

JUN 29 1979

Honorable Joseph A. Califano, Jr.
Secretary
Department of Health, Education
and Welfare
330 Independence Avenue, S. W.
Washington, D. C. 20201

Dear Mr. Secretary:

On behalf of my colleagues, I want to call to your attention the enclosed statement and summary of facts prepared by our Kansas Advisory Committee. It notes that 25 years after Brown, the Federal District Court has not yet found the Topeka schools to be in full compliance with the law and the Constitution in dismantling their de jure segregated school system.

Our Advisory Committee's summary shows that:

1. In December 1973, as a consequence of claims made in Johnson v. Whittier, HEW conducted a Title VI review of Unified School District 501 (Topeka, Kansas).
2. On January 11, 1974, HEW/OCR regional office in Kansas City sent a notice to the district that it was in noncompliance with Title VI and that unless a conciliation agreement was completed within 30 days, administrative proceedings to terminate eligibility for Federal funds would begin. Notice of deferral of Federal Funds was issued on June 10, 1974.
3. On August 15, 1974, hearings were held in Federal District Court for the District of Kansas on a suit filed by the school district against HEW alleging that HEW lacked jurisdiction over the district under Title VI. This claim was based on the fact that the Court had retained jurisdiction over the district under Brown and had never issued a final order. In a Memorandum of Decision and Findings of Facts and Conclusions of Law (dated August 23, 1974) the

Court agreed with the district. However, it suggested (as it had done orally at the hearing on August 15, 1974) that HEW through the Justice Department present any information it had about the status of the district to the Court under Brown. By agreement of the parties the Court allowed HEW and the district time to negotiate a compromise before issuing an order in the district's suit. While negotiations were in process, HEW withdrew its letter of deferral.

4. Following two years of negotiation, on September 9, 1976, HEW's counsel wrote to its Administrative Law Judge asking for dismissal of the Title VI complaint because the district had a "plan" of compliance. This "plan" included a "long range facilities plan", an affirmative action plan, and agreement to establish a citizens advisory council. The district told Commission staff in April 1978 that it did not then and does not now have a "desegregation" plan although it takes racial balance into account in policymaking.

5. Following dismissal of HEW's complaint, the district agreed to a stipulation of dismissal, ending its suit against HEW.

6. On November 17, 1976, the director of OCR wrote to the head of the Civil Rights Division of the Justice Department stating that the "long range facilities plan" did not constitute compliance with the law or the Constitution. He stated that since HEW's jurisdiction was limited, he hoped Justice would use its powers to bring the evidence before the Court under Brown. This was never done. According to Justice, the effort could not be justified by the size of district, its minority population and probable success. No written response was sent by Justice to HEW.

7. On December 15, 1978, the district agreed to pay \$19,500 to settle the claim of Evelyn Rene Johnson that she had been denied an adequate education by reason of her race (Johnson v. Whittier).

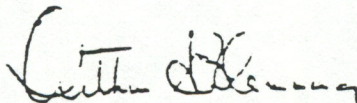
8. On April 19, 1979, in response to a complaint, the Kansas City regional office of HEW/OCR announced it would conduct a complete investigation of the policies and practices of the school district to determine whether it was in compliance with the law and the Constitution. Six days later, on April 25, 1979, OCR told the district that its investigation would be limited to the impact of current policies and practices on the opportunities for integration in a single school attendance area.

We are concerned by the failure of the Office for Civil Rights regional office in Kansas City to undertake a complete review of the policies and practices of the Topeka school district that currently maintain segregation or have done so in the past. The Department of Health, Education and Welfare has the authority and duty to monitor Title VI compliance by a school district which is under a judgment of a Federal Court for desegregation. But it also has the duty to bring its findings to the attention of the Federal Court rendering such judgment (45 CFR §80, et. seq., see also Adams v. Richardson, D.C. D.C. 1972, 351 F.Supp. 636). We urge review of the district's policies and practices. OCR through the Department of Justice should report its findings to the Court so that the Court can determine whether the school district is in compliance with the law and Constitution. We also have asked the Attorney General to review his department's role in this matter.

We look forward to receiving your response.

Sincerely,

FOR THE COMMISSIONERS,



ARTHUR S. FLEMMING
Chairman

Enclosure