fully implemented by 1981. (Dr. Owen Henson, pp. 1436-1461 and Exhibit 240).

100. Over the years there were a variety of final OCR conclusions concerning allegations of discrimination against USD #501. (Exhibits C-1 through C-10). In each instance in which the State Board of Education was advised by the federal government of a complaint of racial discrimination against USD #501, the State Board was notified the complaint had no merit or was successfully resolved by the federal government with the district's cooperation. (Id).

101. The various OCR conclusions are as follows:

a. In 1976, a review of data did not reveal any evidence the Topeka public schools discriminated against complainant's son on the basis of race and its assessment of discipline. It was suggested the school district implement a study concerning disciplinary practices. (Exhibit C-2).

b. In 1976, Topeka public schools were found to be in compliance with the requirements of Lau v. Nichols relative to equal educational opportunity for national origin students. The OCR analysis was based upon an on-site review and revealed no evidence the school district was discriminating against children in the district's programs and services upon the basis of national origin. (Exhibit C-3).

c. In 1979, OCR investigated a complaint filed against USD #501, alleging racial discrimination in pupil assignment practices, specifically alleging the implementation of the 1976 long-range facilities plan resulted in resegregation of students and that the planned closing of Central Park Elementary School would result in racially-imbalanced student enrollment in schools within the district. OCR further determined the open enrollment policy had not significantly affected the racial composition of Topeka schools. OCR stated it would continue to monitor the effects of the open enrollment policy in future years. (Exhibits C-5, C-4).

d. In 1982, OCR completed its investigation of a complaint filed against USD #501 concerning disciplinary suspensions of a minority student and the failure to place the minority student in regular education classes. OCR concluded the district did not violate federal law relative to the allegations in the complaint. USD #501 agreed to develop a plan to correct some other concerns developed by OCR during its investigation, and OCR agreed to close the case. (Exhibit C-6).

e. In 1983, OCR completed its investigation of a complaint the district discriminated against complainant on the

basis of handicap and the conditions of employment and the termination of employment. OCR found no support for the allegation. OCR did require, and the district agreed, that a statement of nondiscrimination on the basis of handicap would be added to district publications. (Exhibit C-7).

f. In 1984, OCR found no discrimination to pregnant students or students recovering from childbirth within district's educational program. (Exhibit C-8).

g. In 1984, a claim that a handicapped parent was discriminated against in the opportunity to participate in her child's educational program was withdrawn and the filed closed. (Exhibit C-9).

h. In 1985, OCR investigation of a complaint alleging discrimination on the basis of race and sex concerning salaries paid to minority teachers was found to be without merit. The investigation concerned alleged racial discrimination in the following areas: teacher salaries, selection of head coaches, reassignment of learning disability teachers, selection of school administrators, and assignment of kindergarten teachers. OCR found no basis for the complaints and closed the investigation. (Exhibit C-10).

102. USD #501 has received numerous state and national awards for excellence in various educational programs, including projects to assist educationally-disadvantaged students. Many of these recognized programs benefit students in schools targeted by plaintiffs as part of the current litigation. (Exhibits E-1 through E-7). The number of awards received by the district

in recent years demonstrates USD #501 is an educationally-outstanding school system. (Walberg, p. 2049).

103. Plaintiffs offer no evidence of any racially discriminatory action by any state official in the management, administration or promotion of any program or activity receiving federal financial assistance in violation of 42 U.S.C. 2000d.

PROPOSED CONCLUSIONS OF LAW

104. The rights, duties and future obligations arising from this litigation were determined by the U.S. Supreme Court and this Court, upon remand from the high court. See Brown v. Board of Education of Topeka, 347 U.S. 483 74 S. Ct. 686, 98 L.Ed. 83 (1954) ("Brown I"); Brown v. Board of Education of Topeka, Kansas, 349 U.S. 294, 75 S. Ct. 753, 99 L.Ed. 1083 (1955) ("Brown II"); Brown v. Board of Education of Topeka, 139 F.Supp. 469 (D. Kan. 1955).

105. The U.S. Supreme Court was fully apprised during the remedial proceedings in this case, of the components of the Topeka desegregation plan, including the actual school attendance zones contemplated, the phased-in approach, use of so-called "grandfather" clauses, optional attendance zones, and the discontinuing of student transportation. (Exhibits F-1, F-3, Brown II). The Court also was aware of the expected racial percentages in Topeka schools resulting from the plan, including the fact that some Topeka schools would remain all-Black for a

time and some schools would be all-White. (Id). Indeed, the Court had no criticisms of the plan. (Brown II).

106. In its order of remand issued to the District Court of Kansas, the U.S. Supreme Court ordered the lower court "take such proceedings and enter such orders and decrees consistent with the opinions of this Court as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to this case." (349 U.S. at 300).

107. On remand, this Court fully considered the elements of the Topeka desegregation plan and plaintiffs' objections to that plan. The Court ordered the implementation of the plan, despite plaintiffs' objections, and found the plan was "a good faith effort to bring about full desegregation in the Topeka schools and full compliance with the mandate of the Supreme Court . . ." 139 F.Supp. at 470.

108. This Court further stated:

> "Desegregation does not mean that there must be intermingling of the races in all school districts. It means only that they may not be prevented from intermingling or going to school together because of race or color.
>
> "If it is a fact as we understand it is with respect to Buchanan School that the district is inhabited entirely by colored students, no violation of any constitutional right results because they are compelled to attend the school in the district in which they live."

139 F.Supp. at 470.

109. Plaintiffs did not appeal this Court's 1955 ruling. The school district fully implemented the Topeka desegregation plan as ordered by this Court. Therefore, the future obligations

arising from this ruling were set out by this Court. No further order was requested of this Court by plaintiffs for the next twenty-four years.

110. Court decisions soon after this Court's order on remand continued to construe Brown as prohibiting racial discrimination in school admission, but not requiring affirmative efforts of racial mixing of school children as a constitutional right. Cooper v. Aaron, 558 U.S. 1 78 S. Ct. 1401, 3 L.Ed. 2d 5 (1958); Griffin v. County, 77 U.S. 218 84 S. Ct. 1226, 12 L.Ed. 2d 256 (1964); Alexander v. Holmes County Board of Education, 396 U.S. 1990 S. Ct. 29, 24 L.Ed. 2d 19 (1969); Downs v. Board of Education of Kansas City, 336 F.2d 988 (10th Cir. 1964); Northcross v. Board of Education of City of Memphis, 302 F.2d 818 (6th Cir. 1962); Bell v. School City of Gary, Indiana, 324 F.2d 209 (7th Cir.) cert. denied, 377 U.S. 924 (1963); Board of Education of Oklahoma City Pub. Sch. v. Dowell, 375 F.2d 158 (10th Cir. 1967) Cert Denied 409 U.S. 1041 (1967); Keyes v. School District #1, Denver, Colorado, 445 F.2d 990 (10th Cir. 1971).

111. The Topeka desegregation plan fully complied with the mandates of the Supreme Court and conformed to the existing interpretations subsequent to that decision. The full implementation of the Topeka desegregation plan requires a showing of intent to promote segregated schools prior to a finding of any liability today. There must be a showing in a school desegregation case of "a current condition of segregation" resulting from intentional state action. Washington v. Davis, 426 U.S. 229, 240 (1976).

112. It is important to remember judicial powers may be exercised only on the basis of a constitutional violation. Swann v. Charolotte-Mecklenburg Board of Education, 402 U.S. 1, 24, 91 S. Ct. 1267, 28 L.Ed. 2d 554 (1971).

113. Plaintiffs have the burden of proof to show: (1) that segregated schooling exists today within the Topeka school system; and (2) that it was brought about or maintained by intentional government action. Brown v. Topeka Board of Education, 84 F.R.D. 383, 399 (D. Kan 1979), citing Columbus Board of Education v. Penick, 443 U.S. 449, 99 S. Ct. 2941, 61 L.Ed. 2d, 666 (1979).

114. This showing by plaintiffs must be "satisfactorily established by factual proof and justified by reasoned statement of legal principles." 84 F.R.D at 399, citing Dayton Board of Education v. Brinkman, 433 U.S. 406, 410, 97 S. Ct. 2766, 2770, 53 L.Ed 2d 851 (1971).

115. The law requires the Court in its review of this case to consider the entire Topeka school system, and not any mere segment thereof. Green v. New Kent County School Board, 391 U.S. 430, 437, 88 S. Ct. 1689, 29 L.Ed. 2d 716 (1968).

116. In Green v. New Kent County, supra, the Court identifies the factors relevant to a determination of a segregated school system: (1) student assignment; (2) faculty/staff assignments; (3) transportation; (4) facilities; and, (5) extracurricular activities. In the instant action, there is no allegation of racial discrimination on the basis of transportation facilities or extracurricular activities.

117. "There is no substantive constitutional right to a particular degree of racial balance or mixing." Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. at 24; Pasadena City Board of Education v. Spangler, 427 U.S. 424, 434, 96 S. Ct. 2697, 49 L.Ed. 2d 599 (1976).

118. The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole. Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. at 24.

119. The extent, if any, of the liability of the members of the State Board of Education must be determined only if the Court finds a constitutional violation existing within USD #501. Washington v. Davis, Supra. Even so, liability necessarily will be dependent on the extent, if any, of the role of these defendants in creating and/or perpetuating the condition that is alleged to violate the Constitution. Bradley v. Baliles, 639 F. Supp. 680, 687 (E. D. Va. 1986).

120. Liability in a civil rights case is premised generally upon personal participation, or knowing acquiescence, in an illegal policy by a person with authority to alter the illegal policy. Brown v. Board of Education, Case No. T-316 (D. Kan.) p.3, Sept. 29, 1986), citing Rizzo v. Goode, 423 U.S. 369 (1976); Kite v. Kelley, 546 F.2d 334 (10th Cir. 1976); McClelland v. Facteau, 610 F.2d 693 (10th Cir. 1979); Smith v. Hill, 510 F.Supp. 767 (D. Utah 1981).

121. Plaintiffs' evidence fails to identify any segregative act affecting Topeka schools committed by any official of the state occurring since the momentous pronouncement in Brown.

Therefore, plaintiffs lack any basis upon which to allege liability on the part of the members of the State Board of Education. This especially is true since a court ordered desegregation plan was fully implemented. See Bradley v. School Board, 338 F. Supp. 67 (D. Va. 1976); Griffin v. School Board, 377 US 218, 221, 84 S. Ct. 1226, 12 L.Ed. 2d 256 (1964); Little Rock School District v. Pulaski County Special School District #1, 778 F.2d 404, 417 (8th Cir. 1985); Liddell v. State of Missouri, 731 F.2d 1294 (8th Cir. 1984); Kelley v. Metropolitan County Board of Education, 615 F. Supp. 1139 (1149) (M.D. Tenn. 1985); Reed v. Rhodes, 662 F.2d 1219, 1226 (6th Cir. 1981).

122. Plaintiffs' evidence fails to identify any specific action within the authority of the members of the State Board which could have been directed at the Topeka school district which would have reduced or eliminated the racial discrimination plaintiffs allege to exist within the Topeka school district.

123. Plaintiffs' evidence fails to identify any knowing acquiescence in any alleged illegal policy of racial discrimination by Topeka school officials subsequent to this Court's 1955 ruling and/or full implementation of the Court-ordered Topeka desegregation plan.

124. Plaintiffs bear the burden of proving vestiges of the past dual school system are in place today "for the simple reason that the Court has never previously determined that vestiges of segregation remain." Bradley v. Baliles, 639 F. Supp at 689. The longer the time since the school system has been segregated, the less likely it would be that vestiges of such segregation remain in the system. (Id).

125. At some point in time, "the relationship between past segregation acts and present segregation may become so attenuated as to be incapable of supporting a finding of de jure segregation warranting judicial intervention." Keyes v. School District #1, 413 U.S. 189, 211, 93 S. Ct. 2686, 37 L.Ed. 2d 548 (1973). See also FN 10, 84 FRD at 400.

126. Even the fact there may be racial imbalances or racial identifiability in the schools of a former de jure school district does not give rise as a matter of law to a presumption that these schools are vestiges of de jure segregation. Price v. Denison Independent School Dist., 694 F.2d 334, 364, 367 (5th Cir. 1982).

127. State educational policies favoring equal educational opportunity and the providing of additional financial aid to assist low-income and low-achieving students, while not being explicitly designated for the purpose of eliminating any vestiges of past discrimination, would certainly have the effect of helping those students in need of remedial action. "Accordingly, such funds would necessarily have the effect of eliminating what plaintiffs contend are the vestiges of the prior segregation." Bradley v. Baliles, 639 F. Supp. at 689.

128. With the constitutional amendment in 1966, Article 6 of the Kansas Constitution was changed. For the first time, local public schools were constitutionally recognized. (Kan. Const; Article 6, Section 5). The constitutional article, among other matters, was to provide "constitutional guarantees of local

control of local schools." (Kansas Legislative Council, "The Education Amendment to the Kansas Constitution," December, 1965, p. iii). Prior to the 1966 amendment , the State Board was advisory only to the then-Superintendent of Public Instruction. The duties of the superintendent primarily were the certification of teachers and administrators, administering laws concerning standards, courses of study and curriculum, and school libraries and textbooks. (Exhibit A-19).

129. The State Board of Education was constitutionally created as an elected body to provide general supervision of the educational interests of the state, to perform such other duties as mandated by the Legislature. (Article 6, Section 2(a)).

130. The Legislature was instructed to provide for the establishment and maintenance of the public schools and related activities. (Article 6, Section 1). These constitutional provisions relating to education state the Legislature's duty is to establish local public schools, the State Board of Education is to have general supervision and the local school boards are to actually maintain and operate the local schools. What this constitutional framework clearly requires is that control of the local schools is vested in locally-elected boards of education. NEA-Ft. Scott v. USD #234, 225 Kan. 607, 592 P.2d 463 (1979); State, ex rel. Miller v. Board of Education of USD #398, 212 Kan. 482, 511 P.2d 705 (1973).

131. The State Board's general supervisory authority means "something more than to advise but something less than to control." 212 Kan. at 492. Accordingly, this Court previously has stated, "Although the State Board of Education has

supervisory authority over local school boards, the local school boards are considered the governing bodies of the local schools." Kan. Const., Article 6, Section 5; K.S.A. 72-7901. (Brown v. Board of Education, Case No. T-316 (D. Kan.) p. 4, Sept. 29, 1986).

132. In NEA-Ft. Scott, the Court further amplified that Article 6, Section 2(a) is a restriction on the power of the State Board's authority over local school boards, making clear that control remains with the local boards. The Kansas Constitution limits, rather than confers, power. Therefore, while the State Board has general supervisory authority over the educational interests of the state, it cannot exercise its authority by controlling local school boards. NEA-Ft. Scott v. USD #234, 225 Kan. at 612.

133. Local control over internal school attendance boundaries and enrollment policies is left by statute with the local boards. (K.S.A. 72-8212(c)).

134. Faculty/staff assignments are covered generally by K.S.A. 72-8202, et seq.

135. Transportation policies fall under K.S.A. 72-8301, et seq.

136. Educational facilities and buildings and closing of schools are controlled specifically by local boards pursuant to K.S.A. 72-8212(d) and 72-8213.

137. Extracurricular activities clearly fall within the control of local boards under their general powers. (K.S.A. 72-8212(d)).

138. The Legislature has vested general curriculum policies under the State Board. (See K.S.A. 72-1101), but local control over curriculum is provided to elected boards of education, pursuant to K.S.A. 72-8205.

139. There is no basis for derivative liability with nothing more. Brown v. Topeka Board of Education, Case No. T-316, (D. Kan.) p. 3, Sept. 29, 1986); Monell v. New York City Dept. of Social Services, 436 U.S. 658, 694, N. 58 (1978); Chapman v. Board of Education, Case No. 79-1473, (D. Kan.) Jan. 24, 1980, pp. 4-5.

140. State officials have the right to rely on the conclusions of federal officials properly charged with responsibilities to investigate allegations of racial discrimination. Rosati v. Haron, 459 F. Supp. 1148, 1159 (ED NY 1979).

141. As to any assertion by plaintiffs that these defendants failed to enforce or obey a state law, under the Eleventh Amendment, this Court cannot order a state officer to obey state law. Pennhurst State School and Hospital v. Halderman, 465 U.S. 89 (1984). Brown v. Board of Education, Case No. T-316 (D. Kan.), p. 5, Sept. 29, 1986.

CONCLUSION

These defendants firmly believe the Court must find in their favor and against plaintiffs in this case. The plaintiffs utterly fail to demonstrate even one affirmative act by even one member of the State Board of Education (current or past) to thwart efforts at integration in the Topeka school district. Additionally, plaintiffs fail to demonstrate any failure to act within the confines of the constitutional powers and limitations imposed upon the State Board which then would have a causative effect on the illegal conditions plaintiffs allege to exist today within USD #501. Plaintiffs notions of derivative liability are simply wrong as a matter of law. Finally, subsequent to the Brown decision, a court-approved desegregation plan was fully implemented, and, since that implementation, numerous efforts were made to improve racial balances within Topeka schools. On a statewide basis, the State Board of Education has, since its 1969 creation, taken great strides to promote non-discriminatory educational opportunity across Kansas.

All of this aside, the factual and legal issues against the individual members of the State Board of Education need not be addressed by the Court, unless this Court finds there today exists an unconstitutional condition in the educational program offered to its Black students by USD #501. The testimony and evidence referenced above, and as more fully stated in the post-trial brief of USD #501, conclusively demonstrate there does not today exist an unconstitutional condition of racial isolation. Therefore, the Court should render judgment in favor of these defendants and against plaintiffs.

Respectfully Submitted,

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CERTIFICATE OF MAILING

I HEREBY CERTIFY I forwarded a copy of the above and foregoing to:

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_____
Dan Biles