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Norman Dorsen
PRESIDENT

Ira Glasser
EXECUTIVE DIRECTOR

M E M O R A N D U M

August 22, 1983

TO: Brown III Co-Counsel

FROM: Jon C. Dubin

RE: Pre-51 Discovery and Discovery Update

Shortly after this case was reopened, (see 84 F.R.D. 383), we served a detailed set of interrogatories to the defendants. The defendants objected on relevance, res judicata, and burdensomeness grounds to disclosing all materials requesting information before 1951, the date of Brown I's commencement. Magistrate Crow upheld the defendants' objection on relevance and res judicata grounds but declined to consider the defendants' burdensomeness objection. In November of 1982, Judge Rogers reversed the Magistrate's order and set for hearing the issue of burdensomeness. After the hearing on December 3, 1982, we reached a stipulation with the school board which Judge Rogers approved by court order on March 18, 1983. The terms of the order provide that by June 1, 1983, the school district disclose the pre-51 answers to 9[a-o] [s-t] 10, 11, 18, 19, 20, 24, 25, 26-28 and 32; that it provide us the audit reports from 1940-51 as answers to 12, 13 and 14 (school district budgetary and expenditure information); that we are entitled to review teacher personnel files on microfilm from 1940-51 under a confidentiality protective order as the answers to 9 p, q, and r (teacher assignments and qualifications); and that we waive the answers to 5 (school boundary tract information) and 17 (federally subsidized housing).^{1/} In addition, while not made part of the written order, Judge Rogers orally set discovery deadlines on the answers to outstanding interrogatories of June 1, 1983, for the school district and August 1, 1983, for us.^{2/} We did not start receiving the pre-51 materials until July 1, 1983. On July 1st we received the answers to 19; 20; 24; 25; 9 a-e, g, o, s and t; 9 l, m, n; 10; 11; 18; 26-28. On July 20th we received the answers to 9 e, f and h and on July 26th we received the answer to 32. We have still not received the answers 9 i, j and k (attendance zones

1. While #17 is not mentioned at all in the court order, its waiver was agreed upon in negotiations between counsel.

2. Judge Rogers also indicated orally that he would set deadlines for other discovery (i.e. depositions), after August 1, 1983, but to my knowledge he has not yet addressed the issue.

and feeder patterns) and 21 (explicit segregation policies and practices).

In a letter from the school district's attorney, Gary Sibelius, dated June 1, 1983, which finally disclosed uncontested post-51 materials (9 p, q, and r post-51; 7 and 51-59 of the third set of interrogatories), Sibelius indicated that he would be late in answering the pre-51 materials and would grant us a "commensuarate period of time in September" to answer the school district's interrogatories. We should contact Sibelius to request the missing materials and seek a stipulation granting us two months from the date the school district provides us the remaining answers, for us to provide answers to the school district.

DISCOVERY UPDATE

Plaintiffs' First Interrogatories and Document Requests to School Board

Subject: General Background, enrollment data, attendance zones, etc.

Served: January, 1980.

Answered: Substantially answered.

Not Answered: Pre-51 9 i, j and k (attendance zones, feeder patterns);
21 (segregation policies)

Objections: None outstanding.

Status: We should request these answers from the school district.

Plaintiffs' Second Interrogatories to School Board

Subject: Federal funding, teacher salaries, feeder patterns,
standardized tests, etc.

Served:

Answered: Answers to most.

Not Answered: No answers to 4 & 5 (salaries). The defendant has
requested clarification of 4 & 5 in order to answer.

Objection: No formal objections.

Status: We should clarify 4 & 5 and request answers.

Plaintiffs' Third Interrogatories to School Board

Subject: Architects, overcrowding, vocational training, teacher
employment, control attendance zones, school discipline
and special education.

Served: June, 1982.

Answered: Some answers provided.

Objections: Objections on grounds of irrelevance to 11-49 (teacher employment); 60 (student discipline, 60-61 (special education).

Status: We should negotiate with the school board about those questions objected to then move to compel if necessary.

Plaintiffs' Second Document Request to School Board

Subject: Reports to civil rights commissions students discipline, correspondence to Topeka Housing Authority, high school yearbooks.

Served:

Answered: School board has indicated it would make some documents available for inspection.

Objections: Objections to 1, 7 (civil rights office reports); 2 (EEO reports); 3 (student discipline policies) 6 (correspondence with U.S. Dep't of Education); and 8 (high school yearbooks -- pre-1951) on relevance grounds.

Status: We should negotiate with the school board about those questions objected to them move to compel, if necessary.

School Board's Interrogatories to Plaintiffs

Subject: Segregated schools' descriptions of our proof.

Served: October, 1981.

Answered: Answered only 1-3 as to segregated schools.

Not Answered: We have not yet answered questions 4-21 as to proof.

Objections: None.

Status: We can answer 4-21 only after we receive complete answers from the School Board and the state to our discovery. While Judge Rogers set an August 1, 1983 deadline for us, we should seek a stipulation seeking two months from receipt of the school district's answers since the school district missed its June 1, 1983 deadline.

School Board's First Document Request

Subject: All of the above plus experts' reports.

Status: Same as with School Board's interrogations.

Plaintiffs' First Interrogatories to State Defendants

Subject: State accreditation, data reporting by school districts, withholding of assistance, desegregation authority, teacher certification, state aid formulas, federal aid, special schools, re-organizations, school construction, state employment, transportation and desegregation review.

Served: June, 1982.

Answered: Some answers provided.

Not Answered: 52 c (requesting copies of school district reports filed periodically with the State Dep't of Education). The State indicated those reports are available at the AG's office for our inspection.

Objections: Objections on irrelevance grounds to 44 (Number of State Dept. of Ed. employees) and 45 (race, position and salaries

of folks in 44). Objections as "not within these defendants' knowledge" to 29 (recommendations to Governor on school district reorganization) and 54 (state's remedial measures after Brown III).

Status: We should consider what materials are truly necessary in light of additional state liability research (see July, 1983 memo by John Gevertz) and move to compel and/or file an additional set of interrogatories if necessary.

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