

UNITED STATES COMMISSION ON CIVIL RIGHTS

Washington, D. C. 20425

JUN 29 1979

Honorable Griffin Bell  
Attorney General of the United States  
Department of Justice  
Tenth & Constitution Avenue, N. W.  
Washington, D. C. 20530

Dear Mr. Attorney General:

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. This agency has been in correspondence with Mr. Drew S. Days, III of your Civil Rights Division relative to the current status of school desegregation of Unified School District 501, Topeka, Kansas. On May 14, 1979, the Kansas Advisory Committee to the U. S. Commission on Civil Rights released a statement, 25 Years After Brown: The Status of School Desegregation in Topeka, Kansas. 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.

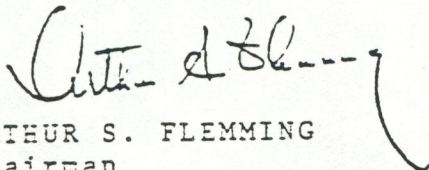
We have requested the Secretary of HEW to undertake a comprehensive review of the Topeka schools and to transmit all findings to you.

We urge you to submit all pertinent facts to the Court so that the Court can determine whether the district is in compliance with the law and Constitution. Your department took such action on May 18, 1979, with respect to the Harrison County, Mississippi, School District. Nine years after a Federal Court ordered the school system desegregated, the Civil Rights Division filed a motion charging that the school system had never been effectively desegregated. In the case of Topeka, it has been 25 years since the Department of Justice has taken such a position. We also believe that the "low number of children involved" alleged by Mr. Days should not preclude vigorous action by the Justice Department, particularly in light of the significance of this case.

We look forward to receiving your response.

Sincerely,

FOR THE COMMISSIONERS

  
ARTHUR S. FLEMMING  
Chairman

Enclosure