DEPAR ENT F HEALTH, EDUCATION, ND W FARE

NOV 17 1976

12286

FILE

The Honorable
Assistant Attorney General
Civil Rights Division
U. S. Department of Justice
Washington, D. C. 20530

Dear

On January 11, 1974, Director of our Kansas City Regional Office, issued a letter of noncompliance under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., to Unified School District #501, Topeka, Kansas. The letter informed the School District of two primary areas of alleged violation: continued segregation of black students and inequality of facilities.

On May 8, 1974, the Topeka Board of Education informed that the District was terminating its negotiations with the Office for Civil Rights and would not submit a Title VI compliance plan. Based on the Board's action, the Office for Civil Rights sent the District a deferral letter on June 7, 1974. On the same date, the Office of General Counsel initiated administrative enforcement proceedings against the District.

The School District filed a complaint and a motion for a preliminary injunction against the Department on August 7, 1974, contending that the Department had no jurisdiction to initiate administrative proceedings against the District on the ground that the District was in compliance with a final court order in Brown v. Board of Education, 347 U.S. 483 (1954). The Court instructed both parties in the matter of Unified School District 501 v. , Civil Action No. 74-1106-C, to negotiate the remaining differences between them. Judge Templar also requested the defendant Department to report any findings resulting from its investigations to the Court.

OFFICE	SURNAME	DATE	OFFICE	SURNAME	DATE	OFFICE	SURNAME	DATE

[illegible] January 11, 1974 letter stated that, at the time, the School District continued to operate five schools whose disproportionately minority enrollment was, in the Department's view, "clearly the result of a former dual pattern of operation." These schools were:

(1) Monroe
(2) Lafayette
(3) Lincoln Hill
(4) Parkdale
(5) Belvoir

[illegible] letter also noted that transfers between School District attendance zones had tended to "impede or retard the extent of desegregation otherwise possible. . ." in the District. Mr. August had noted that approximately one-third of the minority enrollment at the Lafayette School, which was, even discounting these children, racially disproportionate in enrollment, had transferred to this school.

Since Judge [illegible] instruction to resolve the differences between them, the parties have held extensive discussions. Despite a number of steps which have been, or will be taken by the School District, the Department is still presently unable to determine that the District is in compliance with Title VI.

Since the summer of 1974, the School District has closed the Monroe School, and has announced plans to close the Parkdale School. The Monroe School was closed at the end of the 1974-75 school year. Students previously assigned there, or who would have been assigned to that school had they been old enough to attend, were distributed between the Quinton Heights and Polk Schools. According to the District, the Quinton Heights School had a student racial composition of 39 percent minority and the Polk School had a 41 percent minority enrollment during the year following the closing of Monroe.

Parkdale Elementary School, which had a racial composition of 82.4 percent minority students during the 1975-76 school year, is scheduled to be put out of service as a regular elementary school at the end of the 1977-78 school year.

After Parkdale's closing, its students would be assigned to the Belvoir, Highland Park North and Lafayette Schools. The School District estimates that this change would result in a minority enrollment of 74.6 percent at Belvoir, 33.7 percent at Highland Park North, and 70.7 percent at Lafayette.

The Central Park and Polk Schools are scheduled to close at the end of the 1978-79 school year. After receiving children as a result of these closures, the School District anticipates that the Lowman Hill School will have a 42.6 percent minority enrollment at the start of the 1979-80 school year.

The Rice School presently is scheduled to close at the end of the 1980-81 school year. Students who formerly would have been assigned to Rice would be assigned to Lafayette. As a result of the addition of a largely non-minority group of students from Rice, Lafayette is anticipated to open at the beginning of the 1981-82 school year with a student racial composition of 55.3 percent minority.

Thus, by the start of the 1981-82 school year, three of the five schools which were originally the subject of the Department's concern will either have been closed or are anticipated to be less than 50 percent minority in enrollment, assuming enrollments remain relatively stable. The Monroe School is already closed. Lafayette would have a 55.5 percent minority enrollment; Lowman Hill, 42.8 percent; Parkdale will be closed; Delvoir would retain an enrollment approximately 73.9 percent minority.

On March 17, 1976, the School Board adopted as official policy a "Long Range Facilities Plan" which, among other things, incorporated the school closings and pupil assignments discussed above.

The Department's initial concern relating to the transfer of students, particularly to the Lafayette School, appears, after further discussion with school officials, to have resulted almost entirely from the fact that "Follow Through", a federally-assisted, special program for disadvantaged young children, was located at the Lafayette School because space was available for the program there. Virtually all of the transferring minority students were participants in this program and were not part of the regular enrollment at the Lafayette School.

However, the length of time provided for full implementation of the desegregation plan renders it, in our view, both constitutionally unacceptable and unacceptable under the substantive requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d.

Where there has been a historical failure to fully implement a desegregation plan despite a considerable length of time during which opportunity to do so was available, a school district, under the law as

announced by the United States Supreme Court in Alexander v. Holmes, 396 U.S. 19 (1969), must implement its desegregation plan fully and immediately. The Topeka Unified School District was the first school district in the United States to be formally apprised of its obligation to desegregate.

It is also the Department's understanding that a majority-minority transfer provision, i.e., a provision which permits students to transfer from schools where members of their race are in the majority to schools where they are not, with free transportation provided for the transferring students, is an indispensable remedy for those minority students who would otherwise be constrained to remain in racially identifiable schools. See Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971). Topeka's plan does not contain such a provision.

Further, even after full implementation of its plan, the School District will continue to operate two schools which will remain substantially disproportionate in their minority enrollment: Lafayette and Belvoir. The School District will also continue to operate a substantial majority of its other elementary schools as virtually all non-minority in enrollment.

The continued operation of such a substantial number of racially identifiable schools, or even a single one, renders such schools at least presumptive vestiges of a district's formerly officially dual school system. Swann, supra at 22.

Despite the constitutional inadequacies of the District's current plan, it does not appear that the Department will be able to negotiate a fully adequate plan because of the constraints on transportation imposed by Section 215 of the "Equal Education Opportunities Act of 1974," P.L. 93-380, Title II, 88 Stat. 517 (August 21, 1974), (See, 20 U.S.C. 1713-1714) and Section 208 of the "Departments of Labor and Health, Education, and Welfare Appropriation Act," P.L. 94-439 (September 30, 1976).

Section 215 prohibits the Department from requiring a remedy which employs transportation of children beyond the school next nearest to the child's place of residence offering the appropriate grade level of instruction. Section 208 further prohibits the Department from requiring a remedy involving transportation beyond the school nearest a student's residence.

Inasmuch as the Department is effectively precluded from taking further action on this matter by the District's suit against us and the Judge's views regarding our jurisdiction, as well as by recent statutory law discussed above, I believe that you will want to review the facts with a view toward taking appropriate steps to resolve this matter in the federal courts, utilizing the general civil rights jurisdiction over educational activities available to you under Title II of Public Law 93-380. I would also strongly urge that, pursuant to his request, the Judge be advised by our counsel in this matter of the Department's conclusion that the school district has failed to comply with the substantive requirements of Title VI and the Fourteenth Amendment.

Sincerely,

Office for Civil Rights

cc: Director, Office for Civil Rights,
Region VII

Branch File