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INTRODUCTION

Pursuant to the Court's order of November 12, 1985, plaintiffs propose these findings of fact and conclusions of law. Pursuant to the agreement between counsel for the State Board of Education and plaintiffs, plaintiffs have not included facts to be proven by fact witnesses. Those facts will be added upon receipt of defendants' submissions on plaintiffs' contentions. Further, defendants have identified only two expert and no fact witnesses. Plaintiffs anticipate some revision of these proposed findings after defendants disclose their contentions and witnesses.

DEFINITIONS

Except as otherwise noted, "USD 501" or the "City School Board" or the "Board" includes the current USD 501 School Board as an entity, current or past members of the USD 501 school board, and any predecessor board(s) and members responsible for USD 501 school territory, as well as their agents and employees.

Except as otherwise noted, the "State School Board" or the "State Board of Education" or "SBE" includes the Board as an entity, current or past members of the State Board of Education, the State Department of Education, the State Commissioner of Education, and their predecessor agencies, including but not limited to the State Department of Public Instruction, as well as their agents and employees.

Except as otherwise noted, the "Governor" includes the current Governor and all of his predecessors, agents, and employees.

I.

PRIOR TO 1954 THE DEFENDANTS CITY SCHOOL BOARD INTENTIONALLY OPERATED SEGREGATED ELEMENTARY SCHOOLS PURSUANT TO AND IN VIOLATION OF STATE STATUTES AND INTENTIONALLY OPERATED SEGREGATED SECONDARY SCHOOLS IN VIOLATION OF STATE STATUTES. DEFENDANT STATE OFFICIALS KNEW OF AND TOOK ACTIONS IN SUPPORT OF DEFENDANT CITY SCHOOL BOARD'S ACTIONS.

A. Prior to 1954, elementary schools were segregated.

- Topeka's right to segregate was based on its status under Kansas law as a city "of the first class" (population exceeding 15,000). Cities "of the second class" (under 15,000) could not legally maintain racially separate schools in Kansas. However, the right to segregate was limited to grade schools.

See, Kan. Gen Stats. Ch. 18, Art. 5 [75 (1868); (1879). Kan Sess. Laws 269 (1905); Kan. Sess. Laws, Ch. 414; and Reynolds v. Board of Education of Topeka, 66 Kan. 672 (1903) (affirming Topeka's status as a city of the first class).

- From 1940-1950, Black students were required to attend one of 4 schools. White students attended "their neighborhood school."

1940-1950, Set 1, 11*

- In 1950, Topeka elementary schools were completely segregated. Blacks exclusively attended Buchanan, McKinley, Monroe, and Washington. Whites exclusively attended all other schools even when there were Blacks in the attendance area. Black schools were small and more underutilized.

Lamson, William, Race and Schools in Topeka, Kansas, pp. 4-6, 13; testimony of William Lamson

- 1954/55, Buchanan, Monroe, Washington and McKinley were the

* Source cited is to Answers to Plaintiffs' Interrogatory Set 1, (1940-1950) Question 11.

"Negro schools" in Topeka.

Letter from Kansas Attorney
General to Honorable Harold B.
Willey, Clark, United States
Supreme Court, dated May 10,
1955, p. 2

- Until 1941-1942, Black students attended elementary school through eighth grade. White students did so through 6th grade.

1940-1950 Set 1; 11

- From 1940-1950, the school board provided for busing of Black students to and from school.

1940-1950, Set 1, 25

- Prior to 1954-1955, Black students were bused to all-Black schools.

Set 1, 25

- At the time of Brown I, one hundred seventy-six Black children were forced to ride school buses to Black schools in order to obtain an education.

Powell, Bruce R., Brown v.
Board of Education - Johnson v.
Board of Education, 1954-
1975: Segregation, an
Unresolved Controversy in the
Public Schools of Topeka,
Kansas and the Nation (1975),
p. 26

- Kansas law permitted segregation of elementary schools in fifteen first-class cities (those over 10,000 population) but stated that there could be no "discrimination" at high school level.

The Case of the Century
by Dr. Hugh W. Speer
p. 22; Testimony of Dr. Speer

- Pursuant to the law, the six-year elementary schools in Topeka remained segregated, requiring Black children to travel long distances even though many lived within walking distance of white schools.

The Case of the Century
by Dr. Hugh W. Speer
p. 22; Testimony of Dr. Speer

- In 1890, when the Lowman Hill area was annexed to Topeka, it had one integrated school. The Topeka School Board built a new school for whites only and required Blacks to attend an inferior, segregated school.

Court record, Reynolds v. City
of Topeka, 66 Kan. 672 (1903);

Topeka Plain Dealer, Feb. 1902

- Prior to 1954, Pierce Elementary School, a School that became a part of USD 501, was not within a City of the First Class (over 15,000).
 - As of 1952-1953, the Pierce School was all Black.
State Annual Report, 1940's to 1952-1953
 - As of 1954/55, any Black child living in any part of the city could attend the Black school of his choice and the Board of Education furnished bus transportation for those who lived too far to walk.
Letter from Kansas Attorney General and Topeka Board of Education to Honorable Harold B. Willey, Clark, United States Supreme Court, dated May 10, 1955, p. 2
 - Kansas Attorney General Harold R. Fatzer told the Supreme Court of the United States that "redistricting" was necessary in Topeka because "the Negro schools always have been treated differently from those for the whites."
"High Court Told State Complying," Topeka Capital, April 12, 1955
 - In the period 1944 to 1953, the Topeka schools had a special department called "Colored Education" and from 1950 to 1953 had an "Inter-racial Counselor."
A Centennial History of the Topeka Schools, compiled by Retired Teachers of the School System, 1954, p. 71
 - In 1941, Buchanan School had a stage added to one of its eight classrooms so that the room could serve both as a classroom and an auditorium.
A Centennial History of the Topeka Schools, compiled by Retired Teachers of the School System, 1954, p. 124
- B. At least prior to 1941, junior high schools were intentionally segregated.
- Graham v. Board of Ed., 153 Kansas 840 (1941)
 - When Topeka's Junior High schools reacted to the decision in Graham v. Bd. of Ed., 153 Kan. 840 (1941), they fired 6

Black teachers and reduced two more to 1/2 time.

McElgunn, Graham v. Bd. of Ed.:
A Hobson's Choice, 20-21 (1984)
(unpublished paper, Washburn
U. L. S.)

C. At least until 1949, Topeka High School was intentionally segregated.

- Internal segregation existed in extracurricular activities at the Topeka high school up until September 26, 1949.

Set 1, 15

- Topeka High School had a Black king and queen and a white king and queen in 1946-47.

Topeka High School Year Book,
1947, pp. 22-23, p. 96

- In 1946-47, Topeka High School had white class officers for the senior, junior and sophomore classes and one set of Black officers for all three classes.

Topeka High School Year Book,
1947, pp. 10, 34, 40, 56

- Topeka High School had segregated basketball teams in 1946-47.

Topeka High School Year Book,
1947, pp. 65-69

- Cheerleaders for the basketball teams were also segregated.

Topeka High School Year Book,
1947, pp. 69, 70

- The Rambler basketball team of Topeka High School was formed in 1935 by a group of young Black men who had a great desire to play basketball but were deprived of playing in the school's athletic programs.

The Development of All-Black Basketball Teams in Topeka High School, 1929-1949 -- The Cardinals, The Ramblers, by Julia Etta Parks, Ed. D., (1982), p. 2

- Rambler basketball games were played in the East Topeka Junior High School Gymnasium.

The Development of All-Black Basketball Teams in Topeka High School, 1929-1949 -- The Cardinals, The Ramblers, by Julia Etta Parks, Ed. D., (1982), p. 2

- When the Ramblers travelled, the players and their coaches were housed in the private homes of Black people in the school community. Their meals were provided in these homes or in Black restaurants.

The Development of All-Black Basketball Teams in Topeka High School, 1929-1949 -- The Cardinals, The Ramblers, by Julia Etta Parks, Ed. D., (1982), p. 2

- An integrated Trojan Basketball "B" team was organized in 1950 at Topeka High School.

The Development of All-Black Basketball Teams in Topeka High School, 1929-1949 -- The Cardinals, The Ramblers, by Julia Etta Parks, Ed. D., (1982), p. 5

- NAACP's Burnett told Speer that high schools were integrated only from the outside.

The Case of the Century
by Dr. Hugh W. Speer
p. 22; Testimony of Dr. Speer

D. The Governor knew of the intentional segregation maintained by the Topeka school board:

- The former governor of Kansas, Edward Arn (1951-1955), recalls that Brown I was pending before the Supreme Court when he assumed office and remembers that the Court's decision was to reverse the three-judge federal district court ruling.

Stipulation, Governor Arn

- The State of Kansas intervened in Brown I and defended the constitutionality of K. S. 72-1724.

- In 1953, a Kansas school superintendent wrote to Governor Arn protesting Arn's defense of school segregation.

Letter Robinson to Arn, Dec. 10, 1953

- The Governor knew the Pierce School was all Black, not in a city of the first class, provided inferior education and was therefore illegal.

- The only actions taken by any governor prior to 1954 was to sign the bill providing for school segregation and to defend the statute in the Supreme Court.

E. The State Board of Education knew of the intentional discrimination of the Topeka school system.

- In 1906, the Superintendent of Kansas Public Schools said that "[t]here is a movement in Kansas looking toward the segregation of the races in the public schools where the percent of colored population will warrant the separation."
Quoted in Stephenson, Race Distinction In American Law, 2nd ed., 1969, p.184
- The SBE knew the Pierce School was all Black, not in a city of the first class, and therefore illegally segregated.
State Annual Report 1940's to 1952-1953
- The SBE not only knew Pierce was segregated, they accredited the school and provided state funds.
- Although the Kansas Supreme Court held in 1881 that it was illegal to segregate schools in cities of the second class or smaller and although SBE knew there were segregated schools in such cities, they continued to accredit schools and provide state aid.
Bd. of Ed. v. Tinnon, 26 Kan. 1 (1881); SBE Annual Reports; See, e.g., Cartwright v. Bd. of Ed., 73 Kan.32 (1906)
- The SBE accredited segregated secondary schools.

F. School segregation caused housing segregation.

- In 1955, the Attorney General, on behalf of the State of Kansas, told the Supreme Court that school segregation had caused housing segregation in Topeka.
Letter Fatzer to Willey, May 10, 1955
- In 1975, USD 501 said racial isolation in Topeka was due to "the movement of patrons" within the district.
1975 CACE Report

II

ALL OF THE DEFENDANTS. CITY AND STATE OFFICIALS HAVE HAD A DUTY UNDER KANSAS STATE AND FEDERAL LAW TO BRING ABOUT DESEGREGATION IN THE TOPEKA PUBLIC SCHOOLS.

A. Each defendant was a defendant in Brown I and II.

- At the time of the Brown I & II litigation the members of the SBE were appointed by the Governor. The Governor, and thus also members of the SBE, were informed of the pendency of the Brown case and of the Supreme Court's invalidation of the law which had allowed Topeka to maintain a racially segregated school system.

Gov. Arn's Stipulation

- The 1966 "Unification Act" merged the former Dept. of Vocational Education and the State Dept. of Public Instruction into an entity known as the Dept. of Education under the direction of the SBE, whose members are now elected rather than appointed by the Governor.

Kansas: The State of Education, p. 4

- The former County Supt. of Public Instruction had the power to alter common school district boundaries. The 1966 legislation vested this power in the SBE.

Bunning v. Shawnee County, 104 Kan. 478 (1919); KSA 72-6734 et. seq.

B. The duty to desegregate arises from the Supreme Court's rulings in Brown I and II.

See Conclusions of Law, infra, and subsequent cases.

C. Federal Anti-Discrimination Laws passed After Brown I and II regarding education and the use of federal funds by local school districts created a duty to desegregate.

1. Since 1950-51 the defendants have received federal funds.

- Since 1954-55, USD 501 has received federal funds. Since the enactment of the 1964 Civil Rights Act, because of its

receipt of federal funds it has been under the obligation to obey federal anti-discrimination laws and legislation.

Set 1, 14

- The federal monies have been received from, Dept. of Health, Education and Welfare, Dept. of Agriculture, Dept. of Labor, Dept. of Treasury, Dept. of Transportation, Dept. of Commerce.

Set 1, 14, p. 67

- USD 501 received federal revenue sharing from 1972-73 to 1979-80 and under the National Defense and Education Act of 1958 from 1962-63 to 1965-66.

Set 1, 14, p. 62

- Topeka High School received \$28,870.23 from the Veterans Administration in 1948/49.

Board of Education Audit
Report, July 1, 1948 - June 30,
1949

- USD 501 has received federal funds under the following federal educational programs: Title I, (P.L. 89-10) Elementary and Secondary Education Act since 1969-1970, Title II, ESEA from 1965 - 1975-76, Title III in 1975-76, Title IV Section B of the Elementary and Secondary Education Act.

Set 1, 14, pp. 3-30.

- USD 501 has received federal funds to operate such programs as a Title IV Health and Nutrition Project, Title I Reading and Math Programs, Head Start, Title I Health Aides, Follow Through, medical and dental programs.

Set 1, 15

- Federal Title I funds were received for both teachers and educational assistants for every school from 1974-1981.

Set 2, 1; Set 1, 13, pp. 31-33.

- USD 501 received federal Title II (III) elementary guidance funds for 8 schools, 1970-1971 -- 1974-1975.

Set 2, 2

- USD 501 received federal Title III Reading Clinic funds for all elementary and junior high schools in 1967-1970.

Set 2, 2

- USD 501 received federal Title IV Career Exemplary Center funds in 1976-1977 for Highland Park High and all junior highs.

Set 2, 2

- USD 501 received federal assistance under the 1969 Special Needs Project for all schools.

Set 2, 2

- USD 501 received federal funds 1964-1980 for vocational-technical school program for all high schools.
Set 2, 2
- USD 501's Kansas Correctional Vocational Training Center received federal funds 1974-1980.
Set 2, 2
- USD 501 received federal funds for Communications Skills 1975-1980.
Set 2, 2
- USD 501 received federal funds for work study for Topeka High for 1973-1979.
Set 2, 2
- USD 501 received federal funds for the Pre-Vocational Exploratory program 1972-1981 for all secondary schools.
Set 2, 2
- USD 501 received federal funds for the HERO/food service program for Highland Park High.
Set 2, 2
- USD 501 received federal funds for the Follow Through program 1970-1981.
Set 2, 2, 3
- USD 501 received federal funds for the Neighborhood Youth Corps 1965-1974.
Set 2, 2
- USD 501 received federal funds for the Manpower Training Project, 1963-1976.
Set 2, 2
- USD 501 received federal funds from Federal Revenue Sharing, 1973-1979.
Set 2, 2
- USD 501 received federal funds for student lunches, 1970-1981.
Set 2, 2
- USD 501 received federal funds for CETA and Head Start (1968-1982).
Set 2, 3
- USD 501 receives federal funds for vocational programs.
Set 3, 8
- In 1974-1975, USD 501 received over 1.3 million federal

dollars, excluding vocational funds.

USD 501 v. Weinberger, No74-
160-C5, Aug. 23, 1974, p.16

- See also Section III, A and B infra

2. Recipients of federal funds may not take actions that have the effect of segregating students. 42 USC 2000d.

See Conclusions of Law infra.

- Former Governor Avery was advised of a legal duty under Title VI of the Civil Rights Act of 1964 to ensure an end to segregation in the Kansas schools. He was also advised of at least one federal court decision post-Brown concerning school desegregation.

Stipulation

- In 1966 the city Board authorized the signing of forms indicating compliance with the Civil Rights Act of 1964.

TSBM, 7/5/66; Set 1, 12, pp.
30-33.

- The SBE has recognized that schools must operate in accordance with civil rights laws. The Board has stated, "it is necessary to adhere to the regulations outlined in the Civil Rights Act of 1964 as they apply to such projects."

SBE Minutes of April 6, 1971.

D. Defendants had a duty under relevant state law.

- Graham v. Bd. of Educ. of Topeka, 153 Kan. 840 (1941).

- Kan. Gen. Stats. Ch. 18, Art. 5[75] (1968) (1979); Kan. Session Laws 269 (1905); Kan. Session Laws Ch. 414.

III

THE DEFENDANTS HAVE HAD OR COULD HAVE SOUGHT THE AUTHORITY NEEDED TO DESEGREGATE THE PUBLIC SCHOOLS.

A. The Governor had or could have sought the authority needed to desegregate the public schools.

1. The Governor plays a role in education in Kansas.

- Among the responsibilities of the Governor is the "development and recommendation of education policies." At least 3 employees of the Governor currently work, part-time, on that task.

Set 1 to Carlin, 2(a)(b)(c)

- The Governor maintains an education cabinet that he appoints and from which he receives advice concerning education by Kansas.

Set 1 to Carlin, 32-33

- Representatives of the State Dept. of Education sit on the Governor's Education Cabinet (and there is such a body). Kansas State Department of Education, State Plan and Projections for Fiscal Years 1978-1982, p. 51; State Department of Education's Plan for Implementing the Goals of the State Board of Education, Progress Report, July, August and September 1984, p. 73; State Department of Education's Plan for Implementing the Goals of the State Board of Education, Progress Report, July, August and September, 1983, p. 62; State Department of Education's Plan for Implementing the Goals of the State Board of Education, Progress Report, January, February and March, 1984, p. 70.

- The Governor runs periodic conferences on education. Kansas State Department of Education State Plan and Projections for Fiscal Year

1979-1983, p. 3; KSBE minutes
of 11/2/71; 12/7/71; 2/9/82;
2/9/83.

- The Governor has conducted surveys, investigations, or inquiries concerning education, and such surveys etc. have been used to set up a commission on pre-school handicap programs and as the basis for recommendations to the legislature.
Set 1 to Carlin, 24-26
 - The Governor has introduced legislation concerning education in Kansas.
Set 1 to Carlin, 27, 29
 - The Governor never requested additional authority concerning education.
Set 1 to Carlin, 10
 - The Governor plays a role with respect to federal aid to USD 501.
Set 1 to Carlin, 30
 - Governor Robert Docking variously described education as a "high priority", a "primary thrust" of his administration, a "top priority" and a "primary reason of state government."
Stipulation
 - Governor Avery said "education was very much in the forefront during my administration."
Stipulation
 - Governor Anderson "deemed education to be one of the most important functions of government ..."
Stipulation
 - The Governor's power to influence educational programs or policy developments is demonstrated by at least one Governor's Recommendation to the Legislature to pass the "School Foundation Plan", which increased state aid for education.
Stipulation of Gov. Avery
2. The Governor could have influenced the Kansas State Board of Education to adopt policies which would desegregate the schools.
- Under the Kansas Constitution the Governor has had a supervisory role in education through the appointment of members to the Kansas State Board of Education. This appointment power made the Governor responsible for all

"educational interests."

Kans. Const. Art. 6 (2);
Stipulation

- The SBE has described itself as a subordinate agency responsible to the Governor.
Reports of: 10/11/77, p.97.
- Up until 1968, the Governor could remove SBE members "for cause."
K.S. 72-124 (repealed)
- At the time of the Brown I and II litigation the Governor had constant contact with the State Dept. of Education which was under the State Superintendent of Public Instruction. The Governor also had a cooperative relationship with the latter.
Stipulation of Gov. Arn
- Prior to 1968 the Governor had extensive contact with the SBE inasmuch as he appointed members.
Stip. of Gov. Anderson
- Although the Governor did not directly concern himself with the administration of any particular school district, all actions respecting public education were channelled through his relationship with the SBE.
Stipulations of Gov. Anderson
Governor Arn
- Two officials of the State Board meet with the Governor or his office "in the performance of their duties."
Set 2 to State Bd., 1
- "For the past two or three years, the State Board of Education has met with Governor Carlin to discuss matters pertaining to public education in Kansas."
Set 2 to State Bd., 1
- The Governor prepares, review, and approves the budget requests of the State Board of Education.
Set 2 to State Bd., 3
- The Kansas legislature repealed KS 72-124 under which the Governor appointed members to the SBE. The statute provided for the election of SBE members. Today, the Governor still exercises control over the SBE through the state budget.
See K.S. 72-7503; Kansas: The State of Education p. 4
- The Governor reviews budget requests from the State Board and decides on the state Board Budget requests to be sent to the legislature.
Set 1 to Carlin, 9

- The Governor continues to appoint members of the SBE in the event of a vacancy. The governor also retains full appointment powers if no official is elected within 60 days of a vacancy.
K. S. 25-3902 a (1980), Dep. of Merle Bolton at 114 to 116
- Among the responsibilities of the State Department of Education is the responsibility to develop information for the Governor.
Set 1 to Carlin, 2(a)(b)(c)
- The Governor receives minutes of the State Board of Education.
Set 1 to Carlin, 6(a)
- The Governor does not take any actions concerning minutes of the State Board of Education.
Set 1 to Carlin, 7
- At least one Commissioner of Education has viewed it as a major responsibility of his office to keep the Governor informed of educational matters.
Dep. of Merle Bolton at 101
- During the term of service of Commissioner Bolton, it was not unusual for the State Board of Education to present legislative proposals to the Governor's office.
Dep. of Merle Bolton at 102
- During Commissioner Bolton's service there was frequent contact between the Governor's liaison and the State Board of Education with respect to budget data.
Dep. of Merle Bolton at 104
- At one time the Governor formed a study committee on education and Commissioner Bolton was a member of it.
Dep. of Merle Bolton at 104
- The Education Department's legislative liaison communicated with the Kansas legislature as well as the Governor's office.
Dep. of Merle Bolton at 104
- Members of the SBE meet with the Governor and his staff.
Reports of: State Department of Education's Plan for Implementing the Goals of the State Board of Education, Progress Report, April, May, June 1983, p.71; State Department of Education's Plan for Implementing the Goals of

the State Board of Education,
Progress Report, October,
November, December 1983, p.
41. State Department of
Education's Plan for
Implementing the Goals of the
State Board of Education,
Progress Report, July, August,
September 1983, p. 35.

SBE Minutes of: 3/16/67;
1/6/71; 2/2/71; 1/2/74; 6/9/81;
11/10/82; 5/10/83; 6/14/83;
7/12/83; 7/13/83; 1/10/84;
5/9/84.

- The Governor approves many of the statewide plans and projections for public education.
Reports of: 11/12/76, p.3;
10/11/77, pp. 35, 77
 - The Governor asks for and receives reports from the SBE.
State Department of Education's
Plan for Implementing the Goals
of the State Board of
Education, Progress Report,
January, February and March
1983, p.72; State Department of
Education's Plan for
Implementing the Goals of the
State Board of Education,
Progress Report, April, May,
June, 1983, p.67
 - The SBE has petitioned the Governor's office for assistance.
SBE Minutes of 1/5/71; 10/5/71;
1/7/76; 4/15/81, Reports of:
7/11/83, p. 81.
 - The Governor appears to approve informally the current commissioners of education.
SBE Minutes of 11/8/83.
3. The Governor has contacts with USD 501.
- The city School Board agendas reflect contacts between the Board and the Governor.
Set 4, 10, a.g., Feb. 28, 1984

B. SBE had or could have sought the authority needed to desegregate the schools.

1. In general

- The SBE has been deemed responsible for the "general supervision" of the public schools.
Kansas Const., Art. 6, (2)
- The SBE would not accredit schools unless they were in "substantial compliance with all other legal requirements."
SBE Minutes, June 6, 1952
- The supervisory powers of the SBE, which have been deemed "more than to advise but less than to control," include drafting regulations respecting the administration of public education which have the effect of law.
State ex rel Miller Bd. of Ed.,
212 Kan. 482 (1973); KSA72-7514
- The Commissioner and the SBE pass regulations that have the force of law on local school districts, including standards affecting teacher training and hiring.
Set 1, 15-16
- State officials by law have the authority to scrutinize school districts' records, books, and papers. That power would be exercised if the school district were in "flat violation of the law."
Dep. of Merle Bolton at 86-87
- SBF believes it is unclear whether the SBE can require a change of an [illegal] policy by a school district: ("there is a gray area in my mind as to whether the State Board would have that authority").
Dep. of Merle Bolton at 101
- Recently the Kansas Department of Education changed the description of the SBE's relationship to local school districts from "general supervision" to "direction."
State Department of Education's
Plan for Implementing the Goals
of The State Board of
Education, Aug. 10, 1982; see
all previous reports listed
supra.
- Both state and federal officials have asserted that the SBE has more authority in the area of education than it uses.
See, e.g., SBE Minutes of
12/11/68, 7/10/73, 1/11/84.
- The State's involvement in public education became more active after the turn of the century.
Kansas: The State of
Education, p. 3
- "Most assuredly, a series of Supreme Court decisions firmly

established the fact that the state superintendent is a constitutional officer to whom the legislature can delegate almost unlimited powers in the field of education."

1858-1967 Kansas Educational Progress, p. 48

- The State Superintendent makes final decisions on many issues respecting school district organization and boundary changes.

Id. p. 57

- The Legislature looks to the State Superintendent for state leadership.

Id., p. 64.

- The State Superintendent makes decisions on curriculum, leadership and consulting.

Id.

- In 1954, in the defense of K.S. 72-1724 in Brown I, one of the defendants' principal arguments was that "education falls within the state's police power and therefore the state is ultimately responsible for educational interests."

Powell, Bruce, Brown v. Bd. of Ed., April 21, 1975
(unpublished), p. 25

- In 1970, the SBE wrote that "Publicized unrest, protest, some rioting and violence in Kansas cities has drawn the attention of the general public to school problems and has caused questions to be raised about the role and responsibility of the State Education Agency in solving them."

Kansas: A Proposal for a Technical Assistance Project, July 8, 1970, p.6

- In 1970, the SBE wrote that "While ... alleged noncompliance in segregated urban areas are the responsibility of local school districts, such problems do exist beyond the ability of the districts to solve them quickly." SBE should act.

Kansas: A Proposal for a Technical Assistance Project, July 8, 1970, p.7

- The Board has described the regulatory needs of the Dept. of Education as including ensuring that minimum educational opportunities be provided regardless of race, sex, color, national origin, etc.

Reports of Aug. 1980, (Fiscal Year 1981), p. 44

- Proposals devised by the Department of Education and approved by the SBE which have sought federal funding for

desegregation matters have supported the applications for such funds with statements of knowledge as to duty to assist in desegregation efforts.

Kansas, A Proposal for A
Technical Assistance Program,
July 8, 1970; SBE Minutes, June
2, 1970

- The Kansas Department of Education articulated in a proposal a need for technical assistance to local school districts because "[t]here is a growing realization that the Kansas education agency has a role in helping schools deal with problems incident to desegregation."
1970 Technical Assistance
Proposal, p. 5
- In 1968, the SBE approved the issuance of bulletins on state and local responsibilities.
SBE Minutes of 12/11/68
- The SBE has often noted the importance of federal court decisions affecting education.
SBE Minutes of 11/2/71; 2/4/75
- "Respect for laws and institutions" has been translated into a statewide goal.
Report of 11/12/76, p. 31;
SBE Minutes of 4/6/71
- The Kansas legislature has encouraged the SBE to develop curriculum aimed at race relations and racial, cultural and ethnic pride.
1969 Substitute for Concurrent
House Resolution No. 1015 (see
Set 1, 5)
- The Board has said that education is a state responsibility, that the Board exercises supervision and control through laws enacted by the legislature and through the Dept. of Public Instruction (now the Dept. of Education).
SBE Minutes of 12/19/57
- The Dept. of Education's duties have been described as including giving legal opinions and reviewing of matters relating to school law.
Reports of 10/12/76, p. 11
- The State Superintendent's job was described by the Board as including giving "explanations and information concerning school law..."
SBE Minutes of 6/16/52
- The Dept. of Education's duties have been described as "determining basic administrative duties have been performed

by local institutions in compliance with state and federal laws. "

Report of 11/12/76, p. 25;
8/80, p. 17

- The SBE has said that the Civil Rights Act of 1964 must be adhered to.

SBE Minutes of 4/6/71

- The SBE has stated that "education is a state responsibility... The Legislature has delegated many decisions to the department..."

KSBE Minutes of 12/19/57.

- It is the Department of Education's duty to assure that basic administrative duties have been performed by local school districts in compliance with state and federal law.

Report of Nov. 12, 1976, p. 25.

- The SBE must by law define by regulation those matters relating to the administration, staffing, courses of study, and instruction in Kansas schools. Regulations ultimately have the force of law.

Statement of Commissioner of Education Blackburn in attachment to Supplemental Response of defendants to Int. #17 (7/13/84). See also Supp. Response to Int. #16.

- Local school districts have been characterized as "agents" of the State in operating local schools.

SBE Minutes of 12/19/57.

2. SBE has authority under state law.

- Kansas law requires the SBE to "administer the laws" of the state relevant to public education and the SBE has general supervision of the public schools.

KSA 72-7513 (1980).

- The SBE makes policy, approves the mission of the Department of Education and evaluates on a broad overall basis the results that have been accomplished.

Reports Cited infra

- The Commissioner of Education is the executive officer of the SBE. As the head of the Dept. of Education his office is responsible for accomplishing the mission approved by the Board and he has the duty of informing and advising the Board of all matters related to his duties as delegated by law.

Reports Cited infra

- Under Kansas law, the SBE publishes school laws, rules and regulations under which USD 501 must operate, and a local school district can lose its accreditation for failure to comply with a regulation which has the force of law.
KSA 72-120; Supp. Set 1, 17
(Attachment); Dep. of Merle Bolton, 93-95
- If a school district is found in violation of the law, and if the school district refuses to correct such policy at the request of the state, the State can take away that USD's accreditation.
Set 1, 10; Deposition of Merle Bolton at 108
- The State accredits all school districts and has done so since 1915; accreditation standards were modified in 1957 to 1962. A school district can lose financial aid if it loses its accreditation.
Set 1, 10; Dep. of Merle Bolton at 87, 108. 1858-1967 - Kansas Educational Progress, p. 93;
Set 1 to State Board, 5
- Without accreditation a school district loses the right to state aid.
Set 1, 10; Deposition of Merle Bolton at 87, 108
- The State has the practice of giving a school district one year to correct a policy or practice which may be in violation of a rule or regulation which conditions accreditation.
Set 1, 5; SBE Minutes, 4/16/45
- The SBE approves consolidation or annexations of school districts.
KSA - 72-8703; 72-7108. SBE Minutes of 4/6/71.
- The SBE approves territorial transfers between districts and certifies geographical boundaries between districts.
See e.g., SBE Minutes of Jan. 1, 1966 (reorganizing USD #501); Jan. 20, 1967; Feb. 16, 1967; June 2, 1967; May 5, 1969; Nov. 12, 1969; Jan. 6, 1970; July 10, 1973; May 2, 1972; June 26, 1975; April 6, 1977. See also, Deposition of Merle Bolton at 83, plus all reports.
- A policy prohibiting discrimination by local school

districts has become a regulation issued by the Kansas Department of Education which could be used by the State in assuring USD 501's compliance Brown II.

See Dep. of Merle Bolton at 95;
Set 1, 17 (attachment)

- The SBE selects matters within the fields of instruction set by the Legislature.
KSA - 72-1101, SBE Minutes of 12/11/68
- The State surveys existing school facilities and determines the needs of a school district.
Report of November 12, 1976, p. 33
- The State administers uniform education and skills testing.
SBE Minutes of 7/8/70; 5/2/72; 11/13/80
- State officials supervise union elections in local school districts.
SBE Minutes of 5/2/73
- State officials supervise school board elections.
SBE Minutes of 8/6/74
- The State certifies teachers a local school district seeks to hire.
KSA 72-7513; SBE Minutes of 1/5/45; 2/9/45; Set 1 to State Bd., 15
- The State Board has the authority to "waive the [teacher] certification standard or [to] issue an emergency certificate."
Set 2 to State Bd., 65; KSA 72-1381
- The State imposes graduation requirements.
SBE Minutes of 2/9/45; 4/16/45
- The State approves textbooks for use by local school districts.
See, e.g., SBE Minutes of 5/11/61
- The State handles appeals from budget decisions and makes approval of capital funds.
See e.g., KSBE Minutes of 6/3/69; 4/8/80; 7/8/80
- The State Board approves bonds issued by USD 501.
Set 2 to State Bd., 49; KSA

1983 Supp. 72-6761 and predecessors

- SBE approves USD building bonds.
KSA 72-6761; See also, Set 1 to State, 35 to 42. KSBE Minutes of 5/11/61; April 6, 1977; May 2, 1972; Deposition of Merle Bolton at 83-84.
- The SBE approves the standards by which Kansas teacher education programs are evaluated and approved.
Set 1 to State Bd., 15
- The State is responsible for providing research and technical assistance to local school districts, an authority which could be used to assist in desegregation efforts.
See the following reports:
 - 1) State Plan and Projections for Fiscal Year (FY) 1977-80, Nov. 12, 1976
(delineating overall objectives for state education, providing statistics on staffing, expenditures, revenues, developing programs for public basic education as well as special education, making needs assessments on such subjects as education for the impoverished, or the presence of women in the labor market).
 - 2) State Plan and Projections for FY 1978-82 (Oct. 11, 1977 (same));
 - 3) State Plan and Projections for FY 1979-83 (Oct. 1, 1978) (same)
 - 4) State Plan and Projections for FY 1980 (July, 1979) (same)
 - 5) Policy Plan for Kansas Dept. of Education, FY 1981 (Aug. 1980) (same)
 - 6) State Dept. of Education's

Plan for Implementing the Goals of the State Board of Education (Aug. 10, 1982) (stating goals and plans for action, with no mention of plans to assist in achieving racial desegregation in the public schools as a means toward equal educational opportunity.)

- 7) State Dept. of Education's Plan for Implementing the Goals of the State Board of Education, Progress Report for July-September, 1982 (Nov. 10, 1982) (stating among other goals providing necessary services to local districts to achieve educational goals with no mention of the need for equality or racial balance or how to get this)
- 8) Id., Progress Report for October - December, 1982 (Feb. 8, 1983) (same)
- 9) Id., Progress Report for January - March 1983 (May 11, 1983) (same)
- 10) State Dept. of Education's Plan for Implementing the Goals of the State Board of Education, Progress Report for April - June 1983 (July 13, 1983) (same)
- 11) State Dept. of Education's Plan for Implementing the Goals of the State Board of Education (Sept. 14, 1983) (see pp. 2-3 stating goals and objectives)
- 12) Id., Progress Report for July - September, 1983 (Nov. 8, 1983) (updating implementation of goals)

and objectives)

- 13) Id., Progress Report for April - June 1984 (Aug. 14, 1984) (same)
- 14) Id., Quarterly Progress Report for July - September 1984 (Nov. 13, 1984) (stating as a goal providing research and technical assistance, information and resources)
- 15) Id., Progress Report for January - March 1984 (May 8, 1984) (stating goals and objectives and updating implementation of such)
- 16) Id., Progress Report for October - December 1983 (Feb. 14, 1984) (same)

- The State Board requires 501 to submit the names of nonpublic schools and the number of students.
Set 2 to State Bd., 60
 - The SBE determines state aid entitlement to local school districts and has done so since 1949.
KSA 72-7043; Set 1 to State Bd., 21a
 - USD 501 receives aid from the state for school safety, special education, adult basic education, school food assistance, vocational education, bilingual education, and funds to operate the district under the State Equalization Act and from income taxes.
Set 1 to State Bd., 21b
 - The State grants aid for transportation costs.
See KSA 72-8302
 - State officials review special education decisions.
SBE Minutes of 7/13/77
3. The State Is Ultimately Responsible for USD 501's Use of Federal Monies and Compliance with all Federal Laws, Rules and Regulations that Accompany the Use of Such Funds.
- Kansas law empowers the state to ask for and administer the use of federal financial assistance or to seek compliance

with laws (such as Title VI of the Civil Rights Act of 1964) which condition the use of such funds on compliance with anti-discrimination laws.

See KSA 72-127, 72-6202.

- USD 501 receives or has received through the State federal money.

Set 1, 14

- The SBE administers and supervises federal food service programs in existence at local school districts.

KSA 75-5112 et seq.

- The State Board of Ed "reviews" 501 "applications for various categorized state and federal aid. Following approval and funding, a sequence of monitoring, reporting, and auditing takes place.

Set 2 to State Bd., 14

4. The State Board has never requested additional authority concerning school segregation.

Set 2 to State Bd., 6-7;
State Bd. of Ed. Minutes

IV

DEFENDANTS CLAIM THEY HAVE TAKEN ONLY ONE STEP TOWARD
DESEGREGATING THE TOPEKA PUBLIC SCHOOLS. THAT STEP, THE FOUR-
STEP DESEGREGATION PLAN, IS INADEQUATE.

- A. The Governor claims to have taken no action to desegregate the schools.
- B. The SBE claims to have taken no action to desegregate the schools.
- C. The city board claims that the Four-Step Plan is their only action to desegregate the schools.

- The only desegregation plan ever adopted has been the 4-step desegregation plan approved by the Board on September 18, 1953.

Set 1, 21 & 23; Set 2, 11

- D. The United States District Court held that the city school board's 4-Step Desegregation Plan did "not constitute full compliance with the mandate of the Supreme Court..."

Brown v. Bd. of Ed., 139 F. Supp. 468, 469-70 (1955)

- E. The Four-Step Plan itself was inadequate.

1. In General

- In September 1953 the USD 501 adopted the first step of a "Four Step Desegregation Plan".

"Excerpt from Topeka School Board" Minutes (TSBM) of 9/8/53; Set 1, 9h-2-4, 1, m, n.; Set 1, 21 & 23

- The first step of this plan's only effect was that of 15 Black children being able to attend formerly all-white schools (Randolph and Southwest).

Set 1, 9h-2-4, 1, m, n. TSBM 9/8/53; Set 1, 21 & 23

- The second step of the 4-step plan was taken on 9/54 and placed 123 Black children in white schools.
Set 1, 9h-2-4 1, m, n.; 21 & 23
 - The third step took place effective September 1955.
Set 1, 9h-2-4, 1, m, n.; 21 & 23
 - In the third step children who were "affected by the changes in district lines as herein recommended" [the 4-step plan] would be allowed to finish the elementary school in the school which they attended in 1954-55.
Set 1, 9h-2-4, 1, m, n.; 21 & 23
 - The Step 3 "option" facilitated the needs of parents who did not want to integrate.
TSBM 2/7/55. Set 1, 9h-2-4 1, m, n.; 21 & 23
 - In its school board meetings to discuss the effect of Step IV of the Four-Step desegregation plan, the Board acknowledged that the District Court was critical of an option plan applicable to white children.
TSBM p.7, TSBM 12/21/55. Set 1, 9-h-2-4 1, m, n.; 21 & 23
 - Despite this acknowledgement that Option "d" would allow parents who did not want to integrate to move out of the district, the Board approved the option plan.
Set 1, 9h-2-4, 1, m, n.; 21 & 23
 - The Plan moved a few kids only (most schools remained either "Black" or "white"). Two members of the public went on record as being opposed to the optional features because of its "detrimental [effect] to pupils and teachers to prolong complete integration."
Set 1, 9 h-2-4 1, m, n.; 21 & 23
 - Step IV was opposed because "it would take seven long years to terminate racial segregation."
Set 1, 9 h-2-4 1, m, n.; 21 & 23
2. The Four-Step Plan never ended segregation.
- There was no change in the basic pattern from 1950 to 1956.
 - i) There were five all-white schools, (Gage, Oakland, Potwin, Crestview, Stout), serving the 5 all-white residential areas, after the 4-step plan - 2 of which were opened in 1954 & 1955 and placed in all-white

residential areas.

- ii) There were three all-Black schools, (Buchanan, Monroe, Washington), to which USD 501 assigned all-Black student bodies on a system-wide basis.
- iii) 44% of the Black pupils were assigned to the 3 all-Black schools.
- iv) 33% of the white pupils were assigned to the 5 all-white schools.
- v) This pattern continued in 15 elementary schools: 5 schools were assigned 64% of the Black students not assigned to all-Black schools; 5 other schools were assigned only 12% of the Black students not assigned to all-Black schools.
- vi) USD 501 continued to underuse the all-Black schools to allow the Black/white polarization.
- vii) Five all-white schools, (Gage, Oakland; Potwin, Crestview, Stout), had 11 standard classrooms in excess of their physical capacity. Black Schools were underutilized by 13 classrooms.
- viii) Had these assignments not been according to a pattern of overcrowding the white schools and underusing the Black schools the 3 schools would have averaged 56.5% Black rather than 100% Black.
- ix) In 1956, forty-nine percent of white students were in all-white schools and sixty-seven percent were in schools with less than half of the system-wide average of minority students.

Lamson, William, Race and Schools in Topeka, Kansas, p. 7-8, 15, 68; testimony of William Lamson

- The Four-Step Plan did nothing to desegregate the schools in the area of the former all-Black Washington School.

Lamson, William, Race and Schools in Topeka, Kansas, pp. 108-114; testimony of William Lamson

- The racial history involving the reassignment of Black Monroe students in 1956 shows that Monroe kept most of its Black students.

Lamson, William, Race and Schools in Topeka, Kansas, pp. 114-115; testimony of William Lamson

- No white students were ever assigned to Monroe.
Lamson, William, Race and Schools in Topeka, Kansas, p. 115; testimony of William Lamson
 - Schools surrounding Monroe remained mostly white (Polk and Quinton Heights).
Lamson, William, Race and Schools in Topeka, Kansas, p. 115; testimony of William Lamson
 - Lincoln and Van Buren shared most of the reassigned Black students.
Lamson, William, Race and Schools in Topeka, Kansas, p. 115; testimony of William Lamson
 - In 1954-1955, 21 of 23 elementary schools were racially identifiable and 86% Blacks were in racially identifiable schools. There were 4 all Black schools.
Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p. 6-7, testimony of Dr. Foster
 - In 1955-1956, 18 of 23 elementary schools were racially identifiable and 71% Blacks were in racially identifiable schools. There were 2 all Black schools.
Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p. 6-7, testimony of Dr. Foster
 - In 1956-1957, 19 of 23 elementary schools were racially identifiable and 80% Blacks were in racially identifiable schools.
Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p. 6-7, testimony of Dr. Foster
3. The plan did not provide for integration of faculty or staff.
- Prior to 1953-1954, "there was a practice of assigning Black teachers to one of the Black schools."
Set 1, 32 (1940-1950)
 - Topeka never intended to integrate teachers or staff. In 1953, many of "Topeka's Black teachers were told by

Superintendent Godwin they were being fired "on the assumption that the majority of people in Topeka will not want to employ Negro teachers next year for white children." Letter, Godwin to teachers, March 13, 1953

- Letter from Topeka Superintendent of Schools to Miss Darla Buchanan dated March 13, 1953 stated that she would be fired if the Supreme Court ruled that segregation was unconstitutional. If Court ruled otherwise, they would re-hire.

The Case of the Century
by Dr. Hugh W. Speer
p. 25; Testimony of Dr. Speer

- There were complaints about faculty not being made a part of the plan. The Board was advised that desegregation should include integration of the Black teacher. "[T]he negro teacher had been completely left out of desegregation."

TSBM 1/18/56, Set 1, 9-h-2-4,
1, m, n. 21 and 23

- "After reading excerpts from various publications on [the] subject [of integrating the teachers], Mr. Burnette again pleaded that the negro teacher be integrated along with the other teachers and children in the Topeka schools."

TSBM 1/18/56, Set 1, 9-h-2-4,
11, m., n., 21 and 23

- The Board ignored this request. "There was no discussion following the comments by Mr. Burnette [on the subject, integrating the teachers.]"

TSBM 1/18/56, Set 1, 9-h-2-4,
1., m., n., 21 and 23

- In 1956, the Board refused to integrate any more than the three Black teachers already teaching in white schools. Minutes throughout 1956-1961 reflect the reluctance of the Board to integrate teachers.

TSM, June 4, 1956, June 20,
1956, Feb. 14, 1957, Feb. 19,
1957, June 3, 1957, Aug. 20,
1957, Nov. 19, 1957, Jan. 20,
1959, July 18, 1960, May 1,
1961

TSDM 1/18/56, p. 9; Set 1, 9-h-
2-4, 1, m, n., 21 and 23

- Teacher segregation continued at least until 1957 to 1958.

Lamson, William, Race and
Schools in Topeka, Kansas, p.
40; testimony of William Lamson

- As of January, 1956, no Black teachers were assigned to racially mixed classes in Topeka. All the Black teachers were assigned to the three all-Black schools.
"Negro Teachers Hit by Desegregation," Topeka Capital, January 1, 1956
- There is no record of any faculty or staff desegregation plan.
Foster, Lamson, Racial Segregation in the Topeka Schools, April, 1985, p. 15, testimony of Dr. Foster
- As of January, 1956, no Black teachers were assigned to racially mixed classes in Topeka. All the Black teachers were assigned to the three all-Black schools.
"Negro Teachers Hit By Desegregation," Topeka Capital, January 1, 1956
- 501 did not adopt a policy prohibiting discrimination in teacher or employee hiring until August, 1963.
Set 1, 32
- 4. The plan was explicitly designed to foster segregation.
- In 1955, the Attorney General, on behalf of the State of Kansas, told the Supreme Court that 501's 4-Step desegregation plan was designed to give white parents a year's opportunity to move out of neighborhoods that would mean their children would go to Black schools.
Letter, Fatzer to Willey, May 10, 1955
- The City School Board told the U.S. District Court that its 4-Step desegregation plan was designed to permit white parents to move out of neighborhoods so that their children would not have to attend Black schools. "It is proper for the Board and the Court to recognize that such adjustments may be made and to afford time therefore."
Def. Mem. Brief on Pl. Motion for Formulation of a Decree and Judgment, Brown v. Bd. of Ed., at 6
- The Four-Step desegregation plan was designed to permit parents to move in order to maintain segregated schools.
Lamson, William, Race and Schools in Topeka, Kansas, p. 69; testimony of William Lamson

THE DEFENDANTS HAVE EITHER TAKEN DIRECT ACTIONS WHICH HAVE PERPETUATED RACIAL SEGREGATION IN THE TOPEKA PUBLIC SCHOOLS, TACITLY APPROVED OF SUCH ACTIONS, IGNORED THE SEGREGATIVE EFFECT OF ACTIONS, OR FAILED TO TAKE ACTIONS.

A. Summary Evidence

- Most school actions were used in the segregative mode," and "the history of desegregation in the Topeka schools illustrates a system of racial duality..."
Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p.33-34, testimony of Dr. Foster
- In 1974, the Board found CACE recommendations to be "beyond what the Board had intended", struck the proposal that racial identifiability be removed from the schools, and sent the CACE recommendations to the staff for "further study".
TSBM, 11/19/74.
- Board and staff members failed to evaluate their decisions affecting boundaries, annexations, optional zones, building additions and closings in terms of the numerical impact such actions/inactions would have on the racial composition of the schools. "These techniques...were used to maintain the white schools."
Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p.34, testimony of Dr. Foster.

B. Facility Use

1. Summary Evidence

- The pattern of student assignments, attendance boundaries, school closings and optional zones from 1953 to 1966 involving Monroe, Quinton Heights, Van Buren and Parkdale and the schools surrounding them shows that
 - a) Parkdale and Washington received disproportionate numbers of Black children, respectively;

- b) Monroe and Van Buren received disproportionate numbers of Black children;
- c) Parkdale students could see from their playground that Lafayette was predominantly white;
- d) Monroe students could see from their playground that Quinton Heights was predominantly white.

Lamson, William, Race and Schools in Topeka, Kansas, pp. 130-131; testimony of William Lamson

- Maintaining overcrowded conditions in predominantly white schools, reassigning the predominantly white Dawson pupils to the predominantly white State Street and Rice elementary schools, the changing of attendance boundaries of the State Street and Belvoir schools and the establishment and cancellation of the optional zones between the State Street and Dawson schools and between the Belvoir and Hudson elementary schools tended to isolate Black students at the Belvoir elementary school and contain white children at the schools which surrounded it from 1960 to 1966.

Lamson, William, Race and Schools in Topeka, Kansas, pp. 158-159; testimony of William Lamson

- The large number of white students leaving the predominantly Black and racially transitional Topeka elementary schools from 1956 to 1966 was a major source of white students to populate the newly constructed and newly annexed all or predominantly white Topeka elementary schools.

Lamson, William, Race and Schools in Topeka, Kansas, p. 159; testimony of William Lamson

2. Annexation

- No consideration was given to the racial impact of the annexations of East Indianola, Kaw Valley, or Lyman.
Schendel Deposition at 58, 73.
- At least 9 of the 15 annexed schools were opened and maintained as racially identifiable or assigned disproportionately large numbers of minority students and "[t]hrough at least 1980 the Board seemingly took no positive steps to desegregate these annexed schools."

Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p. 31-33, testimony of Dr. Foster

- There was an annexation/deannexation in 1984 that potentially resulted in the loss of 8 white students.
Supp. Resp. Set 2, 6, 21,
- The State Board Commissioner approved the 1984 transfer of property to another school district.
Supp. Resp. Set 2, 6, 21,
attachment B
- From 1957 to 1966, annexations contributed to school segregation.
Lamson, William, Race and Schools in Topeka, Kansas, p. 79; testimony of William Lamson
- In 1957, the Board of Education annexed the all-Black Pierce School District No. 14 to the Topeka school system and assigned it an attendance boundary in common with the Quinton Heights School.
Lamson, William, Race and Schools in Topeka, Kansas, p. 140; testimony of William Lamson
- In 1957, Quinton Heights became the school conceptually between the racially polar all white Stout, the all-Black Pierce, the all-Black Monroe, and the substantially Black Van Buren.
Lamson, William, Race and Schools in Topeka, Kansas, p. 141; testimony of William Lamson
- Quinton Heights lost an aggregate of 135 white students between 1956 and 1966 while gaining only seventy-nine Black children over the same period.
Lamson, William, Race and Schools in Topeka, Kansas, p. 142; testimony of William Lamson

The annexation of areas northeast of old District No. 23 in 1960 also perpetuated segregation.

Lamson, William, Race and Schools in Topeka, Kansas, p. 111; testimony of William Lamson

Students from the former Dawson School which was annexed into Topeka as a predominantly white school was allowed an optional attendance zones between the mostly white State and Oakland schools.

Lamson, William, Race and Schools in Topeka, Kansas, pp. 112-113; testimony of William Lamson

Rather than close the Dawson at annexation and reassign those students to the Washington School, Washington would have been 63.3 percent Black rather than one hundred percent in 1960.

Lamson, William, Race and Schools in Topeka, Kansas, p. 113; testimony of William Lamson

3. The City School Board opened and closed schools, renovated buildings, made boundary changes and used temporary buildings in ways that contributed to segregation or resegregation.

- USD 501 assumed responsibility for The Pierce School in December, 1957.

Topeka Capital, Dec. 31, 1957

- At the time it was closed in 1959, Pierce was an all-Black. Topeka Capital, Aug. 5, 1959

- Of schools opened between 1954 and 1983, eight of the 15 elementary schools and 4 of the 7 secondary schools "opened racially identifiable and remained so through 1983-1984 or for extended periods of time."

Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p. 25-27, testimony of Dr. Foster

- School closings 1954-1983 were segregative in the closings of for example, Seabrook, McKinley, Buchanan, Parkdale, Washington, Van Buren, Dawson, Sheldon, Polk, Central Park, Crane, and Capper.

Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p. 27-29, testimony of Dr. Foster

- "In 1980 the junior high system was completely reorganized but little improvement resulted from a desegregation standpoint."

Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p. 29, testimony of Dr. Foster

- "The significant result of school additions was a general maintenance of the status quo racially which amounted to, in most cases where additions were made, a maintenance of segregated schools."

Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p. 29-30, testimony of Dr. Foster

- USD 501 used portable classrooms to maintain segregated

schools. Most portables were placed at racially identifiable schools (e.g., 106 of junior high portables from 1967-1980 were at white schools).

Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p.30-31, testimony of Dr. Foster

- "The utilization of facilities played a major role in the maintenance and impaction of segregated schools in Topeka from 1954-1983.

Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p.31, testimony of Dr. Foster

- "Even if most of the secondary schools were either racially nonidentifiable or at least racially mixed by 1954, the construction and opening of four new secondary schools virtually all white from 1961-1970 leaves little doubt as to intentional segregative action by the Topeka Board in terms of pupil assignment."

Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p.13-14, testimony of Dr. Foster

- From 1954 to 1956, school construction contributed to school segregation.

Lamson, William, Race and Schools in Topeka, Kansas, pp. 40-45; testimony of William Lamson

- From 1954 to 1958, use of temporary facilities contributed to segregation.

Lamson, William, Race and Schools in Topeka, Kansas, pp. 40-49; testimony of William Lamson

- From 1950 to 1956, school closings resulted in reassignment of students "in a manner designed for the containment of Black and white students in all or significantly Black and white schools respectively."

Lamson, William, Race and Schools in Topeka, Kansas, pp. 49-53; testimony of William Lamson

- School construction, additions, portables, rentals, and modifications, 1954-1956, permitted white students to stay in segregated schools.

Lamson, William, Race and

Schools in Topeka, Kansas, pp. 71-72; testimony of William Lamson

- From 1957 to 1966, classroom additions contributed to school segregation.

Lamson, William, Race and Schools in Topeka, Kansas, pp. 78-79; testimony of William Lamson

- From 1957 to 1966, portable classrooms contributed to school segregation.

Lamson, William, Race and Schools in Topeka, Kansas, pp. 79-80; testimony of William Lamson

- In 1962, Topeka added classrooms to Parkdale and Lafayette although Parkdale had been operating at undercapacity levels from 1957 to 1961.

Lamson, William, Race and Schools in Topeka, Kansas, p. 104; testimony of William Lamson

- After these additions, they closed the former all-Black Washington School and assigned all of the students to Parkdale.

Lamson, William, Race and Schools in Topeka, Kansas, pp. 104-105; testimony of William Lamson

- They also reassigned Black students from the Lincoln School which closed in 1962 to the Parkdale School.

Lamson, William, Race and Schools in Topeka, Kansas, p. 105; testimony of William Lamson

- The result was making Parkdale a 59.4 percent Black school in 1962.

Lamson, William, Race and Schools in Topeka, Kansas, p. 105; testimony of William Lamson

- The reassignment of Black students to Parkdale was part of a total reassignment plan also involving the Lafayette School which took most of the students from the closed Lincoln School in 1962. Since Topeka abolished an optional zone in this area, Lafayette became mostly white because Lincoln had been mostly white. Parkdale became the all-Black replacement for the former all-Black Washington.

Lamson, William, Race and Schools in Topeka, Kansas, pp. 106-108; testimony of William Lamson

- Meanwhile, Parkdale took most of the Black pupils. While the white schools became whiter, they also became overcrowded. There was room, however, at Parkdale. Instead, the overcrowding at the white schools re-created the segregation that once existed by having an all-Black Washington School.

Lamson, William, Race and Schools in Topeka, Kansas, pp. 109-110; testimony of William Lamson

- The Board handled the overcrowding at the white schools by using portable classrooms.

Lamson, William, Race and Schools in Topeka, Kansas, p. 111; testimony of William Lamson

- Monroe was kept mostly Black in the 1950's by the underutilization of Polk and the cancellation of an optional zone in 1959 between Polk, Buchanan and Lowman Hill.

Lamson, William, Race and Schools in Topeka, Kansas, p. 118-120; testimony of William Lamson

- In 1962, Polk reopened with more space even though it had been underutilized for six years prior.

Lamson, William, Race and Schools in Topeka, Kansas, p. 119-120; testimony of William Lamson

- If the Board had closed Polk and reassigned the students to Monroe, it would have been less of a Black school.

Lamson, William, Race and Schools in Topeka, Kansas, pp. 120-121; testimony of William Lamson

- The 1962 closing of Lincoln perpetuated segregation.

Together with this closing, they cancelled an optional attendance zone involving two schools (Monroe and Van Buren) and created a new one involving Polk, Monroe and Van Buren.

Lamson, William, Race and Schools in Topeka, Kansas, p. 121; testimony of William Lamson

- The new optional zone brought in a larger predominantly white residential area (according to the 1960 and 1970 census).

Lamson, William, Race and Schools in Topeka, Kansas, pp. 121-122; testimony of William Lamson

- The result was that with the Board's redrawing the north and west boundaries around Polk and the creation of an optional zone around Polk and Clay in 1964 these two schools took in mostly white students.

Lamson, William, Race and Schools in Topeka, Kansas, pp. 122-123; testimony of William Lamson

- Meanwhile, Lowman Hill took in the students from the only city blocks shown to have over twenty-five percent Black residents from the redrawing of the northwestern boundary.

Lamson, William, Race and Schools in Topeka, Kansas, p. 123; testimony of William Lamson

- In 1962, Topeka closed Lincoln and assigned most of the students to Lafayette. Lafayette also received students from an abolished optional zone in 1962 which had twenty-eight percent Black students.

Lamson, William, Race and Schools in Topeka, Kansas, pp. 133-134; testimony of William Lamson

- While the defendants made these reassignments, they also added space at Lafayette through portables and additions.

Lamson, William, Race and Schools in Topeka, Kansas, pp. 133-134; testimony of William Lamson

- The students Lafayette received were mostly Black. However, adjacent to Lafayette was Oakland and east were Rice and Dawson, which, compared to Lafayette, were being underutilized.

Lamson, William, Race and

Schools in Topeka, Kansas, p. 134; testimony of William Lamson

- Oakland and State Street was maintained as mostly white through overcrowding at a time when Lafayette was undercapacity.

Lamson, William, Race and Schools in Topeka, Kansas, p. 135; testimony of William Lamson

- The closing of Dawson in 1966 had an effect on the distribution of Black students to Lafayette. In 1960, Dawson was annexed into Topeka; and in 1960-63, it had an optional attendance zone with State Street Elementary.

Lamson, William, Race and Schools in Topeka, Kansas, p. 136; testimony of William Lamson

- While Dawson lost students, State Street became overcrowded. When Dawson was closed in 1966, the remaining students were sent to Rice and State, predominantly white schools.

Lamson, William, Race and Schools in Topeka, Kansas, pp. 136-137; testimony of William Lamson

- The inclusion of the Dawson area to accommodate white residents living in the Dawson, Rice and State Street area even violated the schools' own "neighborhood school policy."

Lamson, William, Race and Schools in Topeka, Kansas, p. 137; testimony of William Lamson

- In any event, had the Board re-drawn the boundaries between Lafayette and State and Dawson, Lafayette could have absorbed more white students and even so adhere to the "neighborhood school concept."

Lamson, William, Race and Schools in Topeka, Kansas, p. 138; testimony of William Lamson

- In 1959, school officials closed the all-Black Pierce and assigned its seventy-nine students to Quinton Heights, Highland Park North and Highland Park Central elementary schools.

Lamson, William, Race and Schools in Topeka, Kansas, p. 143; testimony of William

Lamson

- Topeka school officials chose to rebuild the 87.7 percent Central Park Elementary School in 1966 even though its population was declining.

Lamson, William, Race and Schools in Topeka, Kansas, p. 168; testimony of William Lamson
- The Central Park Elementary School was closed in 1980 and its student population reassigned to Stout, Randolph and Lowman Hill elementary schools.

Lamson, William, Race and Schools in Topeka, Kansas, p. 176; testimony of William Lamson
- The Polk Elementary School was closed in 1979 and its pupils redistributed to Sumner, Lowman Hill and Quinton Heights elementary schools.

Lamson, William, Race and Schools in Topeka, Kansas, p. 175; testimony of William Lamson
- In 1978, the Parkdale Elementary School was closed and its 298 students divided between Lafayette and Highland Park North elementary schools, bringing their respective percentages of Black students to 51.8 percent and 48.8 percent in a school system that was only 16.8 percent Black.

Lamson, William, Race and Schools in Topeka, Kansas, p. 175; testimony of William Lamson
- Had the students from Parkdale been reassigned to Sumner and Polk, their average pupil ratio would have been about 36.6 percent Black.

Lamson, William, Race and Schools in Topeka, Kansas, p. 175; testimony of William Lamson
- Topeka school authorities placed an average of 3.5 portable classrooms a year at two elementary schools which were disproportionately Black but they placed thirteen portable classrooms each year at nine schools which were less Black in their respective racial compositions than the system-wide elementary average from 1967 to 1980, or were often all white.

Lamson, William, Race and Schools in Topeka, Kansas, p. 183; testimony of William

Lamson

- 81.7 percent of the portable classroom placements and one hundred percent of junior high school closings were effected from 1967 to 1980.

Lamson, William, Race and Schools in Topeka, Kansas, p. 202; testimony of William Lamson

- In 1970, USD 501 opened the new French Junior High School with an all-white student body in a year when there existed within the Topeka schools system two junior high schools which were three and four times greater, respectively in their assigned proportion of Black students than the average Topeka junior high school in that year.

Lamson, William, Race and Schools in Topeka, Kansas, p. 215; testimony of William Lamson

- The placement of portable classrooms in high numbers at predominantly white junior high schools after 1966 continued the pattern of disproportionate provision of classroom capacity at those same schools which were predominantly white prior to 1966 and aided in the containment of white students at those schools and the separation of Black students into other schools not so treated.

Lamson, William, Race and Schools in Topeka, Kansas, p. 222; testimony of William Lamson

- When Topeka Senior High School opened in 1961, it was 0.3 percent Black in pupil racial ratio.

Lamson, William, Race and Schools in Topeka, Kansas, p. 225; testimony of William Lamson

- The Topeka school system gained 225 white students at the senior high level from 1961 to 1983 but over that period of time Topeka West Senior High School gained 661 white students.

Lamson, William, Race and Schools in Topeka, Kansas, p. 228; testimony of William Lamson

- The 1960 United States Census showed that the largest concentration of the Black population in the Topeka school system was located squarely between Topeka and Highland Park senior high schools.

Lamson, William, Race and

Schools in Topeka, Kansas, p. 230; testimony of William Lamson

- Actions of the Topeka School officials had increased the number of Black students at Topeka Senior High School by forty-two percent from the estimated figure for 1958, while over the same period the number of white children reduced by twenty-nine percent by 1966.

Lamson, William, Race and Schools in Topeka, Kansas, p. 234; testimony of William Lamson

- USD was advised of but did no analysis of the racial impact of the closing of the Lincoln School.

Set 4, 50

- From 1953 to 1956, attendance boundary changes contributed to school segregation.

Lamson, William, Race and Schools in Topeka, Kansas, pp. 72-74; testimony of William Lamson

- The location of Crestview was a joint decision of the school board and a real estate developer who realized that the buyers would be more attractive if it had a school to offer.

Topeka Daily Capital [#205] 3rd series. Set 1, 10, 11, 18, 20, 27, 28

- According to former Superintendent Wendell Godwin, Crestview school duplicated territory already being served by the Southwest school. The purchase was made with the knowledge that the school might not even be needed. According to Godwin "if the children are there, the school should be where the children are."

Topeka Daily Capital p. 7.

- "As with all the schools built during the time I was on the Board, I think housing, population growth, more or less dictated the needs."

Summers, former Board Member - Deposition at 35.

- "Schools are opened and closed depending on the needs of the school population."

Summers, former Board Member - Deposition at 67.

- Assistant Superintendent (Program Audit and Planning) Tribbey said that they'd "tentatively decide on closings without regard to race and then look at the impact."

Tribby Deposition at 66.

- Privately, "I felt that things should be done to decrease minority enrollment...but it should be done within the context of the school closings caused by a decrease in enrollment ... to state that publicly would make it difficult to achieve the end result."
Morris, former Board Member -
Deposition at 14.
- "In all of these closings, politically, we were conscious of where schools were being closed...it was easier to sell...if you could say...everybody's involved. We aren't just closing Black schools."
Morris, former Board Member -
Deposition at 65.
- In 1962 the attendance boundaries for McClure, McEachron and Crestview were approved without consideration for the racial impact.
TSBM, 4/2/62.
- In 1962 a decision to maintain Monroe was approved without consideration for the racial impact.
TSBM, 4/2/62.
- Portable classrooms were approved in 1962 for McCarter, State Street, Highland Park North and Avondale East without regard for the racial impact.
TSBM, 4/16/62.
- In 1962 a Board member recognized the need to make further studies before deciding to build a third school but failed to stipulate that such an analysis should encompass a study of the racial impact.
TSBM, 8/20/62. Also, TSBM, 9/4/62, 10/1/62.
- In 1962 the Board failed to evaluate the changes in attendance areas for Landon Junior High and Boswell in light of their racial impact.
TSBM, 9/17/62.
- In 1962 the Board approved closing Lincoln, Monroe and Washington because of the school system's ability to house students in buildings close by; and that no additions would be made for Polk, Van Buren, or Quinton Heights because of the economy of operating fewer schools and because of the additions planned for Parkdale and Lafayette. No discussion of the racial impact occurred.
TSBM, 2/5/62.
- No discussion of the racial impact of closing Bishop occurred.

TSBM, 3/5/69.

- In 1968 the Board discussed building a new elementary school to take 175 students from McClure and McEachron without considering racial impact.

TSBM 10/21/68.

- In 1973 the attendance areas were changed between Bishop, Avondale and Southwest Avondale, French and Capper Junior High schools and Crestview and McClure because "the number attending Bishop and the anticipated increased enrollment..." without consideration of the racial impact.

TSBM, 2/20/73, 2/1/73.

- In 1977, in developing alternatives to the McEachron and Jardine boundaries, Tribbey outlined the following criteria; it should require minimum capital improvement, use excessive space in existing schools, should disrupt and inconvenience as few families as possible, should use existing manmade and natural boundaries, should maintain contiguous and coterminal elementary and junior high school boundaries. No criteria of racial impact was identified.

TSBM, 8/3/77, 7/20/77.

- Regarding Scheldon and McCarter, former Board member Schendel said "I am sure there was no consideration of racial balances."

Schendel deposition at 58, 73

- The following schools were opened without regard to the racial impact.

Lafayette - 1957

Lafayette was opened because the building in that part of town was old and "I believe there was some idea that we could be taking in a larger area of students there, making a better mix of the population." Schendel, former Board Member -Deposition at 55.

Lowman Hill - 1959

Lowman Hill was built because of the student population within the area. "It was more feasible." Summer, former Board Member, Deposition at 43.

McCarter and Sheldon - 1957

"I am sure there was no consideration of racial data " Schendel, former Board Member, Deposition at 58.

McEachron - 1959

It was built in a growth area where very few Blacks lived. No discussion of racial balance occurred. Schendel, former Board Member - Deposition at 59. See also ISBM, 8/15/60.

McClure - 1962

It was chosen to be built in a growing area of the city. Schendel, former Board Member - Deposition at 75.

Bishop - 1965

"It was just a logical center for the students that'd be living in that area." Schendel, former Board Member - Deposition at 81.

Topeka West - 1961

It was chosen because of its location "to service the population." Summers, former Board Member - Deposition at 39.

The land was purchased in 1955 in an essentially unpopulated area because "they wanted to be ahead of time." Topeka West opened shortly after Highland Park was annexed in 1961. Schendel, former Board Member at 65.

Eventually, portables had to be placed there, rather than changing any boundaries, because "this particular school district went through a boundary change at the high school level some years ago and it took the community ten years to recover from that trauma." Tribbey, Assistant Superintendent Program, Planning and Audit - Deposition at 130.

- The Board closed the following schools without regard to the racial impact.

Washington - 1962

"It was closed because we felt due to the economy of having more kids in a building than to maintain all those buildings." Schendel, former Board Member - Deposition at 74.

The NAACP said, in 1963, that "with the

closing of Washington, the shift of enrollment to Parkdale resulted in there being less than 20% whites there." School Board Minutes, 7/29/63.

Polk - 1979

It was closed because it was in a commercial zone, a small school, not a high minority school. Morris, former Board Member - Deposition at 70-1.

It was too small, a poor site, the population was thinning. Tribbey, Assistant Superintendent Program Auditing and Planning - Deposition at 121-3.

Central Park - 1980

It was closed because it was being converted into a middle school. Morris, former Board Member - Deposition at 72.

It was closed because of "numbers and where the capacity was located with facilities." Tribbey, Assistant Superintendent Program Auditing and Planning - Deposition at 100.

Parkdale - 1978

"It had site problems and common things that you normally consider when you look at schools as candidates for closure...older and smaller facility." Tribbey, Assistant Superintendent of Schools - Deposition at 118.

Sheldon - 1977

It was closed due to numbers in McCarter, Whitson, Gage area; it was small and isolated. Tribbey, Assistant Superintendent of Schools - Deposition at 114-5.

- The Board failed to examine what might happen to those schools almost eligible for closing and which thus could be closed as a result of open enrollment on the racial composition of those and nearby schools.

SBM, 6/21/78

- The factors considered in closing schools in the Short Range Facility Plan included "age of facility, condition of the facility, current and project enrollment of the neighborhood being served by the facility. These are some of the major

ones."

Tribby Deposition at 58.

- The factors considered in school closings were "the demographic tendency of the neighborhood, whether the student age population is increasing or decreasing, and energy efficiency of the facility ..."
Tribby Deposition at 61.
- School closings were not designed to improve racial percentages. It was only after having to decide to close a school that the racial impact would be considered.
Tribby Deposition at 67.
- In the Long-Range Facilities Plan they "...were looking at some of the same factors we considered previously in the Short Range Facility Plan; the age of the facility, operating cost, adaptability to newer institutional programs, numerous factors."
Tribby Deposition at 66.
- The decision made to close 4 middle schools was based on "age of facility, their condition, some site restrictions. Another major factor was simply demographics. This is the central part of the city and there are no students residing there."
Tribby Deposition at 107.
- The decision to make two junior high schools one was the result of the size of the schools. "They were old. They were on small sites. They were not located close to the concentration of the students within the area."
Tribby Deposition at 108.
- Grant was closed, and not Quincy, because it was older, the site smaller and a poorer facility.
Tribby Deposition at 113.
- The plan to raze State Street was made in order to make a school the size consistent with the assumptions and to replace some older facilities and to get a school centrally located within the school population. It seemed a good location and a good site. No extention on Lundgren or Lafayette was made because the area was too big and transportation costs would be increased.
Tribby Deposition at 167.
- USD 501's placement in 1961 of Topeka West high school at the Western boundary to accommodate white flight was followed by continued expansion of the school in the years following to accommodate the overflowing white students. In 1967 it made as a priority the construction of another 2 classrooms at T. West.

5-year Bldg. Needs 1967

Set 1, 20

- The 1964 and 1965 Capital Improvement Reports did not consider the racial impact of proposed actions.
TSBM, Sept. 8, 1964, June 21, 1965
- The May 1966 5-Year Projection of Building Needs did not consider the racial impact of proposed actions.
5-Year Projection of Bldg. Needs, May 1966
- The January 1967 Recommendations for Attendance Area Changes did not consider the racial impact of proposed actions.
Recommendations for Attendance Area Changes, January 1967
- The May 1967 5-Year Projection of Building Needs did not consider the racial impact of proposed actions.
5 Year Projection of Building Needs, May 1967
- The May 1968 5 Year Projection of Building needs did not consider the racial impact of proposed actions.
5 Year Projection of Building Needs, May 1968
- The June 1969 Projection of Building and Site Needs contained a section on Philosophy and Assumptions but did not consider the racial impact of proposed actions.
Projection of Building and Site Needs, June 1969
- The 1973 Capital Improvements Report contained a section on Philosophy and Assumptions that included "reduction in racial isolation and ... equal educational opportunity," but included no data on the racial impact of proposed actions.
1973 Capital Improvements Report
- None of the Long Range Facilities Plans or Capital Improvement Plans from March 17, 1976 to 1977-1978 contain as a "goal," "assumption" or "need" anything about racial balance in the schools.
March 17, 1976 LRFP
April 6, 1976 Capital Improvement Report
1976-1977 LRFP
Nov. 17, 1976 Capital Improvements Report
1977-1978 LRFP
1977-1978 Capital Improvements Report

- The 1974 Short Range Facilities Plan had as a "Desired Status" the statement that "a wide range of economic as well as racial factors would also be desirable from an educational view point."

Proposed Short Range Facilities Plan, Dec. 3, 1974, p. 12

- Portables were put at Topeka West because enrollment at Topeka High was at its top. "So that the feeling I would guess... would be to put it at the smaller school and I think the site size at Topeka High is very limited and to place portables on that site it would be very difficult."

Gray, former Superintendent of Schools - Deposition at 107.

- Portables are still around because of special programs in some of the schools.

Gray, former Superintendent of Schools - Deposition at 110.

- As of 1982, USD 501 used, but did not need to use, portable classrooms.

Set 3, 2

4. Attendance policies

(a) General

- In 1963, Board members stated that they did not have the time to change Board school assignment policies but would keep NAACP recommendations for further study, prompting a NAACP representative to ask if NAACP recommendations had been rejected and to state the Board policies were reaffirming segregation.

ISBM, 8/26/63.

- Head Start and Follow Through students were disproportionately Black and the programs were disproportionately housed in Black schools.

Set 2, 3

- From 1950 to 1956, Black schools were underutilized and white schools overcrowded.

Lamson, William, Race and Schools in Topeka, Kansas, p. 54; testimony of William Lamson

- In 1956, thirty-nine percent of new Black students were assigned to all Black schools and seventy-five percent of white students were assigned to schools with less than one percent minority students.

Lamson, William, Race and Schools in Topeka, Kansas, p.

71; testimony of William Lamson

- From 1956 to 1966, the number of elementary schools with more than twice the system-wide average of Black students went from four to seven.

Lamson, William, Race and Schools in Topeka, Kansas, p. 76; testimony of William Lamson

- In 1966, forty-five percent of non-Black minority students were assigned to the seven elementary schools with the greatest number of Black students.

Lamson, William, Race and Schools in Topeka, Kansas, p. 78; testimony of William Lamson

- From 1953-1956, attendance boundary changes contributed to school segregation.

Lamson, William, Race and Schools in Topeka, Kansas, pp. 72-74; testimony of William Lamson

- Around 1959, Topeka overcrowded the Central Park School and failed to use space at Clay and Polk, thus failing to desegregate the area surrounding the area surrounding Lowman Hill and Buchanan.

Lamson, William, Race and Schools in Topeka, Kansas, p. 93; testimony of William Lamson

- Lowman Hill was assigned seven times the number of Blacks as Central Park.

Lamson, William, Race and Schools in Topeka, Kansas, p. 94; testimony of William Lamson

- Lowman Hill replaced the Buchanan all-Black school and became the next disproportionately Black elementary school.

Lamson, William, Race and Schools in Topeka, Kansas, p. 94; testimony of William Lamson

- The Central Park School in 1961 to 1962 was kept as an all-white attendance area; they underused the space at Central Park to distribute Black students. They also could have closed Central Park and redistributed the students in a way to desegregate and create at Clay, Central Park, Lowman Hill and Van Buren a proportionate Black/white student population.

Lamson, William, Race and Schools in Topeka, Kansas, p. 95; testimony of William Lamson

- In 1966, Parkdale Elementary had become an increasingly Black school. This was the result of student reassignment involving the formerly all-Black four schools. A system of attendance boundaries, optional zones and school construction involving Parkdale, State Street, Lafayette and Lincoln made Parkdale in 1966 85.3 percent Black.

Lamson, William, Race and Schools in Topeka, Kansas, pp. 98-102; testimony of William Lamson

- Meanwhile, the Lafayette School was two times Black as it should have been, while the Oakland, State and Lincoln schools were maintained as virtually white schools.

Lamson, William, Race and Schools in Topeka, Kansas, p. 102; testimony of William Lamson

- Although optional attendance zone policies were abolished in response to complaint that they facilitated segregation, they were eventually replaced with "open enrollment" policies which had the same operative effect.

"1978-79 Board of Education Policies, Section V" - Set 1, 10, 11, 18, 26, 27, 28, Exhibit F.

- When the school system did close Dawson in 1966, it reassigned the students to other mostly white schools (State and Rice).

Lamson, William, Race and Schools in Topeka, Kansas, pp. 113-114; testimony of William Lamson

- However, they could have reassigned these students to Parkdale which in 1966 was 85.3 percent Black.

Lamson, William, Race and Schools in Topeka, Kansas, pp. 113-114; testimony of William Lamson

- Monroe became mostly Black in 1966 through the use of attendance boundaries involving Lincoln and Van Buren and Polk and Quinton Heights.

Lamson, William, Race and Schools in Topeka, Kansas, pp. 116-117; testimony of William Lamson

- The attendance boundaries drawn around these schools and involving the Louman Hill and Parkdale schools (which eventually became Black schools) indicates that they fit the

1960 census report that the area around Van Buren was seventy-seven percent Black.

Lamson, William, Race and Schools in Topeka, Kansas, pp. 117-118; testimony of William Lamson

- Meanwhile, the 1960 census data showed that the area around Polk and Quinton Heights was mostly white. The Board's attendance boundaries neatly fit these figures.

Lamson, William, Race and Schools in Topeka, Kansas, p. 118; testimony of William Lamson

- When the Topeka Board of Education opened the New Stout Elementary School in 1955, it reassigned to it nearly one quarter of the Quinton Heights school attendance area, converted one quarter of Quinton Heights attendance zone into an optional zone between Stout and Quinton Heights schools, and drew the common boundary between Stout and Quinton Heights in a manner which continued the assignment of Black children to Quinton Heights but which caused only white children to be assigned to Stout.

Lamson, William, Race and Schools in Topeka, Kansas, pp. 139-140; testimony of William Lamson

- In 1962, Topeka school officials again modified the Quinton Heights attendance boundary to include Black children and exclude white children.

Lamson, William, Race and Schools in Topeka, Kansas, p. 144; testimony of William Lamson

- Starting in 1962, Topeka school officials overtly excluded white students from Quinton Heights and included Black pupils into Quinton Heights through manipulations of attendance boundaries.

Lamson, William, Race and Schools in Topeka, Kansas, pp. 147-148; testimony of William Lamson

- Three attendance boundaries were changed in 1968-69 at the elementary level, transferring students between disproportionately Black schools and reassigning white children to a disproportionately white school.

Lamson, William, Race and Schools in Topeka, Kansas, pp. 179-180; testimony of William Lamson

- The four 1973 boundary changes were all between and among six southwestern elementary schools which ranged from 0.0 percent Black to 8.5 percent Black.
Lamson, William, Race and Schools in Topeka, Kansas, p. 180; testimony of William Lamson

- The boundary changes of 1975 furthered the consolidation of the affected schools being assigned disproportionately large numbers of Black students in the central portion of the school system and fine tuned the elementary schools containing disproportionate numbers of white students on the west side of the school system.
Lamson, William, Race and Schools in Topeka, Kansas, p. 180; testimony of William Lamson

- In 1976, the attendance boundary of the all-white McClure School was expanded to include an area which the 1980 United States Census indicates was all or predominantly white in residential racial population.
Lamson, William, Race and Schools in Topeka, Kansas, p. 182; testimony of William Lamson

- In 1977, attendance boundary changes shifted the 161 white and four Black children from the closed Sheldon School to four predominantly white schools.
Lamson, William, Race and Schools in Topeka, Kansas, p. 182; testimony of William Lamson

- In 1978, the total number of boundary changes break down into the boundary changes between and among disproportionately Black elementary schools and those between and among the disproportionately white elementary schools.
Lamson, William, Race and Schools in Topeka, Kansas, p. 182; testimony of William Lamson

- 1980 attendance boundaries contained and directed 53.7 percent of the Black children in elementary schools in Topeka to six schools with assigned racial proportions that ranged from twice to nearly four times the system-wide elementary level, while directing the system's white students to disproportionately white schools.
Lamson, William, Race and

Schools in Topeka, Kansas, p. 183; testimony of William Lamson

- The attendance boundary designed for East Topeka Junior High School by the Board of Education included within it the largest concentrations of Black residents.

Lamson, William, Race and Schools in Topeka, Kansas, p. 187; testimony of William Lamson

- Of the three all-Black elementary schools maintained by Topeka school officials after 1954, two fed directly into East Topeka and Crane junior high schools.

Lamson, William, Race and Schools in Topeka, Kansas, p. 188; testimony of William Lamson

- The attendance boundary for Crane Junior High School included a residential area of largely Black residents and its feeder pattern included an all-Black elementary school.

Lamson, William, Race and Schools in Topeka, Kansas, p. 188; testimony of William Lamson

- Topeka school officials could have brought the East Topeka Junior High School Black population to seventeen percent in 1956 by utilizing space available at East Topeka to relieve overcrowding at Capper Junior High School.

Lamson, William, Race and Schools in Topeka, Kansas, p. 189; testimony of William Lamson

b. Open enrollment

- Under the open enrollment policy a parent could avoid having a child attend a school they were assigned to and apply for admission to a parent's non-residence zone during a Board appointed "open enrollment" period.

Lamson, William, Race and Schools in Topeka, Kansas, pp. 139-140; testimony of William Lamson

- The abolishment of optional zones when open enrollment policies existed also carried student reassignment techniques that avoided integration. Although in theory only students about to graduate were allowed to remain in an "old" school after an optional zone was abolished, the entire family could still remain in the old school as long as an application was made during the period of "open

enrollment". This perpetuated any segregation the initial zone had fostered.

Section VII - 1978-79 Policies;
Exh. F to Set 1, 10, 11, 18, 26,
27, 28

- Open enrollment policies existed in 1979-1980.

Id.

- When the Board adopted the "open enrollment" policies the parents of the school board were notified by letter of how they could move a child anywhere in the district.

"Letter to Parents or Guardian
7/10/78", Exhibit G to Set 1,
10, 11, 18, 26, 27, 28.

- Parents were also notified through a vague provision that a parent's request might be denied if the transfer was "detrimental to an individual school or to the District as a whole" It was never made clear that such a provision was intended to prevent re-segregation. It was also never made clear that such a provision might not be used to perpetuate white flight. It was never used.

Id.

- The Board and staff initiated an Open Enrollment Policy, in July 1977, without evaluating how its implementation would affect the racial composition of schools. "There was nothing I remember seeing that would point out that the open enrollment plan was negative." "They were created due to community pressure for "more flexibility."

Miller, Director of Demographic
Services - Deposition at 18-19.

- In 1978, Open Enrollment was opposed by the two Black school board members because of the effect it would have on school segregation.

Set 4, 19, 34-36

- In 1978, when Open Enrollment was adopted, 18 white students asked to leave East Topeka Junior High which was 71% Black and 28 white students asked to move from 27% minority Topeka High to 2% minority Topeka West.

Set 4, 19, 34-36

- The 1978 Open Enrollment plan was rushed through the School Board without usual procedures, according to one board member.

Set 4, 19, 34-36.

- Before Open Enrollment was adopted, a Board member asked but was not told its racial impact.

TSBM, June 21, 1978

- "Open enrollment without racial restrictions -- the restrictions usually meaning the transfer must not result in increased segregation at either the sending or receiving schools -- has been considered discriminatory for some years in districts with any significant minority enrollment."
Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p. 41, testimony of Dr. Foster

- Open enrollment was "virtually certain to bring about segregative results."
Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p. 42, testimony of Dr. Foster

- In 1979 the Board commissioned DCAC to study the open enrollment policy in light of improving minority percentages in the schools.
TSBM, 5/21/79.

- That report, issued in 1980, recommended that the program "should be closely monitored to determine if that policy caused significant changes in the minority percentages in the district schools."
TSBM, 3/6/80.

- See Section VI C, infra.

- (c) Optional Zones

- Optional attendance zones policies such as the 1971-72 plan permitting a family to stay in a school despite the abolishment of attendance zones were in effect in the 1971-72, 1972-1973, 1974-1975 school years.
Set 1, 10, 11, 18, 26, 27, 28. Exh. F.

- A number of racially significant optional zones in Topeka illustrate the classic manner made by the use of such zones to maintain segregation. "Topeka used optional zones in this manner largely to permit whites to stay segregated in white schools during transitional periods."
Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p. 39-40, testimony of Dr. Foster

- In 1963, Lowman Hill was surrounded by six optional attendance zones.
Lamson, William, Race and Schools in Topeka, Kansas, p. 96; testimony of William Lamson

- Five of these zones had been created in the 1950's.
Lamson, William, Race and Schools in Topeka, Kansas, p. 96; testimony of William Lamson
- With the elimination in 1964 of widespread use of optional zones, some were kept (such as Lowman Hill, Clay, Gage) and some were reassigned.
Lamson, William, Race and Schools in Topeka, Kansas, p. 96; testimony of William Lamson
- Prior to this elimination, the residential area surrounding Lowman Hill was in transition.
Lamson, William, Race and Schools in Topeka, Kansas, pp. 96-97; testimony of William Lamson
- Upon the reassignment of optional zones, Lowman Hill was withdrawn from the participation in optional zones in remaining all white areas.
Lamson, William, Race and Schools in Topeka, Kansas, p. 97; testimony of William Lamson
- The reassignment signalled that Lowman Hill was becoming a Black school.
Lamson, William, Race and Schools in Topeka, Kansas, p. 97; testimony of William Lamson
- In fact, by 1966 Lowman Hill was 46.6 percent Black. Because other minority students were also assigned here it was 49.6 percent minority. The result was that Lowman Hill was four times greater in proportion of Black students than other elementary schools.
Lamson, William, Race and Schools in Topeka, Kansas, p. 98; testimony of William Lamson
- In 1963, the Board decided that students residing in the predominately Black optional areas of Belvoir-Hudson and Monroe could continue to attend any school designed as an optional attendance area.
TSBM, 8/26/63.
- In 1959, school officials cancelled the optional attendance zone between Quinton and Stout, assigned the students to Stout, and created a new optional attendance zone giving Quinton Heights pupils an option to attend the all-white Stout or the newly annexed Avondale West. Both optional attendance zones had totally white populations.

Lamson, William, Race and Schools in Topeka, Kansas, p. 143; testimony of William Lamson

- In 1964, Topeka school officials cancelled the remaining Quinton Heights-Stout attendance zone, which was all-white, and assigned the former Quinton Heights territory to Stout.

Lamson, William, Race and Schools in Topeka, Kansas, p. 145; testimony of William Lamson

- In 1963, the Board issued a Progress Report that stated only that optional areas, where possible, would be eliminated.

TSBM, 11/4/63.

- Miller, Director of Demographic Services, doesn't remember the Board requesting reports on racial makeup prior to the elimination of optional zones although the district staff had racial impact data available since 1966.

Miller - Deposition at 52-3.

- Board member Schendel, who sat on the Board for 20 years, doesn't recall how they evaluated their impact; "...maybe federal census data or finding out who live there."

Schendel, former Board Member - Deposition at 31.

- The Board learned about the segregative effect of optional zones through a 1971 complaint and the institution of Johnson v. Whittier.

Miller, Director of Demographic Services - Deposition at 53.

- "As areas undergo racial changes optional zones are established for a period of time to allow whites in the area to go to whiter schools during the transition. As changing areas gain racial identity the optional zones are closed and the areas assigned to like-race schools. Topeka used optional zones in this manner largely to permit whites to stay segregated to white schools during transitional periods."

Foster, Gordon, Racial Desegregation in the Topeka Schools, April, 1985, p. 40; testimony of Dr. Foster.

- They were of no "substantive importance."

Morris, former Board Member - Deposition at 40-1.

- "I don't remember looking at any information that can tell me (whether their effect was positive or negative)."

Gray, former Superintendent of
Schools - Deposition at 116.

- "An optional zone was an area that gave the children of those parents residing there a choice of one or more schools besides their own neighborhood schools."
Miller, Director of Demographic Services - Deposition at 48-9.
- Their purpose "... was to allow for the orderly expansion of the district as the district had grown prior to that time and to allow families to maintain a common attendance area for their children."
Morris, former Board Member - Deposition at 37-8.
- "They weren't established or continued in order to have an effect on racial balance."
Morris, former Board Member - Deposition at 41.
- They were instituted because: "... the only way of financing years and years ago was to go with a bond levy, bond issue. That may or may not have been an easy thing to get accomplished so they might have said, if we have room over here at the adjacent school, let's put them there ... by creating an optional attendance area."
Miller, Director of Demographic Services - Deposition at 42-3.
- Their elimination wasn't a big issue with the Board -- "it was purely a convenience factor."
Morris, former Board Member - Deposition at 56-7.
- "As I remember in the back of our minds... was that here is an area where race can be a part of this thing and if the Black kids in this area want to go to the white school over there, fine."
Schendel, former Board Member - Deposition at 94.
- "Once something is set, you have to have a good reason for changing it. Let's say the optional area existed for fifteen years. The people ... have long forgotten the reasons why..."
Miller, Director of Demographic Services - Deposition at 52-3.
- "Because you have to wait for populations to be such that you can eliminate them and adjust the population of the surrounding schools, the attendance of the surrounding schools ... so it would just be more logical (to prevent uncertainty on the parts of parents and to prevent

overcrowding) and rational to spread them out over a number of years..."

Tribbey, Assistant
Superintendent-Program Audit
and Planning - Deposition at
82-3.

- Eventually, optional zones were eliminated because "they became a luxury we could no longer afford."
Blackburn, Board Member - School
Board Minutes, 2/24/63.
- USD 501 used optional attendance zones well into the 1970's. In 1976 it made a proposal to eliminate beginning in 1975-76 an optional zone in existence at the senior high school level.
See proposed LRFP, 1/20/76, p.
2, Tribby Deposition, Exhibit
3, 9/18/84
- For the 10 Optional Attendance Zones available in September 15, 1974, the areas involved included 16 Blacks and 1044 whites. 4 zones included no Black students.
Set 2, attachment
- Optional attendance zones ended for high schools in 1977-1978 and junior highs and elementary schools 1975-1976.
Set 1, 7-9
- The 1964 elimination of the optional attendance zones did not necessarily desegregate the school system.
Lamson, William, Race and Schools in Topeka, Kansas, p. 124-130; testimony of William Lamson
- The eliminated optional zones involved Polk and Clay (which became white), Polk and Van Buren and Monroe (1964), Polk and Central Park (1963).
Lamson, William, Race and Schools in Topeka, Kansas, p. 124-125; testimony of William Lamson
- In 1960, the area around Polk was white according to the census data.
Lamson, William, Race and Schools in Topeka, Kansas, p. 124; testimony of William Lamson
- Polk had boundaries with Lowman Hill which was mostly Black.
Lamson, William, Race and Schools in Topeka, Kansas, p.

125; testimony of William Lamson

- With the erasure of the zones, the white students were assigned to mostly white schools; the Black students to Lowman Hill.

Lamson, William, Race and Schools in Topeka, Kansas, p. 126; testimony of William Lamson

- Polk received the white students while Lowman Hill receive most of the Black students in this permanent reassignment.

Lamson, William, Race and Schools in Topeka, Kansas, p. 127; testimony of William Lamson

- Polk did not need the white students in 1964.

Lamson, William, Race and Schools in Topeka, Kansas, p. 127; testimony of William Lamson

- Meanwhile in 1964, Van Buren and Monroe (formerly in an optional zone with Polk) were experiencing reassignment.

Lamson, William, Race and Schools in Topeka, Kansas, p. 127; testimony of William Lamson

- Monroe increased in population; whereas before the abolishment of the optional zone, it was 41.2 percent Black; by 1964, it had been reassigned more Black student and became seventy percent Black.

Lamson, William, Race and Schools in Topeka, Kansas, p. 128; testimony of William Lamson

(d) Other transfer policies/feeder patterns

- The 1980 transfer policy implicitly labeled Belvoir, Highland Park North, Lafayette, Lowman Hill, Quinton Heights and Eisenhower as Black or minority schools and Avondale West, Crestview, Gage, McClure, Potwin, Whitson, French, Jardine and London as white schools.

Set 4, 19, 34-36

- On September 17, 1980, two Board members said that the transfer policy was having a negative effect on the minority percentages at the high school level.

TSBM, Sept. 17, 1980

- On December 17, 1980, a Board member noted that Board policy "does not make provisions for denying request when they create a negative effort on the majority/minority makeup of a school."

TSDM, Dec. 17, 1980

- In 1981, a Board member said that "the Board has a responsibility to see that student transfers do not make a school racially identifiable."

TSDMs, Jan. 17, 1981

- The DCAC found that student transfers through Sept. 15, 1980 negatively affected school segregation in the middle and "considerably" so in the high schools.

Set 4, 19, 4-36

- As of 1982, Board policy regarding student transfers required only approvals be granted for (a) a majority race student who requests transfer to a school which has a higher minority race percentage than his/her home attendance school or (b) a minority race student who requests a transfer to a school which has a lower minority race percentage than his/her home attendance school.

TSBM, 1/6/82.

C. Faculty was and is segregated

1. Hiring

- "Over the past few years, we tried to make certain locations... for the purpose of really seeking minorities more than anything else. Of course, we are never going to turn down any applicant because they are minority or not a minority."

Ybarra, Director of Personnel,
at 14.

- The first attempt to reach out to minority applicants occurred in 1975 but the Personnel Department failed to keep any figures on the race or ethnicity of the people contacted.

Ybarra, Director of Personnel -
Deposition at 17.

- The Personnel Department does not keep data on the number or percent of Black applicants becoming employees.

Ybarra, Director of Personnel -
Deposition at 18.

- While Blacks comprise 9.9% of the labor force, the teaching staff is approximately 7.6% minority.

Ybarra, Director of Personnel -
Deposition at 43.

- The Board never looked into why nine Black applicants hadn't been employed.
Schendel, former Board Member -
Deposition at 38.
- Forest Slaughter and Frank Ybarra are the only Black and Hispanic men to sit on the Administrative Council.
Tribby Deposition at 12.
- Tribbey admits they have one Black Principal and "some" Black assistant Principals. There are only 2 Blacks at the Central Office.
Tribby Deposition at 134-5.
- 501 did not adopt a policy prohibiting discrimination in teacher or employee hiring until Aug. 1963.
Set 1, 32
- "There is no record of any ... plan or proposal" by USD 501 for racial desegregation of teachers or other employees.
Set 1, 33
- Surveys on teacher supply and demand conducted by the State have disregarded the factor of race and discriminatory hiring or placement or its effects on de-segregation/integration.
Jan. 1983, "Teacher Supply and Demand," 4th Annual Survey.
- Prior to adopting the 1963 Policy that prohibits discrimination in employee hiring, the Board received a report from the superintendent concerning complaints about teacher assignment.
Set I, 32-33
- In 1972, school officials were told that recruiting of Black teachers was inadequate.
Minutes of the Meeting, Apr. 14, 1972
- The 1978-1979 CACE Affirmative Action Committee recommended that USD 501 set affirmative action goals "more in keeping with school district population figures." USD 501 refused.
1974-1981 CACE Report on Implementation
- The 1978-1979 DCAC Affirmative Action Committee found that minority employees were overrepresented as teacher aides, underrepresented as secondary and specialized teachers, overrepresented in lower salary ranges, and overassigned to Black schools.
1978-1979, DCAC Final Report
- There are three guidelines for minority representation in

the employment force.

- 1) staff should reflect the racial mix of student enrollment
- 2) staff should reflect the racial mix of minorities in the residential population
- 3) staff should reflect the racial mix of minorities in the available relevant work force.

Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p.42-46, testimony of Dr. Foster

- Using the 1st guideline, which is most frequently used of formerly de jure districts, the "guideline has never been approached in Topeka and the likelihood of it being met gets less and less over the years. . ."

Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p.42-46, testimony of Dr. Foster

- From 1973-1984, there were never more than 13.5% minority staff and never less than 19.3% students. The % of minority staff is staying constant. The % of minority students is increasing.

Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p.42-46, testimony of Dr. Foster

- Minorities are underrepresented as elementary and secondary teachers and clerical/secretarial workers and over represented as teacher aides and service workers.

Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p.46-51, testimony of Dr. Foster

- As of 1983-1984, minority staff were 11.8% of all staff; minority students were 25.8% of all students or a difference of 14%.

Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p.45, testimony of Dr. Foster

- As of 1964, the Secretary of Civil Rights, notifying the Board of two employment discrimination complaints, noted that the Board employed 34 Blacks, or 3% out of the 1103 certified staff. In addition:

- o only one of the 103 administrators and supervisors was Black;
- o two Blacks and one Mexican-American were among the 167 teachers hired that year; and,
- o three Blacks, two of whom were assigned to clerical positions in predominately Black schools, were among the 306 non-certified personnel.

Letter from Executive Secretary
on Civil Rights to the School
Board, TSBM, 6/15/64.

- As of 1970, the Board employed:

- o 6, of 163, Black secretaries;
- o 1, of 84, Black custodians;
- o 1, of 53, Black maintenance persons;
- o 1, of 8, Black security officers;
- o 2, of 18, Black kindergarten teachers; and
- o 9, of 150, Black food service personnel.

TSBM, 5/4/70.

- As of 1975, although the Black population in the city was 14.3%, the Board employed Blacks in 6% of total staff positions, Hispanics in 2%, and American Indians and other minority groups in .3%. In addition:

- o 6% of the administrative staff, principals and supervisors were Black;
- o 6% of the teaching staff were Black;
- o 3% of the clerical and nursing staff were Black;
- o 12% of the operation and maintenance services were Black;
- o 8 % of the teaching aides were Black.

See Affirmative Action Program
- 1975

- In 1963, Board member Dr. Payne admitted to the Mayor's Human Relations Committee that "we have not actually sought out teachers from minority groups."

TSBM, 11/6/63.

- In 1963, the Board discussed whether it should review its recruiting practices and actively seek out minority applicants at least three different times.

TSBM, 7/17/63, 11/6/63;
11/12/63.

- One Board member stated: "we don't want to go to campuses and say, 'we want to hire white teachers or we want to hire negro teachers'". The Board President then asked "if we are supposed to go out and get them."

TSBM, 11/6/63.

- In 1970 a Board member complained that of five candidates asked to come to Topeka for an informal interview at their university none showed up. "Why", he asked, "did they fail to complete their interviews?" He then admitted, in response to a question from a member of the audience, that Black teachers had only "helped" in the recruitment process.
TSBM, 4/17/70.
- In 1963 a member of the Mayor's Human Relations Committee informed the Board that her committee had found it difficult to get facts regarding discrimination and whether the Board tried to get minority applicants.
TSBM, 11/6/63.
- In 1966 the Board refused a request from the Committee on Civil Rights for data claiming no such records were kept.
TSBM, 10/3/66.
- In 1963, a Board member said, "out of 10 negro applicants and 10 white applicants, the 10 white applicants are no doubt better qualified." Board President Richardson then stated that active commitment would involve a "lowering of standards", and asked "why a qualified teacher in the minority group doesn't apply."
TSBM 11/6/63.
- In 1963, upon agreeing to make a statement to university officials that "all students, including negroes, are welcome to apply for teaching positions" it was recorded in Board minutes that "it was understood that all selections would be based on qualifications for teaching."
TSBM, 11/12/63.
- In 1963, the Board issued a Progress Report stating only that positions would be filled regardless of race. No timetables, goals or method of reassignment were designed.
TSBM, 11/4/63.
- In 1963, the Board issued a Personnel Policy which said only that there would be no discrimination in hiring on the basis of race, creed, color or national origin. Again, no alternative remedial measures were envisioned to institute integration.
TSBM, 8/6/63.
- In 1963, a Board member reminded a colleague, at the colleague's observation that college placement offices may be referring only white applicants, that the Board has "no control over credentials made by colleges, and nothing to do with their preparation." One Board member then suggested that when no Black students are referred that requests be made for them, which prompted a Board member to respond, "we urge outstanding applicants regardless of race".

TSBM, 11/17/63.

- By 1982 the staff was reporting to the Board the breakdown by minority groups of potential employees interviewed for teaching positions but still failed to utilize active recruitment procedures which could guarantee sufficient representation.

TSBM, 1/6/82.

2. Assignment

- There is no record of any facility or staff desegregation plan.

Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p. 15, testimony of Dr. Foster

- There are no policies prohibiting discrimination in faculty assignment.

Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p. 14-15, testimony of Dr. Foster

- "From 1973-1984, the elementary schools with the highest minority enrollments in Topeka had a much higher average of minority staff members than the elementary schools with the lowest minority staff members."

Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p. 15-16, testimony of Dr. Foster

- From 1973-1984, secondary schools assigned minority staff disproportionately to minority schools.

Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p. 15-16, testimony of Dr. Foster

- Although the 1980-1981 process for staff assignment said one of its purposes was to ensure racial assignment equity, there has been no change in assignment since 1980.

Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p. 16-17, testimony of Dr. Foster

- Elementary and secondary students assigned to racially identifiable white schools were much more likely to have white teachers or staff than students assigned to Black schools and vice versa.

Foster, Gordon, Racial

Segregation in the Topeka Schools, April 1985, p. 18-19,
testimony of Dr. Foster

- In 1983-1984, 4 of 26 elementary schools had no minority staff and 6 others less than 2. 3 of 9 secondary schools had three or less minority staff.
Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p. 22,
testimony of Dr. Foster
- As of 1981-1982, there were still disparities in assignment of minority teachers at the secondary school level.
Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p. 22-23,
testimony of Dr. Foster
- "An analysis of faculty and staff assignments to the schools in the Topeka District indicates the intentional segregation of both elementary and secondary schools by faculty and staff assignments."
Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p. 24,
testimony of Dr. Foster
- Associate Superintendent James Gray defended staffing disparities by stating "people have been in certain buildings for a number of years, and the administration has not gone in and forced staff personnel to transfer."
Powell, Bruce R., Brown v. Board of Education - Johnson v. Board of Education, 1954-1975: Segregation, an Unresolved Controversy in the Public Schools of Topeka, Kansas and the Nation (1975),
p. 98
- As of 1964, the two predominately Black schools had the majority of available Black teaching staff; Parkdale had approximately 25% Black staff and Monroe had 60% Black staff; of 34 Black teachers in the school system that year, 20% were concentrated in two schools.
TSBM, 8/5/64.
- In 1963, the Board transferred three Black teachers formerly assigned to a predominately Black school (Monroe) and replaced them with three white teachers and a white principal, although the NAACP had warned such an act would be purely token.
TSBM, 11/12/63.

- Prior to the HEW complaints, the Board didn't perceive teaching assignment patterns as negative.
Morris, former Board member -
Deposition at 83.
- "The Board really didn't get involved in teacher assignments in any way."
Morris, former Board member -
Deposition at 87-88.
- The General Director of Personnel, since 1979, has no knowledge of whether a minority assignment policy exists.
Deposition of Ybarra at 44-5.
- "The policy was we wanted no big surprises for anyone, the teachers as well as parents." (speaking of transferring Black teachers to white schools).
Schendel, former Board Member -
Deposition at 20-1.
- The Board depended on the staff to assign teachers within the law.
Morris, former Board Member -
Deposition at 85.
- The former Superintendent of Schools, who resigned in 1984, has not looked at race statistics since 1976.
Gray - Deposition at 72.
- USD 501 never adopted a policy prohibiting discrimination in teacher or employee assignment.
Set 1, 32
- Prior to 1953-1954, "there was a practice of assigning Black teachers to one of the Black schools."
Set 1, 32; 1940-1950, 32
- In 1974, HEW alleged that complete faculty segregation continued "at least until the completion of the 1956-1957 school year."
Notice of Opp. for Hearing, In
Mtr. Topeka Unified School
District #501, No. S-79
- In 1974, HEW alleged that "the School District has continued to assign faculty in a manner which reinforces the racial identity of its substantially disproportionate and one-race schools."
In Mtr. of Topeka USD #501, S-
79
- As of 1984, there were "at least three schools with no minority staff" and the DCAC LRMP Committee recommended the

board act to correct this. The staff ignored or failed to understand this recommendation.

1983-1984 DCAC Final Report,
pp. 39, 81

- In 1956, the Board refused to integrate any more than the three Black teacher already teaching in white schools. Minutes throughout 1956-1961 reflect the reluctance of the Board to integrate teachers.

Board Minutes, June 4, 1956,
June 20, 1956, Feb. 14, 1957,
Feb. 19, 1957, June 3, 1957,
Aug. 20, 1957, Nov. 19, 1957,
Jan. 20, 1959, July 18, 1960,
May 1, 1961
Set 1, #32.

D. City Board Members showed a lack of commitment to integrating schools and in fact blamed Blacks or other factors.

- From 1956-1966, the City Board kept no statistics on race of pupils assigned.

- Board Member Schendel believed "it was illegal to keep... statistics of racial composition of the schools."
Deposition at 29.

- There was no policy or regulation requiring the Superintendent to look at the racial impact of Board decisions.

Gray, formerly Superintendent
of Schools - Deposition at 97.

- Tribbey, Assistant Superintendent of Program Audit and Planning, never tried to quantify race population trends.
Deposition at 64.

- Tribbey does not recall ever having discussed race with any Board members.

Deposition at 105.

- Tribbey admits that segregation/desegregation is not a specific item on the Administrator's Council's agenda.
Deposition at 13.

- "The only thing I would have to go on would be whether there were predominately Black people living in the immediate vicinity of the school or not and I think that is all we would go on."

Schendel, former Board Member -
Deposition at 95.

- "You know overall whether there were Black families, the

absence of Black families, that sort of thing. We didn't have specific numbers."

Schendel, former Board Member -
Deposition at 95.

- "I automatically know approximately... the approximate racial percentage in the schools."

Bergkamp, Board Member -
Deposition at 23.

- "The thing that was obvious to us was the enrollment of the school and with the entrance of HEW, the percent of minority students became a more - a more considered factor, although prior to HEW coming in there really wasn't a lot of discussion one way or the other."

Morris, former Board Member -
Deposition at 46.

- The primary motivating factors behind an evaluation of the facilities plan in 1973 was declining enrollment and the overall ages of the facilities, not race.

Morris Deposition at 37-8.

- The 1974 Missions and Objectives of the School Board included nothing on race.

TSBM, 3/5/74

- The 1973 Capital Improvements Report incorporated the Kansas State Topeka Junior High schools Study that said that its goal of racial diversity in the classroom "should not be interpreted as a mandate for busing or school integration." (emphasis added)

1973 Capital Improvements Reports

- In 1956 a Board member reminded the Board that there was a "serious site problem" involving the "negro-white problem" in the Monroe and Van Buren area. "No white children", he argued, "would go to a negro school and neither school was adequate for that area." He asked that it be discussed at a future date. It never was.

TSBM, 7/16/56.

- In 1961, a Board member reported to the Board that at least fourteen schools were experiencing problems as a result of integration. Integration at one school, for example, which he insisted remain unnamed, had resulted in many white families moving from the District. He said: "integration has brought about the problem of all white areas becoming all negro areas, which poses a potential threat to property values, jobs..." Among the 17 problems he cited were that no original staff members remained at the school and that "one teacher had resigned rather than teach there." Nothing

was done.

TSBM, 3/6/61.

- In 1963, a Board member reminded the Board that "we are dealing with a culturally handicapped group, sometimes as great as a physically handicapped group, and it is the responsibility of us all to help solve this problem."
TSBM, 11/6/63.
- In 1963, a Board member blamed segregation on the establishment of the highway, a conclusion challenged by the NAACP representative.
TSBM, 7/29/63.
- That same year, Board member Payne asked if the NAACP was asking it to solve its housing problems. (to which the NAACP representative responded that "it's not a problem of housing but one of using proper optional areas.")
TSBM, 7/29/63.
- That same year, Board member Schendel noted that it seemed to him "that the NAACP is suggesting we forget school boundaries" to which the NAACP representative responded that "if we were to adopt the open enrollment plan, evidence is that most of the students will go to the schools in their neighborhood." The School Board President then reminded the NAACP representative that "students are assigned to schools without regard to race, creed or economic status" and that he would "hope that the children are not used as pawns for solving these problems." He said that a great deal of study had gone into drawing up optional areas for Belvoir and Hudson, taking into consideration the safety hazard created by Highway 70 and that he hoped that drawn school boundaries would utilize the schools to the fullest.
TSBM, 7/29/63.
- In 1975, the Board passed a Resolution denying district non-compliance and stating that "the racial balance in certain attendance areas (which appears to be one of the bases for the Department of HEW's allegation of violation of said Civil Rights Act), has been aggravated or worsened by actions of other governmental agencies."
TSBM, 6/29/75.
- In 1961, Board suggestions to facilitate integration included the hiring of a psychologist, psychiatrist, social worker, decreasing the average teacher load from 30 to 25 or establishing special rooms.
TSBM, 3/6/61.
- In 1963 the Board responded to NAACP complaints by noting only that a special drop out team had worked for one month and two weeks before school opened and for two weeks after it closed, calling on potential drop-outs -- implying they

would be predominately Black.

TSBM, 11/4/63.

- In 1963, the Board postponed action on the Topeka Ministers recommendation for a bi-racial committee until it could meet with the Mayor's committee on Human Relations "to clarify its position." At that meeting a member of the Human Relations Commission stated that the Commission had no objection to the appointment of this committee. But Board member Payne expressed concern "as to whether this committee is a continuing thing and if its going to be a committee for life." The Board minutes then noted that "he inferred that none of the Board members wanted this to continue indefinitely." President of the Board Richardson expressed a strong reluctance "to deal" with a bi-racial committee".

TSBM, 11/14/63.

- In 1968, the Board rejected community pleas to withdraw security guards from the schools. Instead it agreed initially only to conduct conferences on the subject (10/7/68), which ultimately included only the three Principals of the High Schools (two of whom placed guards in the parking lots and one, at Topeka High, who placed them on each floor).

TSBM, 10/21/68.

- The Board then approved the use of guards and one month later approved the seeking of authorization from the Mayor to draft an ordinance investing the security guards with the power and authority of police.

TSBM, 11/18/68.

- Five months later the Board approved the hiring of eight guards (TSBM, 4/21/69) and in 1970 agreed to talk with the County attorney who felt the notification of parents before a disciplinary "interrogation" created such a delay that it "could confuse or cause the defendant or witness to refuse to talk."

TSBM, 4/12/69, 1/5/70.

- In 1970, in response to student demands, the board:

- o while reinstating students who had not returned to school after the boycott, reaffirmed that the primary avenue of appeal open to students, who believed themselves unjustifiably suspended or expelled was only direct appeal before the Board. The Board agreed to provide a certified shorthand reporter at "official" disciplinary proceedings after a Board meeting with over 1200 people present.

TSBM 4/20/70, 5/2/70, 5/4/70.

- o required parents/students to bring factual evidence of racism, leaving it up to each school principal to

initiate an investigation.

TSBM, 5/4/70.

- o stated the nature of extracurricular activities was not the Board's responsibilities but that of each school.

TSBM, 5/4/70.

- o urged Principals to ask student bodies to try to work out a plan whereby representation could become a reality and "directed" them to establish election/selection procedures which would ensure representation of all groups, excluding areas where performance skills are a primary criteria

TSBM, 6/15/70.

- o agreed that Mexican-American food served in the cafeteria be authentic.

TSBM, 6/15/70

- o requested that a consultant from Washington be called in to review the curriculum.

TSBM, 5/4/70.

- o agreed to recognize Mexican-Americans as Mexican-Americans on documentation after the current supply of records expired.

TSBM, 5/4/70.

- o did not try to develop ways to end harassment of minority students by administrators and teachers as requested.

TSBM, 4/17/70.

- o did not address the demand to employ more Black and Mexican-Americans in every capacity.

TSBM, 5/4/70.

- o did not abolish the law labeling individuals or students trespassors as requested.

TSBM, 4/17/70.

- o did not set up a bi-racial committee to determine if students should be suspended or expelled.

TSBM, 4/17/70.

- o did not reinstate suspended or expelled students. Instead, the Board established a Community Education Committee for students "who had demonstrated an inability to adjust to the regular educational program by extreme antisocial behavior."

TSBM, 1/5/70.

- See also Section VI.

- In 1970, the Board portrayed student demands as threatening to law and order, not addressing their concerns about equal education. "The Board", it resolved, "reaffirms its responsibility for the safety and welfare of pupils and teachers and provisions have been made for this purpose. . . . The Board believes that most parents and pupils want our schools to be operated in a manner where interference with the educational process won't be tolerated." The Board then reminded the community that city officials would make every effort to maintain law and order.

TSBM, 4/29/70.

- In 1971, the Board did not change its priorities for the allocation of \$400,000 in Title I money despite Committee recommendations but referred it for a study that was never presented.

TSBM, 8/26/71. See also
Section V, supra.

- No school by school comparison of facilities has been made since 1974.

Gray, former Superintendent of
Schools - Deposition at 128.

- No comparative data on a school by school basis of teacher experience or schools in general has been made.

Henson, Associate
Superintendent of Education
Services - Deposition at 29-31,
16.

- Board Member Bergkamp "automatically compares" expenditures or test scores or pupil-teacher ratio with the racial composition of the schools.

Deposition at 24.

- The Board didn't evaluate test scores past elementary school until after state involvement.

Morris, former Board member -
Deposition at 101.

- Associate Superintendent Tribbey never compared race and test scores of the Iowa Basic Skills Test; never presented figures to the Administrative Council or School Board.

Deposition at 20, 27, 29.

- See also Section V.

E. City Board Members Adhered to the Concept of
Neighborhood Schools and knew that such adherence
perpetuated segregation.

- "... I'm not willing to sacrifice the neighborhood school

concept to go to much larger elementary schools...when I believe we have quality educational programs, where I know that the patrons in the district are satisfied and where I know that the very social life of some communities revolves around the schools, particularly on the eastern part of town.

Bergkamp, Board Member -
Deposition at 29.

- "I was personally not in favor of taking the four schools we had and decreasing the percentage to under 50% because it would mean sacrificing the neighborhood school concept."

Bergkamp, Board Member -
Deposition at 29.

- The Topeka S. Bd. adopted a neighborhood school policy and deemed it as having "important educational and social values" together with the optional zone plans which accomodated "white flight".

"Reaffirmation of Topeka Plan,"
p.1. Exh. D - Set 1, 10, 11,
18, 26, 27, 28

- The Defendants have admitted using the neighborhood school concept, which has fostered segregation, since the rendering of the Brown I decision in 1954.

Proposed Short Range Facilities Plan. Set 1, 20(B). p. 13

- As of 1984, one of the 501 Long Range District Goals was to "Maintain neighborhood schools where economically and educationally feasible to do so."

LRMP, p.2, 5

- "It was probably a unanimous reaction on the part of the Board and administration that where economically and educationally feasible, we'd want to retain the system that we had." "... one of the assumptions was to try to have every school under a 50% minority ratio in order to achieve this, it became apparent we'd be taking away some shools and not retaining the neighborhood schools."

Bergkamp, Board Member -
Deposition at 28.

- In 1963 the Board reaffirmed the "neighborhood school concept" and issued a Policy Statement to the public that boundary lines or attendance areas within Topeka would be adhered to as previously established.

TSBM, 8/26/63.

- In 1975, the Board resolved "to maintain the neighborhood school concept wherever possible" -- despite the institution of the HEW lawsuit in 1974.

TSBM, 2/18/75.

- In 1984, the Board continued to affirm the neighborhood school concept: "The Board also believes it should work toward racially balanced enrollments in our schools while maintaining the neighborhood concept."

TSEM, 1/4/84.

F. The City Board Members failed to take opportunities to desegregate. This included the rejection of plans that would have had a desegregative effect.

1. General

- From 1957 to 1966, Topeka could have desegregated the schools.
Lamson, William, Race and Schools in Topeka, Kansas, pp. 80-164; testimony of William Lamson
- Topeka could have effectively desegregated its schools in 1954 to 1956.
Lamson, William, Race and Schools in Topeka, Kansas, pp. 15-40, 55-6, 73-74; testimony of William Lamson
- The East Topeka Junior High School was underutilized by 254 pupil spaces in 1960 and could easily have absorbed Dawson, Rice and Belvoir geographic areas, making East Topeka 31.7 percent Black in 1960.
Lamson, William, Race and Schools in Topeka, Kansas, p. 194; testimony of William Lamson
- Topeka Board of Education could have effectively desegregated its schools in 1959-1960.
Lamson, William, Race and Schools in Topeka, Kansas, pp. 195-196; testimony of William Lamson
- The Topeka Board of Education could have effectively desegregated its schools in 1967-1979.
Lamson, William, Race and Schools in Topeka, Kansas, pp. 204, 207, 209; testimony of William Lamson
- The Topeka Board of Education could have effectively desegregated its schools in 1966-1980.
Lamson, William, Race and Schools in Topeka, Kansas, pp.

212, 214, 215, 217, 218, 220,
221; testimony of William
Lamson

- School desegregation in Topeka would have been "both feasible and practical" from 1953-1984 but was not done. Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p. 52-33, testimony of Dr. Foster
- In 1974 experts proposed a desegregation plan that the Board refused to adopt. TSBM, May 20 and May 27, 1975
- In 1975 a Board member suggested using magnet schools to eliminate racially identifiable schools. TSBM, 3/4/75.
- By 1984 the board had failed to study that solution except for receiving a report from the Citizen's Advisory Council which in its 1984-5 Long Range Master Plan Final Report found "if a situation of unequal education opportunities and/or unacceptable racial imbalance is determined to exist in the Topeka public schools, some solution other than the current approach in Topeka must be sought; however, with no long range master plan, no permanent superintendent, no identifiable economic solution to school finance and lack of community consensus of the district policies and philosophies, the magnet school concept seems premature today." DCAC Final Report, 1974.

2. 1974 - The Tentative Plan

- "In 1974 the Topeka District enjoyed an exceptionally good opportunity to get the job done under pressure by HEW... The Tentative Plan developed and proposed by the administrative staff would have probably received approval from HEW and, in that framework at least, the District would have been unitary and desegregated. This did not take place." Foster, Gordon, Racial Segregation in the Topeka Public Schools, April, 1985, p. 52; testimony of Dr. Foster.
- The plan was initiated "... because of the involvement of the press and other community groups ... out of recognition of facility under-utilization and HEW's letter." Morris, former Board Member - Deposition at 48.
- The plan was ultimately rejected because "this was the first experience that this School Board had had with public

pressure, politics if you will, and my recollection is that the heat that was generated in the community was a bit uncomfortable . . . it caused individual Board members who had been a part of the development of the plan and the response to quiver and shake and change their mind and so another plan was subsequently developed . . . we decided to choose two out of the five to show good faith and that we were listening to the public."

Morris, former Board member -
Deposition at 51.

- In 1974 the USD 501 was involved in negotiation proceedings to prevent the cut off of federal funds because USD 501 was found to be still racially segregated. HEW said in a letter to Supt. Bolton that:

- a. the OCR wants racial balance, not absolute percentage standards.
- b. transfers such as those at Lafayette, which has a disproportionate number of minority students and receives more through transfer, must be discontinued.
- c. most minority junior high school students in Topeka attend schools which are generally inferior in facilities to the junior high schools most white students attend.
- d. statistics and criteria for judging inadequacy of minority kindergartens are given.
- e. letter from HEW, Civil Rights Division dated 3/12/74 to Merle Bolton.

- In June 1974 the HEW advised Bolton that as a result of their investigations the Civil Rights Office would begin "administrative enforcement proceedings."

Letter from HEW to Merle
Bolton, 6/7/74

- This informal threat to investigate whether USD 501 was in compliance with federal anti-discrimination law was formalized in the filing of an administrative complaint.

Docket No. S-79, Notice of
Opportunity for Hearing
(Received by September 6/10/74)

- The 1974 Tentative Plan for a More Perfect Unitary School System (1974 Tentative Plan) was developed in response to HEW complaints.

See letter April 30, 1974 from
Craig to Parent attached to
plan; Feb. 8, 1974 Bd. Minutes

- The 1974 Tentative Plan was intended to and would have had an integrative effect.
1974 Tentative Plan, p. 1, 2, 10-12
- The 1974 Tentative Plan proposed to "adopt policy to ensure that no school will be allowed to become racially isolated in excess of 50% minority composition "
1974 Tentative Plan, p. 2
- The 1974 Tentative Plan was rejected by USD 501.
Set 1, 21 and 23.
- They were not adopted because of excessive cost.
Schendel, former Board Member -
Deposition at 47.
- "There were some schools which were higher than we would like to have them, and we were looking for a way to change them, but not at the way they (HEW) were suggesting it here."
Schendel, former Board Member -
Deposition at 44.
- "We felt that we were being crowded into something that just wasn't right for the Topeka school district by outside forces and we all resented it."
Schendel, former Board Member -
Deposition at 42.
- "People would rather have swept the issue under the rug. It was a bothersome issue to school administrators all over the country, not just Topeka."
Morris, former Board Member -
Deposition at 46.

3. 1983-1984 - Plans N & X

- "In January 1984 two long-range master proposals, Plans X and N, were developed to be considered by the community, the District Citizens' Advisory Counsel and the Board. Both involved a considerable amount of construction, closing schools, and reorganization. While not perfect from a desegregation planning standpoint both plans would have moved the District very close to being completely desegregated. This did not take place."
Foster, Gordon, Racial Segregation in the Topeka Schools, p. 53; testimony of Dr. Foster.
- Benefits foreseen by Topeka Board of Education in implementing a set of long-range proposals include improved racial balance in the elementary and middle schools.

Fact Sheet About Long-Range
Proposals, Topeka Public
Schools, January, 1984

- Racial balance was not a reason for the plan but was "one of the goals of the plan."
Ward, Board Member, Deposition at 36.
- The plan was precipitated by a significant decline in student population.
Gray, former Superintendent of Schools - Deposition at 143.
- The staff projected both plans would bring the minority percent below 50%.
Gray, former Superintendent of Schools - Deposition at 148.
- "They would have improved racial balance."
Henson, Associate Superintendent of Educational Services - Deposition at 63.
- "... to enhance our racial balance was clearly one of the goals of this next potential long-range plan."
Ward, Board member - Deposition at 12.
- "They were just proposals submitted for comment."
Bergkamp, Board Member - Deposition at 46.
- "I think all the Board members felt the plans, because they were too severe, were not acceptable to the public ... I think that was the one that was accepted by all the Board members."
Berkamp, Board Member - Deposition at 48.
- Board Member Bergkamp's personal opinion was that they would have closed too many schools.
Bergkamp, Board Member - Deposition at 53.
- They were withdrawn because they "... essentially received no support from any quorum or segment of our public... almost universally rejected ... turned more on facilities component than anything else ... and distance from school and size."
"What I heard the public saying was that we want elementary schools of not more than 400. Just the reverse of our goal."
Ward, Board Member - Deposition at 39-43.

- "People did not say I don't want my children to go to school with minority students.... But I guess you could argue that theoretically maybe they are criticizing the size of the school because the consolidation may be brought about that possibility.... They did say sometimes a little slightly different statement which is ... is this plan being forced upon us for legal reasons."

Ward, Board Member, Deposition
at 44.

- "I got some reaction from some other Board members that the concerns expressed by the community were significant enough that they didn't feel like they would implement the plans."

Henson, Associate
Superintendent of Education
Services - Deposition at 154.

- Plans N and X of the Long Range Master proposals were system-wide plans involving the closing, construction and consolidation of schools as well as alterations in school attendance boundaries. Plans N and X were prepared and proposed for consideration by the School Board on January 4, 1984.

Supp. Resp. Set 1, 19,

- The Final Report of the 1983 District No. 501 Citizen's Advisory Council included a plan of the DCAC Long-Range Master Plan Committee for the closing, construction and consolidation of schools as well as alterations in school attendance boundaries. It was prepared and proposed for consideration by the school board on May 2 and June 6, 1984.

Set 1, 19

- The School Board "officially rescinded both facilities' plans N and X from further consideration on April 18, 1984."

Set 1, 20(c)

- The Final Report of the 1983-1984 District 501 Citizen's Advisory Council was accepted by The Board of Education on June 6, 1984. "No further action in regard to the report has been taken by The Board since that date."

Set 1, 20(c)

- The Long Range Master Proposals (LRMP) would have "contribute[d] toward the attainment of the twenty-one established long-range district goals" including:

"8. conduct the recruitment, employment, training, and promotion of all employees consistent with the district's established affirmative action plan..."

14. Ensure that all decisions made by the Board and Administration of The Topeka Public Schools contribute

toward the continued maintenance of a racially balanced school system and that an equal educational opportunity continues to be provided for all students...

16. Establish a comprehensive human relations program."

LRMP, pp. 1-3

- Under Plan N, the number of racially identifiable middle schools as of 1988-1989 would be 0 of 4 though two schools would be between 35-40% minority (Chase, Eisenhower) and 2 schools between 10-15% minority (Jardine, Landon)
LRMP, p. 12
- Under Plan N, the number of racially identifiable elementary schools as of 1988-1989 would be 7 (French, H.P. Central, Hudson, McCarter, McClure, Stout, Whitson) of 13. No school would be over 45% minority or under 4.3%.
LRMP, p. 12
- Under Plan X, the number of racially identifiable middle schools as of 1984-1985 would have been 0 of 3 and all schools would range from 22-27% minority.
LRMP, p. 20
- Under Plan X, the number of racially identifiable elementary schools as of 1990-1991 would be 5 (Eisenhower, French, H.P. Central, McClure, Whitson) of 13 and no school would be over 45% minority or under 3.5%.
LRMP, p. 20
- Plans N and X would provide "improved racial balance."
LRMP, p. 36
- One of the goals of the DCAC Long Range Master Plan Committee in 1984 was "racial balance."
1983-1984 DCAC Final Report, p. 34
- Under the DCAC LRMP Committee proposal there would be 2 (Highland Park, Topeka West) of 3 racially identifiable high schools.
1983-1984 DCAC Final Report, p. 50
- Under the DCAC LRMP Committee proposal there would be 1 (French) of 3 racially identifiable middle schools. French would be under 7% minority; Eisenhower and Jardine over 30%.
1983-1984 DCAC Final Report, p. 50
- Under the DCAC LRMP Committee proposal there would be 6 (Bishop, Crestview, HP Central, Hudson, McClure, Whitson) of

16 racially identifiable middle schools. They would range from 48% to 4%.

1983-1984 DCAC Final Report,
p. 50

- One member of the DCAC LRMPCC felt that Plans N and X as well as the Committee proposal, by insisting on coterminous boundaries "will tend to perpetuate patterns of segregation in the community." She also noted that the schools to be closed would fall disproportionately hard on minority schools.

1983-1984 DCAC Final Report,
p. 63

G. Miscellaneous

- USD 501 "has made no request for federal funds for desegregation related purposes."
RTP (2nd), Request 6
- In 1975, CACE made two recommendations that USD 501 stop using textbooks that were racially discriminatory. USD admitted some texts were discriminatory, but only promised to correct it "within the limitations of the current financial monies available."

1974-1981 CACE Report on
Implementation

H. The Board maintained discriminatory election procedures

- In 1970, the Board maintained that a Mexican American would have to be elected, the only alternative to a Board member's resignation.

ISBM, 5/4/70.

- In 1974, the Board rejected the 6 district plan.

ISBM, 10/15/74.

- The Board refused to consider a proposal put forth by the Kansas Institute for Minority Empowerment and Coordinating Committee to change the election and voting plan to a district method.

ISBM, 6/19/72.

- In 1976 the Board still failed to consider the racial constituency of the Board in devising a new election plan. They adopted a resolution which would divide the district into three, electing two members from each and one at-large member.

ISBM, 6/9/76.

- In 1982 the Board approved changing the election districts without discussing race -- "recommendations were made to represent a more even distribution in population."

TSBM, 10/20/82.

- In the 1982 elections there is no indication that the Board sought to improve minority representation.

TSBM, 6/28/82.

- In 1982 the Board had an opportunity to elect a minority candidate after Ross Freeman resigned but did not do so.

TSBM, 5/12/82.

I. The Board failed to evaluate the quality of education for Black students.

- The September 1978 Task Force Report on Reading carried no evaluation of minority reading scores.

- In 1961 the Board in citing school drop-outs failed to examine their racial composition.

TSBM, 11/20/61.

- When reviewing the 1981 Iowa Test Scores the Board failed to note/identify how minority students perform.

TSBM, 2/4/81.

J. SBE took actions that perpetuated segregation

- Until 1983, SBE provided no research or technical assistance to local school districts on school segregation.

Set 1 to State, 2.

- Although SBE received approval for federal funds to assist USD 501 "on problems arising relative to minority groups," it took no action.

SBE Responses to all I; Letter
Oct. 24, 1975, Bolton to
Weltmer

- The State Board has never sent any documents to USD 501 concerning school segregation.

Set 2 to State Bd., 5, 29;
State Bd. of Ed. Minutes.

- No school desegregation cases or laws were circulated by the State Board to local school districts.

Set 1 to State, Aug. 1

- The SBE took no action to desegregate The Pierce School.

SBE Minutes

- Most of the recent reports issued by the Department of Education state that there is a need for minimum educational opportunities regardless of sex, race, color, yet the same report never articulates a specific program or objective directed at achieving this goal.

Policy Plan & Objectives for FY
1980, p. 36.

- In 1983 the SBE's "Mission Statement" asserted the same goal and again the report stated no specific plan directed at achieving racial integration.

Report 9/14/83, p. 1

- 1983 Progress reports assert the same need of "equal educational opportunities" with no mention of any program, policy or objective having been implemented toward this goal.

Id.

- The SBE has articulated only once the idea of creating a program or office dedicated to civil rights issues in education and never followed up on the proposal.

SBE Minutes of 3/3/70.

- The State has supported the concept that "all Americans should have equal access to free, quality public schools," but never mentions race as a factor in achieving such a goal.

Kansas: The State of
Education, p. 2.

- Defendants admit that no "research" or "technical assistance" on desegregation matters has ever been provided to local school districts on matters of desegregation.

Set 1 to State, 2.

- The defendants "efforts" at devising any program which would address integration issues demonstrate apathy towards improving race relations. A "guideline" for introducing minority studies into the general curriculum which was produced in response to the Kansas Legislature's mandate for a comprehensive educational program on race relations, assures local school districts that minority studies will not be made a state requirement. Rather, the decision to include minority studies is deemed subject to local "self-determination."

Guidelines for Integrating
Minority Studies, p. 1.

- Funding for a Department of Education program to provide technical assistance on matters relating to race and national origin has been in existence only one year, although the need for such a program was first acknowledged by State education officials more than fifteen years ago. In June, 1970, the SBE submitted a draft proposal to apply for funds under Title IV of the Civil Rights Act of 1964 to "additional study."

SBE Minutes of June 2, 1970.

- A July 8, 1970 version of this proposal recognized that the Department of Education has a duty to assist in desegregation matters based in state and federal law and that there is a lack of data and publications or education conferences or workshops to help identify needs in the desegregation area.

Proposal dated 7/8/70, pp. 3-7.
- In August, 1970, the State Finance Council deferred action on the establishment of a fund in the Kansas budget for technical assistance on equal education opportunity matters.

Letter of Robert Brandt,
Secretary of State Finance
Council to Commissioner of
Education Whittier.
- In May, 1970, the Commissioner of Education wrote to the State Finance Council requesting approval of the Technical Assistance Project.

Letter of Commissioner Whittier
to State Finance Council dated
5/2/71.
- There is no evidence that the State Finance Council ever approved the fund, that education officials pursued the matter of desegregation funding, that another application for funds was made, or that Title IV funds ever became a part of the FY 1972 education budget.

Communication from Dan Biles,
Counsel for SBE
- Five (5) years later, in 1975, the Kansas Board of Education again considered a Department of Education proposal for technical assistance funds under Title IV. This proposal expressed similar needs to the 1970 proposal, including: assessment of desegregation on the basis of sex, color, race, national origin, etc., consultation regarding student and/or faculty assignments in multi-racial situations, and staff training and instructional improvement with respect to race and sex.

Proposal of Department of
Education dated June 9, 1975.
- In October, 1975, the Department of Education submitted a proposal to the State Finance Council to approve a grant received under Title IV for \$58,000 to be included in the fiscal year 1976 education budget.

Letter of Commissioner Bolton
dated 10/24/75 to Secretary of
Administration.
- Another five (5) years later, and ten years (10) after the first proposal, in December, 1980, the SBE authorized the Department of Education to develop a Title IV technical

assistance proposal.

Memo of Assistant Commissioner
Crouch to Commissioner Bolton
dated 3/10/81.

- In March, 1981 the Department of Education submitted another Title IV proposal to the SBE at one of its regular meetings. The proposal articulated similar problems and similar needs in the desegregation area and knowledge by state officials of race-related complaints. The SBE rejected the proposal to seek Title IV funds.
Id.; SBE Minutes of 3/11/81;
Proposal of March 10, 1981.
- In 1981, SBE staff proposed submitting a proposal for "technical assistance and training to local school districts in race desegregation..."
Memo, Crouch to Bolton, Mar.
10, 1981
- The 1981 technical assistance proposal was not approved by SBE or the Governor.
Communication from Dan Biles,
Counsel for SBE
- In 1983, the SBE again approved of a proposal to apply for Title IV funds.
SBE Minutes 3/9/83.
- Concurrent with increased activity in this litigation, the defendants state that a technical assistance project is finally in its first year of existence.
Set 1 to State, 2.
- The State does not require actual proof of compliance with Title VI of the Civil Rights Act of 1964 which prohibits discrimination by any recipient of federal funds. In fact State officials generally "assumed" that local school districts were in compliance by merely accepting on a routine basis applicable forms without further investigation.
Deposition of Merle Bolton at
91.
- State officials have never investigated, or instituted a procedure for doing so, whether a local school district is in compliance with SBE regulations which prohibit discriminatory staffing and pupil assignment decisions.
Deposition of Merle Bolton at
95.
- In 1976, the federal Office of Civil Rights (HEW) suggested by letter to the Commissioner of Education that UDS 501 was in violation of anti-discrimination laws. The State never

conducted an inquiry as to whether the HEW statements regarding disproportionate minority representation in disciplinary decisions were illegally based. The 1981 proposal for technical assistance referred to this matter but the SBE rejected the application for Title IV funds that were supposed to address this problem.

Deposition of Merle Bolton at 97. (Exhibit #1); SBE Minutes of 3/11/81.

- The State has never instituted any procedure to investigate a school district's compliance with Brown II or any other alleged violation of race discrimination laws.

Set 1 to State, 12; Deposition of Merle Bolton; see all stipulations regarding the Governors.

- The State has never recommended desegregation of students and faculty as a means of improving public education. The SBE has never required such a study.

Set 1 to State, 13.

- The State has never attempted to review any plans or proposals for desegregation of teachers, staff or students within USD 501.

Set 1 to State, 53.

- The State has never refused to approve bonds for construction on grounds that it might perpetuate segregation. The SBE has never required such a showing prior to approving the issuance of bonds.

Set 1 to State, 35-42.

- In 1985, the SBE sought approval for a technical assistance program " to assist local schools with problems arising relative to minority groups ... " SBE added in all capital letters "IT IS NOT TO ADVOCATE FOR Busing OR ANY OTHER SPECIFIC APPROACH. "

Memo to SBE from Budd, May 20, 1975

- The SBE has never set up, as it can, any advisory committee to report or give recommendations in the area of race in pupil assignment.

Deposition of Merle Bolton at 117.

- No advisory committee has ever been requested to look into the effect of optional zones, territorial transfers between districts, boundary changes, school sitings, closings and

openings on the racial composition of a school district.

Deposition of Merle Bolton at
118.

- The former Commissioner demonstrated the State's "hands off" attitude and admitted that investigations from the State on a school district's discriminatory practices would only follow upon official announcement of discriminatory policies by a school board.

Deposition of Merle Bolton at
108.

- Official Department of Education reports evidence the State's "hands off" approach by stating on the one hand the need to provide equal educational opportunities to each Kansas student, and on the other hand asserting that "primary responsibility for operational control" lies in the local school districts.

Plan for FY 1981, pp. 1-2, 44.

- the State provided funds to USD 501

- USD 501 receives reimbursements from the State for expenditure of funds for:

Special Ed
Special Ed Coop
AVTS
Food Services (beginning 78-79)
Sales Taxes 4-8,
Retirement funds
Supp. Retirement
Emergency School Finance

Set 1, 12

- No school desegregation cases or laws were circulated by the State Board to local school districts.

Set 1 to State, Aug. 1

- In response to the June 1974 notice from HEW that Topeka had segregated schools, SBE did nothing.

Answers to All I

- In response to the allegations in Johnson v. Whittier that Topeka's segregated school harmed Black students, SBE did nothing.

Answers to All I

- The State Board has never conducted any "surveys, investigations, or inquiries" pertaining to school segregation in USD 501.

Set 2 to State Bd., 10

- The State Board has never issued any "reports, recommendations or plans" pertaining to school segregation in USD 501.
Set 2 to State Bd., 12
State Bd. of Ed. Minutes
 - The State Board never requested that any law providing for the permissible or mandatory segregation of schools be repealed nor did it take any position on or, comment on such repeal.
Set 2 to State Bd., 20-23;
State Bd. of Ed. Minutes
 - The State Board has never issued any public statements or documents concerning school segregation in Kansas or USD 501.
Set 2 to State Bd., 31; State Bd. of Ed. Minutes
 - The State Board has never made any recommendations to any school district in Kansas, the State Legislature, or the Governor concerning school segregation.
Set 2 to State Bd., 5, 32;
State Bd. of Ed. Minutes
 - The State Board has never "received, reviewed, sent, approved, or objected to any correspondence with USD 501 concerning segregation" except for a few letters to and from HEW.
Set 2 to State Bd., 29; State Bd. of Ed. Minutes
 - The State Board took all authorized actions to approve city school board actions. It accredited schools, certified teachers, approved annexations, approved bonds, etc.
See Section III B, supra.
- K. The Governor took actions that perpetuated segregation
- The Governor never conducted any survey, investigation or inquiry into school segregation in Kansas.
Set 1 to Carlin, 24
 - The Governor has not introduced any legislation concerning school segregation in Kansas.
Set 1 to Carlin, 29
 - The Governor never requested the repeal of any law relating to school segregation in Kansas.
Set 1 to Carlin, 44
 - Governor Carlin issued no public statements or documents concerning school segregation in Topeka.
Set 1 to Carlin, 47

- Governor Carlin never made any recommendations to USD 501, the State Board of Education, or the State Legislature concerning school segregation in Topeka.
Set 1 to Carlin, 48
- Despite the problems noted, there is no indication the June 2-3, 1970, Technical Assistance Proposal was approved by SBE or the Governor.
Communication from Dan Biles, counsel for SBE
- Despite the problems, the Governor rejected the July 8, 1970 Technical Assistance Program.
Letter, Brandt to Whittier, Aug. 25, 1970
Letter, Whittier to Brandt, May 12, 1971
- The Governor rejected the May 12, 1971 request from SBE for a Technical Assistance Program.
Communication from Dan Biles, counsel for SBE
- There is no indication that a SBE proposal for a civil rights staff person, March 3, 1970, was approved by the State Board or the Governor.
Set 1 to Carlin, Aug. 14, 1985, 5
- There is no indication that the Governor approved the 1975 Recommendation of the Commissioner for technical assistance "on problems arising relative to minority groups."
Communication from Dan Biles, Counsel for SBE: Letter Oct. 24, 1975, Bolton to Weltmer
- The 1981 technical assistance proposal was not approved by SBE or the Governor.
Communication from Dan Biles, Counsel for SBE
- Several former governors have admitted that they never took an interest in the matter of Brown II so as to propose legislation regarding desegregation.
Stipulations by Govs. Avery and Arn
- One governor stated that he didn't view desegregation as a responsibility resting at the gubernatorial level even though during his term the Governor was responsible for all "educational interests".
Stip. of Gov. Avery; see also Kans. Const. Art. 6 [2];

- Although Governor Anderson (term 1961 to 1965) has stipulated to having been advised that segregation still existed in Kansas, there was no action taken by his office toward eliminating the vestiges of legal segregation under K.S. 72-1724.

Stipulation

- The SBE has never adopted any policies which would promote racial desegregation in the Topeka public school system. Prior to 1968 the Governor never exercised his power under KS 72-124 (removal "for cause") to encourage SBE members to adopt such policies.
- Governors never sought money from the legislature for desegregation; never exercised institutional leadership role on behalf of integration or improved race relations in the schools.
- The Governor has never sent any documents to the Legislature concerning school segregation.

Set 2 to State Bd., 5

- There was no action taken with regard to desegregation during Governor Avery's term.

Stipulation

- Since 1968 the Governor has had the influence of the state budget to encourage the KSBE and the Dept. of Education to promote desegregation. The Governor's office has never used this power to do so.

Stipulation

- Although during Governor Docking's term education was deemed a "high priority" and the "primary thrust" of his administration, and although he was aware of problems concerning school desegregation, there was no action taken with regard to segregation or desegregation.

Stipulation

- The Governor took no action concerning The Pierce School.

- Defendants admit that they have never circulated to local school districts cases or laws pertaining to desegregation.

Set 1 to State Bd.

VI

THE CITY AND STATE DEFENDANTS HAVE BEEN EXPRESSLY OR IMPLIEDLY AWARE THAT TOPEKA SCHOOLS HAVE NOT BEEN DESEGREGATED AND OF THE NEED TO DESEGREGATE THEM.

A. The Governor

- See Section I, D, supra
- In the 1960s, during Governor Anderson's term, the governor was advised that segregation still existed in the Kansas schools.

Stipulation.
- Former Governor Docking was aware of problems concerning school segregation.

Stipulation.
- Governor Carlin has received at least one letter from the public concerning school segregation in Kansas.

1st I to Carlin, 34
- The Governor received the technical Assistance Proposals referred to infra, IV J and K and V B.

B. SBE

- See Section I, E, supra
- Throughout the 1940's, the State Department of Education required Kansas schools to report student population by race.

4th Set, 51
- Since the mid-60's SBE has received race data on students through HEW forms.
- The state Board claims to have no documents indicating there was ever segregation in any Kansas schools.

Set 2 to State Bd., 24
- In 1970, SBE staff developed a proposal for title 4 funds to "establish an office of equal educational opportunity within the department to provide technical assistance to schools having desegregation problems." The proposal included offering assistance, gathering information, and coordinating

efforts for 3-5 years "or until the desegregation problems are stabilized. "The proposal noted the following problems:

- o "Publicized unrest, protest, some rioting and violence in Kansas cities, ... Topeka...
- o Problems of ... noncompliance in segregated urban areas.
- o Reports of some de facto School segregation not publicized.
- o Some purported local staff segregation.
- o Lack of full-time personnel in The State Department of Education to work with these matters.
- o Lack of information, such as racial census.
- o Lack of preservice and in-service training for school personnel regarding desegregation and providing for racial and ethnic differences...
- o Lack of available state leadership and money for this purpose."

Technical Assistance Proposal,
June 2-3, 1970, pp.1-2

- 1970, the SBE wrote that the result of school segregation in Kansas "has been either de facto segregation or forced desegregation" and that "many problems remain."

Kansas, A Proposal for A
Technical Assistance Program,
July 8, 1970, p.3

- In 1970, the SBE wrote that they had done nothing to "deal with the problems incident to school desegregation" other than curriculum guides.

Kansas, A Proposal for A
Technical Assistance Program,
July 8, 1970, p.4

- In 1970, the SBE wrote that "Publicized unrest, protest, some rioting and violence in Kansas cities has drawn the attention of the general public to school problems and has caused questions to be raised about the role and responsibility of the State Education Agency in solving them."

Kansas A Proposal for a
Technical Assistance Program,
July 8, 1970, p.6

- In 1970, the SBE wrote that "While ... alleged noncompliance in segregated urban areas are the responsibility of local

school districts, such problems do exist beyond the ability of the districts to solve them quickly." SBE should act.

Kansas A Proposal for a
Technical Assistance Program,
July 8, 1970, p.6

- The State Board resubmitted the July 8, 1970 Technical Assistance Program on May 12, 1971 saying that the request was "imperative."

Letter, Whittier to Brandt, May
12, 1971

- On June 7, 1974, SBE was notified that Topeka had been found by HEW to have segregated schools. HEW asked SBE to refrain from committing federal funds to Topeka.

Letter Henderson to Whittier,
June 10, 1974

- In 1975, SBE saw a need "to determine what problems have been caused by isolation of minority groups and to eliminate or reduce problems and needs wherever possible."

Recommendation of the
Commissioner, June 9, 1975, p.9

- In 1975, SBE saw a need "to provide consultative services regarding student and faculty assignments in multi-racial situations."

Recommendation of the
Commissioner, June 9, 1975.
p. 12

- The State Board was kept fully advised of the allegations and status of Johnson v. Whittier which charged that Topeka's segregated schools harmed Black students.

SBE Minutes, July 1, 1977

- In 1981, SBE staff wrote that "the department is aware of the complaints and reviews in relation to race ... Race desegregation efforts are underway in ... Topeka ... [which has in 1975] experienced the need for technical assistance in relation to racial desegregation."

Memo Crouch to Bolton, Mar. 3,
1981, Proposal Under Title IV
of The Civil Rights Act: Race
Desegregation, p.10

- On October 13, 1981, the SBE's lawyer advised the Board that the Department of Justice was planning litigation over unequal education in Black schools. SBE took no action.

SBE minutes, Oct. 13, 1981

C. The City Board

- In 1956, immediately after Brown I, a NAACP representative

"pleaded that the negro teacher be integrated along with other teachers and children in the Topeka schools" and expressed strong opposition to an incremental and slow process of integration.

TSBM, 1/8/56.

- In the mid-1960's, the NAACP protested the absence of Black teachers as consultants, guidance counselors, coaches, vocational instructors, librarians, dietary technicians, supervisors and directors. One NAACP representative stated, "the pattern must be broken".

TSBM, 7/17/63.

- In 1963, the NAACP recommended active recruitment of Blacks for teaching positions, "asking for immediacy in non-professional jobs as well", their immediate reassignment throughout the school system, and "a conscious effort along these lines and along lines of promotion of Negro teachers to administrative and supervisory positions."

TSBM, 7/17/63.

- At a 7/29/63 conference between the Board and the NAACP there were complaints about the optional zones between Parkdale, Summer and Lafayette as having a segregative effect.

Id. p. 2.

- In 1963 a Board member questioned a NAACP representative as to whether or not the quality of instruction was any less in predominately black schools to which the NAACP representative replied that "the indicators are that there is a wide disparity between the higher and lower income brackets."

SBM, 7/29/63.

- The Board reaffirmed the neighborhood policy and decided only to study, not end, the use of optional attendance areas even though it was clear the optional zones were accommodating white flight.

Id. Exh. D p. 3.

- Several months later, the NAACP recommended an evaluation of Board recruiting procedures, pointing out that certain types of practices may discourage Black applicants. They specifically noted that initial emphasis on racial concerns and unclear explanations of the application and hiring procedures could be discouraging.

TSBM, 11/12/63.

- In 1963, a NAACP representative told the Board that meaningful Black teacher reassignments would have to involve at least five teachers. Any less would be merely "token".

TSBM, 7/17/63.

- In 1963, USD 501 was told by the NAACP that Black teachers were disproportionately assigned to Black schools.
Report Pertaining to the
Employment and Assignment of
Teacher, p.2
- As early as 1963, a NAACP representative called optional zones "facilitators of racial segregation". He stated that "the Board was responsible for taking actions gerrymandering zone lines and using optional zones which resulted in white students being able to attend white schools..." Specifically, he argued, the Board did not use optional areas to relieve overcrowded schools.
TSBM, 7/29/63
- In 1962-3, for example, 25-30% Black students were enrolled at Belvoir; in 1963-4, the NAACP representative predicted it would be 75-80%. "Optional zones", he stated, "are designed for the purpose of permitting white students to escape to predominately white schools." He noted that at the time the Board adopted the desegregation policy, it also adopted a policy of having optional zones based solely on race and cited the example of Hudson as one located so as to ensure an all white school.
TSBM, 7/29/63.
- That same year the NAACP representative criticized the Board's use of the neighborhood school concept as a method used to maintain segregation. He pointed out that Parkdale, then about 70% Black, had the possibility of becoming 80% Black by the next year.
TSBM, 7/29/63.
- In 1963, the NAACP representative, in identifying East Topeka High as 70% Black and Monroe as 99% Black, called Monroe a "classic example" of "where the effect results in a negro school" and stated that "the lines are coextensive with the boundary lines of the negro settlement."
TSBM, 7/29/63.
- In 1963, the NAACP criticized the use of school building additions to bring about segregation, citing Parkdale as an example.
TSBM, 7/29/63.
- An NAACP representative noted that with the closing of Washington in 1962, the shift in enrollment to Parkdale resulted in less than 20% white students at that school.
TSBM, 7/29/63.
- In 1963 the NAACP representative recommended that the Board reevaluate the validity of the "neighborhood school concept", permit open enrollment, assure maximum school balances, change boundary lines, and remove optional areas

in some places and reconsider site locations in others.

TSBM, 7/29/63.

- In 1963, a NAACP representative recommended that the Board change the boundary lines at Parkdale, do away with the Monroe optional zones, and begin a study towards racial balance, to be paid for by the NAACP.

TSBM, 7/29/63.

- In 1963, the NAACP representative noted: "it is the duty of local Board's of Education to establish attendance zones which do not result in the harmful effects caused by predominately negro schools."

TSBM, 7/29/63.

- In 1964 the Executive Secretary of the Commission on Civil Rights noted that "it seems strange that with Negroes traditionally employed in custodial and maintenance job classifications with private employers that only one Negro has found such employment with the Topeka School Board of Education. Whether this results from happenstance or the considerations of race and national origin... is something to be discussed with a view towards possible improvement in the employment picture for qualified minority persons in the Topeka schools." He then noted the existence of two formal complaints made by Black teachers and the existence of evidence to support their allegations.

TSBM, 6/11/64.

- In 1964 the Executive secretary of the Commission on Civil Rights requested a meeting with the Board to discuss the formal complaints.

TSBM, 11/6/64.

- In 1970, over 75 students walked out of school protesting, among other things, the under-representation of Blacks on staff.

TSBM, 6/16/64.

- In 1970, at a Board meeting, a member of the audience pointed out that a Black teacher with a masters degree and a Black woman had sought, and been unable to obtain, teaching positions.

TSBM, 4/17/70.

- In 1970, an Ad Hoc Committee, formed by the Board, recommended that a concerted effort be made to employ minority personnel.

TSBM, 5/18/70.

- In 1970, over 75 Mexican-American students walked out of school, went to the Board of Education building, and demanded that the Board appoint a Mexican-American.

TSBM, 5/4/70.

- In 1970, Black and Mexican-American students undertook a general strike and then submitted a series of recommendations to the Board including:
 - o no punishing of boycotting students;
 - o reinstating suspended and expelled students;
 - o firing specific teachers;
 - o ending harassment of minority students by teachers and administrators;
 - o establishing a committee of Black and white students to determine if students should be suspended or expelled;
 - o abolishing a law labelling individuals or non students as trespassors;
 - o employing more Blacks and Mexican Americans in every capacity;
 - o recognizing Mexican-American students as Mexican-Americans on all documentation;
 - o providing authentic Mexican-American food in the cafeteria.

TSBM, 4/17/70; see also Section VI D.

- In 1970, a Board member recognized the severity of treatment of black students, characterizing the situation as "critical", telling the Board it was necessary to "deal with the crisis", and noting that since the beginning of the second semester over 30% of the students expelled or suspended were black.

SBM, 4/17/70.

- In 1971 a Poverty Committee, composed of Topeka citizens, surveyed 508 children and determined that Title I money would best go to the provision of clothing, book rental fees, breakfast programs, transportation and medical care. Other community groups signed a petition in support of these recommendations.

TSBM, 9/7/71.

- In 1972, school board officials were told there was inadequate counseling for Black students.

Minutes of the Meeting, May 4, 1972, May 11, 1972, June 13, 1972; CBME Minutes, July 3, 1972.

- In 1972, school officials were told that there was segregation in the high school lounge.

Minutes of the Meeting, Apr. 14, 1972

- In 1972, school officials were told that Black students were receiving unequal education in the elementary schools.

Minutes of the Meeting,

Apr. 14, 1972

- Topeka Board of Education settled for \$19,500, in a federal court case brought in 1973 by a Black schoolgirl who claimed she received an inferior education because of her race.
Kansas City Star, Section A, 1979 (4/16/79); Johnson v. Whittlier, T-5430 (D. C., Kansas, Dec. 15, 1978).
- Don Oden, School Board President, admitted in 1979 interview that school board did not want the public to know about the large settlement because it feared similar suits would follow.
Kansas City Star, Section A, 1979 (4/16/79)
- The court ordered those connected with the case not to discuss it and sealed the court files at the request of the parties.
Kansas City Star, page 1 and 9, Section A, 1979 (4/16/79)
- In 1974, a Topeka citizen told the Board that the at large method of electing school board members was racially discriminatory.
TSBM, Oct. 15, 1974
- In 1974, the CACE recommended to the Board an end to racially identifiable schools.
TSBM, Nov. 19, 1974
- In 1974, two experts were hired by USD 501 to develop a desegregation plan.
Board Minutes, Mar. 18, 1975, April 8, 1975
- In 1974, the Community Advisory Committee (CACE) submitted a resolution to the Board finding that "the current neighborhood school assignment lends itself to the assignment of large numbers of minority students to the oldest and least adequate schools in the system while large numbers of non-minority students are assigned to the District's newest and most adequate schools."
TSBM, 11/19/74.
- In 1975, Topeka citizen's complained to the Board that facility planning was not taking into account the racial impact of proposed actions.
TSBM, Jan. 7, 1975

- In 1975, school officials were told that Black students were receiving unequal education in the elementary schools.
Minutes of the Meeting, Apr. 14, 1972.
- In 1974, the CACE called for the removal of racial identifiability from all schools by instituting an optional majority to minority transfer policy.
TSBM, 11/19/74.
- In 1975, Topeka citizens complained to the Board that it had not acted on CACE's recommendation to end racially identifiable schools.
TSBM, Jan. 7, 1975
- As of 1975 Board members still recognized that racially identifiable schools existed. "Mr. Scheldrup suggested that the Board might consider the establishment of a Magnet school, as Wichita did, to help eliminate racially identifiable schools."
TSBM, 3/4/75.
- In 1975 a Department of Justice attorney told Board member Crenshaw that "... in his opinion the board's action on 2/18/75 does not constitute an acceptable solution of the issues. Mr. August, of HEW, stated that in his opinion the Board must proceed with the development of additional steps to meet HEW's guidelines -- to eliminate racially identifiable schools.
TSBM, 3/4/75.
- In 1975, the Topeka Board of Education sought Technical Assistance from SBE in desegregation.
Memo to SBE from Budd, May 20, 1975
Letter, Oct. 24, 1985, olton to Weltmer
- CACE was abolished February 18, 1975.
TSBM, Feb. 18, 1975
- The Board dissolved the CACE less than one year after it had set it up (SBM, 5/6/75). In its final statement to the Board, the CACE noted the difficulty it had confronted from the community in attempting to eliminate racial identifiability.
SBM, 5/6/75.
- In 1974, a community member stated, at a Board meeting, that revised Board election procedures were as unconstitutional as the then current at-large plan, possibly violating the Fifteenth Amendment - by preventing Blacks from being elected -- and the "one man one vote" principle derived from

the Fourteenth Amendment. Moreover, he stated, the Board's "... objections to the State Board of Education and in the declaratory judgment suit in Shawnee County District Court, could be interpreted as a discriminatory practice aimed at keeping minorities off the Board of Education. This might cause the courts to find violation of desegregation laws and require a better racial balance of students and teachers as a remedy...in fact, the Board of Education's resistance to change in election procedures may be a weak link in our chain of defense."

TSBM, 10/15/74.

- In 1975, an Affirmative Action Committee, formed by the Board, recommended that the Board increase minority representation to 14.3% of the work force, equal to the then current city-wide racial distribution; develop and establish a program to allow women and minorities to be eligible for promotions; designate an Equal Employment Opportunity Officer to analyze the personnel system and provide all district employees with information regarding affirmative action; have the Affirmative Action Committee work with the Equal Employment Opportunity Officer; and notify colleges and several minority groups in Topeka of openings for certified personnel

Affirmative Action Plan - 1975.

- In 1974, a community member recommended that the Board adopt a 6 district plan which would make it easier for minorities to get seats. He suggested that the Board trade the current system for a cumulative voting plan -- which would allow minorities to pool their votes in order to elect a representative. He urged the Board to work with the CCBC to develop election plans to remove artificial barriers and then take it to the legislature or courts for implementation.

TSBM, 10/15/74; see Section VI H.

- HEW's Office of Civil Rights, Region VII found in 1973 non-compliance with title VI of the Civil Rights Act in the following area:

- o Five elementary schools (Belvoir, Lafayette, Lowman Hill, Monroe and Parkdale) "continue to operate with student racial compositions not consonant with a unitary plan of student assignment capable of fully desegregating the district."
- o These schools had inadequate kindergarten rooms and library media centers.
- o "Most minority junior high students in Topeka attend schools which are generally inferior in facilities to the junior high schools most white students attend."

These junior high schools are significantly older, smaller in general classroom size, smaller in the area of school site acreage, smaller in size of special facilities (such as facilities for shops, homemaking and music) and have significantly fewer auxiliary spaces such as guidance and conference rooms." Four junior high schools were cited: Crane, Curtis, East Topeka and Highland Park.

- o Crane and East Topeka were also cited for non-compliance on the grounds of racial composition.
Letter from Taylor D. August, Director of the Office of Civil Rights, Region VII branch of HEW to Dr. Merle R. Bolton, Superintendent of Topeka Public School District 501, dated January 14, 1974; see also Section VI F 2.

- In May, 1974, HEW charged the school board of USD 501 with assigning teachers and staff according to race and charged the district with never fully desegregating its elementary and junior high staff after Brown I.

Powell, Bruce R., Brown v. Board of Education - Johnson v. Board of Education, 1954-1975: Segregation, an Unresolved Controversy in the Public Schools of Topeka, Kansas and the Nation (1975), p. 97

- In 1975, the Department of Health, Education and Welfare demanded that the Board submit, as an alternative to a lawsuit, a specific plan and timetable to desegregate Topeka.

(HEW letter - 2/29/75).

- In 1975 CACE Racial Balance Task Force recommended a plan to "eliminate socio-economic and racial isolation which exists in the district."

1975 CACE Report

- Racial "isolations exists in USD 501 and is becoming more prevalent."

1975 CACE Report

- The Board dissolved the CACE less than one year after it had set it up. In its final statement to the Board, the CACE noted the difficulty it had confronted from the community in attempting to eliminate racial identifiability.

TSBM, 5/6/75.

- In 1978 and 1979, local Black leaders from the CCBC and NAACP complained that Topeka schools are not desegregated. Statement of Benjamin H. Day, Chairperson Kansas Advisory Committee to U. S. Comm. on Civ. Rights, p. 10
- A citizen complained to the Board in 1979 about the lack of communication between the Board and community. She questioned the Board as to why Board members failed to attend a meeting of Central Park patrons concerning the closing of that school.
TSBM, 5/21/79.
- A NAACP representative informed the Board that the open enrollment policy "... fosters elitism" and asked the Board to "stop this foolishness". Ms. Kathy Russel expressed concern that the open enrollment policy results in polarization and allows families to escape from the problems rather than dealing with them.
TSBM, 3/19/80.
- "Ms. Hartenberger ... expressed her concern regarding the portion of the policy which deals with open enrollment. She felt the Board was being naive if it believed that the community was using the policy for anything other than segregation by choice." She urged the Board to consider the policy very carefully.
TSBM, 2/20/80.
- Staff proposed transfer policies in the summer of 1980 implicitly labeled Belvoir, Lafayette, Highland Park North, Quinton Heights, Lowman Hill, Eisenhower and Highland Park High as Black or minority schools and McClure, Potwin, Crestview, Whitson, Bishop, Gage, French, London, and Topeka West as white schools.
Set 4, 19, 34-36
- The Kansas Advisory Committee in 1980 reported to the U. S. Commission on Civil Rights that after more than 20 years USD 501 was not in compliance with Brown I & II because:
 - o In 1974 HEW found USD 501 in violation of the Civil Rights Act of 1964;
 - o After 2 years of negotiating with HEW, USD 501 finally came up with a Long Range Facilities Plan designed to prevent the cut off of federal funds;
 - o Based on this agreement with OCR a part of which included the promise to implement the LRFP, OCR dismissed the complaint against USD 501 in September 1976. USD 501 was to keep its federal funds.

- o In November 1976 the Justice Department was asked seek proof of compliance. No data was given by USD 501.
Statement of Benjamin Day,
supra.
- As of 1983, school officials know that there are schools over 50% and there has been no Board or staff discussion of it.
Tribby Deposition at 162-3.
- Topeka citizens told the Board that Open Enrollment was being used for segregation.
4th Set, 19, 34-36; Bd.
Minutes, Feb. 20, 1980
- The District Citizens Advisory Council found in 1980 that Open Enrollment caused racial polarization.
4th Set, 19, 34-36; Bd.
Minutes, Mar. 5, 1980
- On March 19, 1980, Topeka citizens told The Board that Open Enrollment was causing racial polarization.
TSEB, Mar. 19, 1980
- The 1980 Community Survey advised The Board the Open Enrollment added to racial polarization.
Set 4, 19, 34-36
- At the request of USD 501, the DCAC Studied Open Enrollment. The 1979-1980 DCAC found that Open Enrollment would create a "trend toward [racial] polarization at the elementary and middle school levels." and "would be a probable cause of minority and white student polarization within USD 501."
1978-1979, DCAC Report
- A study of the effects of the open enrollment policy by a Board appointed District Citizen's Advisory Council concluded that open enrollment tended to penalize Black and white students in USD 501. The reported noted that
 - o "shifts in minority percentages might occur following Open Enrollment Transfer applications. A trend toward polarization existed at the elementary and middle school levels... "
 - o "Although no reasons are known for the Open Enrollment transfer application, certain school's minority percentages (such as Loman Hill may have been adversely affected by incoming and outgoing transfers . . . [The change from 40.74% in 1978 to 43.13% in 1979 [minority enrollment at Loman Hill] may have occurred in large part due to Open Enrollment.

- o "Regardless of the validity of various motivations that parents and/or students may have had in applying for either Open Enrollment or Other transfers, application to participate in both of these programs would be a probable cause of minority and white student polarization within USD 501."
- o "Transfers between attendance centers, Open Enrollment or other transfers tend to shift enrollment, in the direction of ethnic, social and economic patterns."

Exhibit M, Set 1, 10, 11, 18,
26, 17, 28.

- The Board knew that in locating optional zones around Randolph school it was creating sites for white flight. Parents would use the optional zones to avoid integration. The flow of white children went from Randolph to Southwest to Crestview.
See Topeka Daily Capital articles; exh. to Id. Set 1, 10, 11, 18, 26, 27, 28.
- The 1979-1980 DCAC "discovered a substantial trend toward racial imbalance as a result of the overall net effect of Open Enrollment and other forms of student transfers.
Set 4, 19, 34-36
- The kids in Title I schools "... were as much as 6 months and in some instances a year and a half to two years below grade level." This information was available to the Board.
Morris, former Board Member -
Deposition at 99.
- "The peer pressure exerted in those schools (Lafayette, Parkdale or Belvoir - predominately Black) was not of a level that it was at Gage (where Morris' kids went)."
Morris, former Board Member -
Deposition at 106.
- Former Board Member Morris heard concerns about differential quality. The complaints "... would relate more in a general way to a specific kind of problem ..."
Deposition at 16-7.
- The HEW allegation that most minority junior high school students attended inferior schools was considered true by former Board Member Morris.
Deposition at 42.
- He disputed, however, the HEW allegation that most minority students have inadequate kindergarten rooms or a smaller library.

Deposition at 42-3.

- Highland Park students scored lower as National Merit Scholars.
Morris, former Board Member -
Deposition at 101-2.
- On January 14, 1974, HEW found that USD 501 was in violation of Title VI due to "continued segregation of students" and inequitable" distribution of educational resources.
Letter Dir. Civ. Rights to USDC
Judge, undated
- In 1976, HEW found that the City School Board was still not in full compliance with Title VI.
Letter OCR to USDC, undated;
Letter HEW OCR to Dept.
Justice, Nov. 17, 1976
- In 1976, HEW found that even after the Long Range Facilities Plan, Topeka would still have a substantial number of racially identifiable schools and that Topeka still would have "student segregation."
Letter OCR to USD, undated;
Letter OCR to Dept. Justice,
Nov. 17, 1976.
- In November 1976, the director of HEW's OCR found that the City School District was violating TAG VI.
Letter US Comm. on Civ.
Rights, to Dept. of Justice,
Oct. 19, 1978
- In June 1974, HEW notified USD 501 that it would withhold federal funds until 501 complied with Title 6.
USD 501 v. Weinberger, No74-
160-C5, Aug. 23, 1974, p.12;
Letter, Holmes to Bolton, June
7, 1974

VII

TOPEKA SCHOOLS ARE AND HAVE BEEN RACIALLY SEGREGATED AND UNEQUAL.

A. The Standard for Determining Segregated Schools

- In the past Board and staff members informally and occasionally relied on an arbitrarily established 50% minority goal figure as the index for determination of racial identifiability. Board and staff members were consistently unable to identify where the 50% figure originated.
- Former Superintendent Gray noted it was a "standing goal."
Gray - Deposition at 149.
- Ward, a member of the Board of Education, found the 50% figure to be an assumption when he arrived. "It seemed like a significant step in continuing to enhance the racial balance."
Ward - Deposition at 29.
- "I think our advice was that's what the Federal guidelines liked."
Bergkamp, Board Member -
Deposition at 39.
- "There was really no basic data on which to make a decision."
Morris, former Board Member -
Deposition at 59.
- Former Board Member Schendel never remembers passing numbers for official board policy.
Deposition at 46.
- Board Member Ward believed the figure was a staff recommendation.
Deposition at 31.
- Assistant Superintendent (of Program Audit and Planning) Tribbey remembers the 50% figure was picked because it's "not majority" and "... this number was one that it was felt would be accepted by the community and it was something the community could achieve with a minimum of toil and trauma."
Deposition at 160.
- There was a general consensus that "this was an achievable goal, with as I mentioned earlier, minimum trauma and controversy within the community."
Deposition at 164.

- The Board's goal was "to reduce the range and increase the percentages."

Tribbey, Assistant
 Superintendent of Program Audit
 and Planning - Deposition at
 105.
- It would be logical to try to get down to the 50% level. Also, looking at what the Supreme Court rulings have been and the makeup of the community, it seemed to be a worthy goal."

Bergkamp, former Board member -
 Deposition at 38.
- In Tribbey's opinion, it doesn't matter whether you try to get a low minority percentage or a high minority percentage as long as the range is reduced.

Deposition at 92-3.
- The discussion the staff had regarding racial balance figures desired concluded that "it should be broad or general in nature" in the short range facilities plan.

Tribby Deposition at 50-1.
- "No one knows for sure what to use. So it's pretty uncertain" regarding the choice between relying on range numbers versus a single number for evaluation of the school system as a whole.

Tribby Deposition at 161-2.
- Former Board Member Morris noted that HEW mentioned 50% as a criteria "... but it was a far cry from a hard and fast guideline.... It was an unwritten kind of thing we were trying to achieve, a goal rather than a stated policy."

Deposition at 30.
- The 50% figure "... doesn't suggest there is a problem. It suggests to me that if we can, we should consolidate some day or find other ways to reduce them."

Henson, Associate
 Superintendent of Education
 Services - Deposition at 63.
- Former Superintendent of Schools Gray was "not bothered" by the 50% figure.

Deposition at 117.
- "I think we should strive always to move in that direction in all of our actions."

Henson, Associate
 Superintendent of Education
 Services - Deposition at 63.
- "It was probably a unanimous reaction on the part of the

Board and administration that where economically and educationally feasible, we'd want to retain the system that we had." "... one of the assumptions was to try to have every school under a 50% minority ratio in order to achieve this, it became apparent we'd be taking away some schools and not retaining the neighborhood schools."

Bergkamp, Board Member -
Deposition at 28.

- In 1984, the School Board suggested as a "General Assumption" that "All actions by The Board of Education and Administration of The Topeka Public Schools should improve the percentage of minority student enrollment of individual learning centers so that no center has a minority enrollment greater than 50%."

LRMP, p. 5

- In 1975, CACE proposed that the school district ensure that no school be more than 15% off of the district's overall minority %.

1975 CACE Report

- One standard for measuring racial identifiability by pupil enrollment is 15 %.

See Conclusions of Law, infra.

- Racial identifiability in Topeka can be determined today by identifying schools "whose racial make-up falls outside a +_ 15% range from the district mean."

Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p. 4, testimony of Dr. Foster

- In 1980, 501 staff accepted 15% above or below the District average as a measure of racial identifiability.

Set 4, 19, 34-36

- Racial identifiability is measured by looking at all factors.

Testimony of Dr. Foster; see Conclusions of Law, infra

- "School district policies and practices with regard to the assignment of faculty and staff are among the most important indicia of a segregated system."

Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p. 14, testimony of Dr. Foster

B. Topeka schools are segregated. See Section VI, supra.

- Most Topekans recognize that Topeka schools differ in racial composition of their enrollments and perceive some schools

as Black or minority, and others as white. Such perceptions are surprisingly accurate.

CS Survey, p. 1, 28.

- 63% of the respondents say there are schools in Topeka they think of as minority schools, and 61% say there are schools they think of as white.

CS Survey, p. 25, 26, 27

- All of the schools named as "white" by 1% or more of the respondents had a 1983 minority enrollment below the district average of 26%.

CS Survey, p. 25, 26

- All of the schools named as "Black" by 1% or more of the respondents had a minority enrollment above the district average of 26%.

CS Survey, p. 25, 27

- A majority of the respondents designated five schools (Topeka W. High School, French Middle School, Landon Middle School, Whitson Elementary School, McCarter Elementary School) as white and two schools as Black (Lafayette Elementary School, Belvoir Elementary School)

CS Survey, p. 31

- Most residents of Topeka are aware of differences in the racial or ethnic balance of schools, their perceptions are usually correct, and they tend to believe the best schooling is offered by predominately white schools.

CS Survey, p. 33

- Highland Park High, Topeka High, Lafayette Elementary, Belvoir Elementary, Highland Park North and Eisenhower Middle School are most often named as the Black or minority schools. The 1983 minority enrollment in these schools range from 32% (Topeka High) to 62% (Highland Park North), exceeding the district average of 26%.

CS Survey, p. 2, 25

- Topeka West High is named more than any other school as a white school; the 1983 enrollment there was 93% white.

CS Survey, p. 2

- Landon Middle School, French Middle School, Jardine Middle School, Bishop Elementary, Gage Elementary, McCarter Elementary, Whitson Elementary were included as schools mentioned as white schools; they had white enrollments ranging from 86% to 94%, when the District #501 average for 1983 was about 74%.

CS Survey, p. 2

- About 1/2 Topeka schools today are racially identifiable.
Racial Inventory for USD 501
Students.
- "Vestiges of purposeful segregation have continued at the secondary level in Topeka as well as at the elementary schools. The District has never affirmatively desegregated its schools and moved from a dual structure to a unitary status."
Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p.2, testimony of Dr. Foster
- In 1953-1954, all 22 elementary schools were racially identifiable and 99% Blacks were in racially identifiable schools. There were 4 all Black schools.
Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p.6-7, testimony of Dr. Foster
- From 1966-1967 through 1983-1984, in only one year were more than half of the elementary schools racially nonidentifiable.
Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p.7-9, testimony of Dr. Foster
- Not until 1980-1981 were the majority of Blacks out of racially identifiable Black elementary schools.
Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p.7-9, testimony of Dr. Foster
- As of 1983-1984, 38% of Black students were in racially identifiable Black schools.
Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p.7-9, testimony of Dr. Foster
- Capper and Roosevelt Junior High Schools were probably all white 1941-1957.
Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p.7, 10, testimony of Dr. Foster

- From 1966-1984, "an average of 47% of secondary schools were racially identifiable ..."
Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p.10, testimony of Dr. Foster

- For the last 8 years of the period 1966-1984, "an average of 45% of all secondary schools were racially identifiable indicating that little progress had been made in reducing ... " racial identifiability.
Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p.10, testimony of Dr. Foster

- "Many secondary schools ... evidenced a continued history of racial identifiability ... " This included East Topeka, Crane, Curtis, Highland Park, Capper, Landon, Topeka West and French.
Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p.10-13, testimony of Dr. Foster

- "There was certainly no evidence of an affirmative effort to eliminate root and branch the vestiges of state imposed segregation by the reassignment of pupils to elementary schools."
Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p.13, testimony of Dr. Foster

- A school official said in 1972 that there had been nothing implemented to address the problems of Black students.
Minutes of the Meeting, Apr. 14, 1972

- Topeka schools today are not completely desegregated.
Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p.53, testimony of Dr. Foster

- "By any likely measure, most [on the average 80% of elementary and 89% secondary] of the schools in Topeka from 1973-1984 have been racially identifiable by virtue of staff assignments."
Foster, Gordon, Racial Segregation in the Topeka Schools, April 1985, p.18-20, testimony of Dr. Foster

- Racial "isolations exists in USD 501 and is becoming more prevalent. "

1975 CACE Report

- From 1957 to 1966, four of the ten new buildings opened all or virtually all white. One opened with almost four times the number of Black students as the system-wide average.
Lamson, William, Race and Schools in Topeka, Kansas, p. 78; testimony of William Lamson

- In 1975 the CACE Racial Balance Task Force found "that racial and socio-economic isolationism does exist in USD 501 said that it does have detrimental effects on the educational achievements of minority and low-income children and recommended that identified racial and socio-economic isolationism be eliminated. "

1975 CACE Report

- The number of elementary schools set aside for the exclusive education of white students tripled from seven in 1956 to twenty in 1966.

Lamson, William, Race and Schools in Topeka, Kansas, p. 160; testimony of William Lamson

- The number of ninety percent and one hundred percent white elementary schools in USD 501 in 1966 was exactly the same number of all-white schools in the Topeka school system under the total segregation of the 1952 School District No. 23.

Lamson, William, Race and Schools in Topeka, Kansas, p. 160; testimony of William Lamson

- The seven disproportionately Black elementary schools averaged a combined rate of underutilization of 668 pupil spaces, for each year that they existed within the Topeka school system, from 1956 to 1966.

Lamson, William, Race and Schools in Topeka, Kansas, p. 160; testimony of William Lamson

In 1966, the Monroe School was 74.6 percent Black while the system as a whole was 12.1 percent Black.

Lamson, William, Race and Schools in Topeka, Kansas, p. 116; testimony of William Lamson

- In 1966, seventy-three percent of the Black elementary students in Topeka were assigned to seven of the thirty-five elementary schools then operating in the system.
Lamson, William, Race and Schools in Topeka, Kansas, p. 165; testimony of William Lamson
- In 1966, seventy-three percent of the Black elementary students in Topeka were assigned to seven of the thirty-five elementary schools then operating in the system.
Lamson, William, Race and Schools in Topeka, Kansas, p. 165; testimony of William Lamson
- In 1966, there were six all white schools.
Lamson, William, Race and Schools In Topeka, Kansas, p. 9; testimony of William Lamson.
- In 1966, 45% of non-Black minority students were assigned to schools 2-7 times the system-wide average.
Lamson, William, Race and Schools In Topeka, Kansas, p. 9; testimony of William Lamson.
- In 1966, 73.3 percent of all Black students were assigned to schools with more than twice the system-wide average of Black students.
Lamson, William, Race and Schools in Topeka, Kansas, p. 76; testimony of William Lamson
- From 1956 to 1966, the number of schools with less than one percent Black students went from seven to ten. Seven schools were all white.
Lamson, William, Race and Schools in Topeka, Kansas, p. 77; testimony of William Lamson
- Thirty-eight percent of white students were assigned to the ten schools with less than one percent Black students.
Lamson, William, Race and Schools in Topeka, Kansas, p. 77; testimony of William Lamson

- In 1974, seven schools were two to five times the system-wide average and fifty-seven percent of Black students were assigned to those schools.
Lamson, William, Race and Schools in Topeka, Kansas, p. 10; testimony of William Lamson
- In 1974, thirty-eight percent of the non-Black minority students were assigned to schools two to five times the system wide average.
Lamson, William, Race and Schools in Topeka, Kansas, pp. 10-11; testimony of William Lamson
- In 1983, forty-one percent of Black students were in the four elementary schools with the highest percentage of Black students.
Lamson, William, Race and Schools in Topeka, Kansas, p. 11; testimony of William Lamson
- In 1983, six elementary schools were less than one percent Black.
Lamson, William, Race and Schools in Topeka, Kansas, p. 11; testimony of William Lamson
- East Topeka Junior High School had assigned to it in 1956 42.5 percent of all the Black junior high school students in the school system.
Lamson, William, Race and Schools in Topeka, Kansas, p. 187; testimony of William Lamson
- The number of white children attending junior high school in Topeka from 1956 to 1966 increased by 80.8 percent, but the number of white pupils assigned to the East Topeka and Crane schools decreased by 36.4 percent and 19.9 percent respectively over the same period.
Lamson, William, Race and Schools in Topeka, Kansas, p. 191; testimony of William Lamson
- By 1966, the total number of Black students assigned to Crane and East Topeka junior high schools by the Board of Education increased by 151 since 1956, while the total number of Black students assigned to the remaining nine

Topeka junior high schools combined had increased by only 140.

Lamson, William, Race and Schools in Topeka, Kansas, p. 200; testimony of William Lamson

- In 1966, the Topeka Senior High School was 16.7 percent Black, Highland Park Senior High School was 11.5 percent Black and the Topeka West Senior High School was 0.2 percent Black.

Lamson, William, Race and Schools in Topeka, Kansas, p. 234; testimony of William Lamson

- In 1977, Topeka Senior High School was 18.1 percent Black, Highland Park Senior High School was 23.2 percent Black and Topeka West Senior High School was 1.4 percent Black.

Lamson, William, Race and Schools in Topeka, Kansas, p. 238; testimony of William Lamson

- In 1980, 51.5 percent of all Black ninth to twelfth grade students were assigned to one senior high school; 44.1 percent of those Black youngsters were assigned to Topeka Senior High School; and 4.1 percent of those Black children were sent to Topeka West Senior High School, where Topeka school officials were providing for the educational needs of forty-two percent of the white ninth to twelfth graders in 1980.

Lamson, William, Race and Schools in Topeka, Kansas, p. 240; testimony of William Lamson

D. Topeka Schools are and have been unequal

- In 1963, 8 Topeka Ministers sent a letter to the Board requesting it to establish a small, representative, bi-racial committee, with members agreed to by both the Board and NAACP, to work with the Superintendent towards a solution to racial discrimination and requesting that a preliminary report be made to the Board and the NAACP within two months.

TSBM

- In 1963 a Board member questioned a NAACP representative as to whether or not the quality of instruction was any less in predominately Black schools to which the NAACP representative replied that "the indicators are that there

is a wide disparity between the higher and lower income brackets. "

TSBM, 7/29/63.

- In 1963 the NAACP brought to the Board's attention that "the negro as well as the white student, does not get the same quality of education where there is so much imbalance, except that the stigma of an all Negro school is not felt in the case of an all white school."

TSBM, 7/29/63.

- In 1963, in citing two racially balanced schools, Quinton Heights and Clay, the NAACP representative said that "speaking from a psychological viewpoint", he would say "those schools have a better advantage."

TSBM, 7/29/63.

- In 1963 the NAACP delivered a report to the Board entitled "Guidance and Counseling Programs -- Totally Inadequate for Most Negro Students."

TSBM, 7/22/63.

- In 1972, statistics showed that a significant number of Black students, but not white students, were getting failing grades or withdrawing from courses at Topeka High.

Minutes of the Meeting, June 13, 1972; Minutes of the Committee for Better Minority Education ("CBME Minutes"), June 27, 1972

- In 1968, a Coordinating Committee of the Black community protested the placement of security guards within the public schools of Topeka, stating such action challenged and tended to agitate the Black students.

TSBM, 10/7/68.

- In 1968, a Coordinating Committee of the Black community recommended that security guards be used only as a last resort and suggested they be removed.

TSBM, 10/7/68.

- In 1970, Black students complained to the Board that "many incidents had taken place during the school year against Black students" and that Black students were punished too severely for minor offenses.

TSBM, 4/17/70.

- In 1975 the CACE informed the Board the "racial isolation causes hatred and communication breakdowns" and racism "relegates them to a position at the bottom of the ladder", & urged the Board to take a leadership position in eradicating these problems.

TSBM, 11/19/74.

- In 1970, a Board member recognized the severity of treatment of Black students, characterizing the situation as "critical", telling the Board it was necessary to "deal with the crisis", and noting that since the beginning of the second semester over 30% of the students expelled or suspended were Black.

TSBM, 4/17/70.

- A school official said in 1972 that there had been nothing implemented to address the problems of Black students.

Minutes of the Meeting, Apr.
114, 1972

- As of 1980, identifiable white schools had a higher percentage of teachers with Masters degrees than did identifiable Black schools.

Set 1.

- In 1973-1974, an independent report of Topeka Junior High Schools found that 37.9% of minority students attended newer buildings compared to 74.4% of white students.

Collins, Characteristics of
Facilities

- In 1973-1974, an independent report of Topeka Junior High Schools found that more minority students attended schools with very small sites and more white students attended schools with with large sites.

Collins, Characteristics of
Facilities

- In 1973-1974, an independent report of Topeka Junior High Schools found that 61.9% of minority students attended schools with small classrooms compared to 22.4% of white students. Similarly, 72% white students had large classrooms compared to 34.7% minority students.

Collins, Characteristics of
Facilities

- In 1970, Kansas State did a comprehensive study of Junior High Schools. "Minority students have 62.2% in schools that area not recommended for continued use by Kansas State University or me, and majority students have 35.9%, or a significant difference of 26.3%." White students had 64.1% in recommended schools, minority students had 37.8%.

Collins, Characteristics of
Facilities

- In 1973-1974, an independent report of Topeka Junior High Schools found the following to be inadequate schools:

3 of the 4 schools with minority % above 27.2%
2 of the 4 schools with minority % 10.2-19.2%

1 of the 4 schools with minority % under 10.2%

Collins, Characteristics
of
Facilities

- In 1975, students in predominantly "minority schools scored significantly lower on standardized test than students in predominantly white schools."
1975 CACE Report
- As of 1984, not all elementary schools had full-time education teachers, music teachers, or librarians; not all had counselors at a 600-1 ratio, not all were air conditioned; not all had adequate physical education facilities or modern copiers.
LRMP, p. 36, 37; Set 4, 67-68
- 3 of the 6 Black schools had no full-time music teacher, 2 of the 7 white schools had none. 3 of 6 Black schools had no full-time Librarian, 1 of the 7 white school had none.
Set 4, 68
- In 1984, The Designated Middle School Programs Committee of the DCAC found that there was "a great disparity in the [social studies] curriculum in the middle schools."
1983-1984 DCAC Final Report,
p. 18
- As of 1984, only Topeka West had a course in art, architecture, and music appreciation.
1983-1984 DCAC Final Report,
p. 19
- As of 1984, only 2 of 3 high schools had auto mechanics courses.
1983-1984 DCAC Final Report,
p. 37
- As of 1984, Highland Park was the only high school without a swim team.
- Although all three of the high schools applied for national education awards, only white Topeka West received an award.
Set 4, 17
- Questions about which schools are the best, the poorest, which have the best teachers, buildings, facilities, which high schools offer the best preparation for college, and which schools people would most highly recommend to friends planning to move to Topeka elicited replies that closely paralleled answers about which schools are minority or Black and which are white.
CS Survey, p. 2, 39-42

- Topeka West High School is the school named most often as white; it is also most often named as the best high school (best teachers, best facilities).
CS Survey, p. 3, 41
- Highland Park High is never said to be a white school and consistently ranked third behind Topeka West and Topeka High. 1983 per cent minority enrollment: Topeka West: 7%; Topeka High: 32%; Highland Park: 40%.
CS Survey, p. 3, 36, 38, 41
- Ratings of the quality of middle and elementary schools paralleled answers about which schools are minority or Black and which are white.
CS Survey, p. 3, 33
- Schools rated most favorably are French and Landon Middle Schools. In 1983 minority enrollment at each school was 6%.
CS Survey, p. 3, 4, 33
- 14% of the respondents mention elementary schools with very low minority enrollments as better than others (e.g., Bishop, Crestview, Gage, McCarter, McClure, McEachron, Potwin and Whitson).
CS Survey, p. 37
- 1% of the respondents mention elementary schools with large minority enrollments as better than others (e.g., Belvoir, Highland Park North, Hudson, Lafayette, Quinton Heights).
CS Survey, p. 37
- 22% of the respondents named Highland Park as the high school having the poorest facilities; 18% named Topeka High; 1% named Topeka West. More than half had no opinion.
CS Survey, p. 42
- Respondents are more likely to express no opinions when asked about middle schools than when asked about high schools, but replies about middle schools appear to be related to minority enrollment.
CS Survey, p.
- Chase and Eisenhower Middle Schools are usually rated at the bottom of the middle schools. In 1983, Chase had 33% minority enrollment and Eisenhower 42%.
CS Survey, p. 3, 4, 33, 37, 43
- Chase (33%) and Robinson (29%) are named a little more often than Jardine (14%) or Landon (6%) for having modern facilities.
CS Survey, p. 43
- 7% of the respondents name Eisenhower (42%) as having the poorest facilities.

CS Survey, p. 43

- Most respondents favorably refer to elementary schools that had 1983 minority enrollments below the district-wide average of 26%.

CS Survey, p. 44, 45, 46

- With several exceptions, the schools regarded as having the poorest facilities tend to be those with large enrollments of minority students.

Survey, p. 46

- Most of the schools with only a small minority enrollment (e.g., Potwin, McClure, McCarter, Whitson) are seldom or never mentioned as having poor facilities.

Survey, p. 46

- See also Section VIII, C, infra.

- In 1972, a school board sponsored committee found that "a portion of the student population at Topeka High School, and in other of our secondary schools, are not involved in the mainstream of academic endeavor." The students involved were predominantly Black students.

Minutes of the Meeting, Apr. 14
& 20, 1972

- Under the DCAC LRMP Committee Proposal, the two elementary schools with the highest minority % (HP Central, Hudson) had inadequate media centers and multipurpose rooms. Neither had a music room or auditorium. The two elementary schools with the lowest minority % (Whitson, McClure) had adequate media centers and multipurpose rooms. Whitson had a music room and auditorium. The SOI staff agreed with these findings except argued that the Bishop media center was not adequate.

1983-1984 DCAC Final Report,
p. 60, 80

- The kids in Title I schools (predominately Black) "...were as much as 6 months and in some instances a year and a half to two years below grade level." This information was available to the Board.

Morris, former Board Member -
Deposition at 99.

- "The peer pressure exerted in those schools (Lafayette, Parkdale or Belvoir - predominately black) was not of a level that it was at Gage (where Morris' kids went)."

Morris, former Board Member -
Deposition at 106.

- Former Board Member Morris heard concerns about differential quality. The complaints "...would relate more in a general

way to a specific kind of problem."

Deposition at 16-7.

- The HEW allegation that most minority junior high school students attended inferior schools was considered true by former Board Member Morris. Deposition at 42. He disputed, however, the HEW allegation that most minority students have inadequate kindergarten rooms or a smaller library.

Deposition at 42-3.

- Highland Park students scored lower as National Merit Scholars.

Morris, former Board Member -
Deposition at 101-2.

No school by school comparison of facilities has been made since 1974.

Gray, former Superintendent of
Schools - Deposition at 128.

No comparative data on a school by school basis of teacher experience or schools in general has been made.

Henson, Associate
Superintendent of Education
Services - Deposition at 29-31,
16.

Board Member Bergkamp "automatically compares" expenditures or test scores or pupil-teacher ratio with the racial composition of the schools.

Deposition at 24.

The Board didn't evaluate test scores past elementary school until after state involvement.

Morris, former Board member -
Deposition at 101.

Associate Superintendent Tribbey never compared race and test scores of the Iowa Basic Skills Test; never presented figures to the Administrative Council or School Board.

Deposition at 20, 27, 29.

VIII

THE PLAINTIFF CHILDREN HAVE BEEN AND ARE BEING HARMED BY
SEGREGATION IN TOPEKA

A. The Supreme Court Found that Segregation is Inherently unequal and is harmful to educational development.
See Conclusions of Law, supra.

B. Defendants admit that segregation harms children.

- Racial segregation hurts Black and white children.
1975 CACE Report

- Segregation harms children by "denying students the intangible values of interaction and communication, limited their range of learning," and "by automatically implying the inferiority of one group, undermining motivation and limiting their range of learning."

Kansas, A Proposal for A
Technical Assistance Program,
July 8, 1970, p.2

C. Test scores show that harm has occurred.
Testimony of Robert Crain.

- As of 1976, test scores in Black schools were about 1/3 that in white schools.

Set 1, 16; Set 2, 10

D. Evidence is clear that segregation harms children.

- Speer surveyed Brown I witnesses, social scientists and others in 1967 to determine how their views had changed in the last fifteen years and concluded from the results that 1) there is a high degree of consistency among the three groups on all questions and 2) the basic views of fifty-nine of the country's leading behavioral scientists regarding the social and psychological evil of segregation have been very stable for fifteen years.

The Case of the Century by Dr.
Hugh W. Speer p. 219; Testimony
of Dr. Speer

- The first six questions of the survey all deal with the stability of social science theory applied to segregation for the past fifteen years. Almost without exception, the group that signed the social science statement appended to the appellants' brief in 1952 re-endorsed it in 1967.

Likewise, the expert witnesses stood by their testimony. With the same high consistency, a limited control group supported the trial participants of 1951-53.

The Case of the Century by Dr. Hugh W. Speer p. 241; Testimony of Dr. Speer

- According to the combined professional judgments of fifty-nine well-recognized authorities who have been prominent in academic circles for the past two decades, social science theory regarding the effects of segregation has remained highly stable. In other words, time has shown the label of "young, imprecise and changeful" to be unwarranted. One significant development is that the conclusions voiced in 1952 are now better supported by experimental evidence and more systematic theory.

The Case of the Century by Dr. Hugh W. Speer p. 241; Testimony of Dr. Speer

- The social science views condemning segregation have not only been stable for two decades and probably longer, but also highly consistent from expert to expert and discipline to discipline.

The Case of the Century by Dr. Hugh W. Speer p. 242; Testimony of Dr. Speer

- There are indications that social interaction of Black students with the rest of the student body is the critical factor leading to improved achievement among Black students in segregated schools.

Granam, Grace, Improving Student Participation, Washington, D.C., National Association of Secondary School Principals (1966)

- Testimony of Hugh Speer and Robert Crain.

CONCLUSIONS OF LAW

1. The Court has jurisdiction of this case. Brown v. Board of Education, 139 F. Supp. 468 (Kansas, 1955); Brown v. Board of Education, 84 F.R.D. 383 (Kansas, 1979).
2. Prior to 1954, Kansas had a state law permitting segregation in elementary schools in cities of the first class. All other school segregation was illegal. KS 72- 1724. Brown v. Board of Education, 347 U.S. 483 (1954); Brown v. Board of Education, 84 F.R.D. 383 (Kansas, 1979); Graham v. Board of Education, 153 Kansas 840 (1941).
3. As of 1941, it was illegal to provide segregated junior high schools in Kansas. Graham v. Board of Education, 153 Kansas 840 (1941), KS 72-1724.
4. USD 501 is the successor to and responsible for acts of prior school boards in the area for which USD 501 is now responsible. Brown v. Board of Education, 84 F.R.D. 383 (Kansas, 1974); Order, November, 1982.
5. SBE is the successor to and responsible for acts of prior state education agencies and officials including the Superintendent of Public Instruction. School Unification Act of 1963, 1963 Kan. Sess. Laws Ch. 393.
6. In 1954, the Supreme Court found that Topeka's elementary schools were unconstitutionally segregated. Brown v. Board of Education, 347 U.S. 483 (1954).
7. In 1955, the Supreme Court ordered Topeka to desegregate its elementary schools. Brown v. Board of Education, 349 U.S. 294 (1955).
8. In 1955, the District Court found that Topeka's Four Step Desegregation Plan did not provide for complete desegregation. Brown v. Board of Education, 139 F. Supp. 468 (Kansas, 1955).
9. The Governor, SBE, and USD 501 had and have a continuing duty to effectively desegregate the Topeka schools. Brown v. Board of Education, 84 F.R.D. 383, 400 (Kansas, 1979); Columbus Board of Education v. Penick, 443 U.S. 449 (1979).
10. The burden of proof is on the defendants to show that they effectively desegregated the schools. Swann v. Charlotte-Mecklenberg School District, 402 U.S. 1 (1971).
11. The Governor, SBE, and USD 501 had or could have sought authority to effectively desegregate the Topeka schools. See Findings of Fact, § III supra.
12. The Governor's failure to take to action to desegregate the

Topeka schools violates the Constitution. Brown v. Board of Education, 349 U.S. 294 (1955); Milliken v. Bradley, 418 U.S. 717 (1974).

13. The SBE's failure to take any action to desegregate Toeka's schools violates the Constitution. Brown v. Board of Education, 349 U.S. 294 (1955); Milliken v. Bradley, 418 U.S. 717 (1974).
14. Desegregation plans must include desegregation of faculty and staff. Singleton v. Jackson Municipal Separate School District, 419 F.2d 1211 (5th Cir., 1970); Swann v. Charlotte-Mecklenberg School District, 402 U.S. 1 (1971); Columbus Board of Education v. Penick, 443 U.S. 449 (1979).
15. Desegregation plans must eliminate all segregation "root and branch" and achieve "the greatest possible degree of actual desegregation." Green v. County School Board of New Kent County, 391 U.S. 430 (1968); Swann v. Charlotte-Mecklenberg School District, 402 U.S. 1 (1971).
16. Until a school district has completely desegregated, all actions taken must be taken with the intent of achieving desegregation. This includes the responsibility to adjust for demographic patterns and changes that predate a declaration that the system is desegregated. Lee v. Macon County Board of Education, 465 F.2d 369 (5th Cir., 1972); United States v. Board of Education of Valdosta, 576 F.2d 37 (5th Cir.) cert. denied, 439 U.S. 1007 (1978).
17. In Topeka today, a racially identifiable school is one that varies 15 percent from the percent of minority students system-wide and by looking at all other factors that identify a school as Black or white. Keyes v. School District No. 1, 413 U.S. 189 (1973); 380 F. Supp. 673 (Colo., 1974) aff'd in relevant part 521 F.2d 465 (10th Cir., 1975); Swann v. Charlotte-Mecklenberg School District, 402 U.S. 1 (1971).
18. Segregation in one part of a school system leads to a presumption of segregation throughout the system. Keyes v. School District No. 1, 413 U.S. 189 (1973); Brown v. Board of Education, 84 F.R.D. 383 (Kansas, 1979).
19. Pursuant to title VI and its regulations, any action by any defendant that has the effect of fostering segregation is illegal. 42 U.S.C. § 2000d; 34 C.F.R. Part 100; Guardians Ass'n v. CSC, 77 L.Ed.2d 886 (1983).
20. USD 501's rejection of actions that would have fostered desegregation was unconstitutional and illegal. Dauton Board of Education v. Brinkman, 443 U.S. 449 (1979).
21. SBE and USD 501 took actions that illegally and

unconstitutionally fostered segregation in Topeka. See Findings of Fact, ¶ VI, supra; and Conclusions of Law, supra.

22. USD 501 illegally and unconstitutionally failed to take actions to desegregate Topeka schools. Dauton Board of Education v. Brinkman, 443 U.S. 531 (1979).

Respectfully submitted,

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Dated: January 31, 1986



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February 1, 1986

Honorable Richard D. Rogers
United States District Court
United States Courthouse
444 S.E. Quincy
Topeka, Kansas 66683

Re: Brown v. Board of Education, T-316

Dear Judge Rogers:

This letter constitutes plaintiffs' monthly status report.

Findings of Fact. As the Court's order of November 12, 1986 required, plaintiffs are today sending defendants Proposed Findings of Fact and Conclusions of Law.

At the last Court conference in early December, counsel for the State Board complained about plaintiffs' delay in responding to a discovery schedule by the end of December as urged by the Court. The next step was for defendants to respond to plaintiffs' contentions. Defendants have not yet done so. Thus, pursuant to the agreement, plaintiffs Proposed Findings do not include facts that will be presented through fact witnesses. Those facts will be added as soon as defendants complete their agreed-upon discovery step.

Motions. Last week, plaintiffs wrote to request that they be given until February 7 to file reply papers on their motion to amend the complaint. With the Court's permission, we will file a reply at that time.

Plaintiffs have not yet received the Governor's proposed motion for summary judgement.

Trial Preparation. Defendants have not disclosed a single one of their contentions. The Governor and State School Board have not disclosed the name of a single fact or expert witness. The 501 School Board has said they will call at least two expert

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witnesses. One, identified, will testify in the area of polling. One, unidentified, will testify in the area of testing. Neither of the two expert reports promised by the city school board for mid-January have been received. None of the defendants has identified any document they intend to rely on, or any of their proof. Defendants have only deposed two of plaintiffs' five experts, one only today. These failures are particularly inexcusable because defendants have had the bulk of plaintiffs' evidence for almost a year and because trial is now only three months away.

Plaintiffs vigorously oppose any change in the dates set by this Court's November 12, 1985 order. We are, however, being prejudiced by defendants' inaction. Accordingly, plaintiffs propose the following additions to the November 12 order:

By February 15, 1986, defendants shall identify every witness they intend to call who will offer expert opinion, and the substance of the witness' testimony,

By February 28, 1986, defendants shall supply all expert witness reports, and plaintiffs shall identify all fact witnesses,

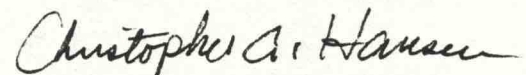
By March 15, 1986, defendants shall complete all depositions of plaintiffs' experts, and identify all fact witnesses,

By March 31, 1986, all parties shall complete all depositions of defendants' experts,

By April 15, 1986, all parties shall complete all depositions of fact witnesses, and a pretrial order shall be submitted to the Court.

We respectfully ask the Court to adopt these additions to the order so that trial can proceed as scheduled without prejudice to any party.

Sincerely,



Christopher A. Hansen

CAH:kw
Encl.

cc: All Counsel