DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20201

The Honorable
United States District Court
for the District of Kansas
P.O. Box 1697
Topeka, Kansas 66601

Dear Judge

As you will recall, in August, 1974, the Court instructed the parties in the matter of Unified School District 501 v. Mathews, Civil Action No. 74-160-C5 to negotiate the remaining differences between them. The Court also suggested the defendant Department of Health, Education, and Welfare report any findings resulting from its investigations to the Court. This letter constitutes that report.

On January 14, 1974 the Department's Office for Civil Rights initially stated its views as to the areas in which, in its opinion, the plaintiff School District was in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et. seq., by a letter to this School District from the Director of the Kansas City, Missouri Regional Office for Civil Rights, Mr. Taylor D. August. The letter noted two primary areas of alleged violation: continued segregation of students and distribution of educational resources such as physical plant, equipment, materials, and staff in such a manner as to deprive the District's minority students of an equitable share of these resources.

Mr. ... letter stated that, at that time, the School District continued to operate five schools whose disproportionately minority enrollment was, in the Department's view, "clearly the result of a former dual pattern of operation."

These schools were:

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

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

Since Mr. letter, as well as since this Court's instruction to resolve the differences between them, extensive discussions have been held between the parties. Despite a number of steps which have been, or will be taken by the school district, the Department is still presently unable to determine that the school district is in full compliance with Title VI of the Civil Rights Act of 1964.

Since the summer of 1974, the school district has closed the Monroe School, and has announced plans to close the Parkdale School. The Monroe School was closed at the end of the 1974-75 school year. Students previously assigned there, or who would have been assigned to that school had they been old enough to attend, were distributed between the Quinton Heights and Polk Schools. According to the School District, the Quinton Heights School had a student racial composition of 33% minority, the Polk School, 41% minority during the year following the closing of Monroe.

Parkdale Elementary School, which had a racial composition of 82.4% minority during the 1975-76 school year is scheduled to be put out of service as a regular elementary school at the end of the 1977-78 school year. After its closing, its students would be assigned to the Belvoir, Highland Park North and Lafayette Schools.

The School District estimates that this change would result in a minority enrollment of 74.6% at Belvoir, 53.7% at Highland Park North, and 70.7% at Lafayette.

The Central Park and Polk Schools are scheduled to close at the end of the 1978-79 school year. After receiving children as a result of these closures, the School District anticipates that the Lowman Hill School will have a 42.8% minority enrollment at the start of the 1979-80 school year.

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

Thus, by the start of the 1981-82 school year, three of the five schools which were originally the subject of the defendant's concern will either have been closed or are anticipated to be less than 50% minority in enrollment, assuming enrollments remain relatively stable. The Monroe School is already closed. Lafayette would have a 55.5% minority enrollment; Lowman Hill, 42.8%; Parkdale will be closed; Belvoir would retain an enrollment approximately 73.6% minority.

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

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

However, the length of time which this district plans to take to fully implement its desegregation plan renders it, in our view, both consititutionally unacceptable as well as unacceptable under the substantive requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d.

Where there has been an historical failure to fully implement a desegregation plan despite a considerable length of time during which opportunity to do so was available, a school district, under the law as announced by the United States Supreme Court in Alexander v. Holmes, 396 U.S. 19 (1969), must implement its desegregation plan fully and immediately. [The Topeka, Kansas Unified School District was the first school district in the United States to be formally apprised of its obligation to desegregate.]

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

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

The continued operation of such a substantial number of racially identifiable schools, or even a single one of them, renders such schools at least presumptive vestiges of a district's formerly officially dual school system, Swann v. Board of Education, 402 U.S.1 (1971).

However, despite the constitutional inadequacies of the District's current plan, it does not appear that the Department will be able to negotiate a fully adequate plan because of the constraints on transportation imposed by Section 215 of the "Equal Education Opportunities Act of 1974," P.L. 93-380, Title II, 88 Stat. 517, (August 21, 1974), (See, 20 U.S.C. 1713) and Section 209 of the "Departments of Labor and Health, Education, and Welfare Appropriation Act of 1976," P.L. 94-206 (January 28, 1976). Section 215 prohibits the Department from requiring a remedy which employs transportation of children beyond the school next nearest to the child's place of residence offering the appropriate grade level of instruction. Section 209 further prohibits the Department from requiring a remedy involving transportation beyond the school nearest a child's residence.

Since the Department's notification in January, 1974, the School District has unilaterally taken steps which eliminated the second area of concern noted above, namely the disparity between the educational resources, that had been made available to minority and to non-minority students. Thus, the Department is presently of the view that student segregation is the only remaining issue at this time.

I hope this letter is of assistance to you in resolving the matters before you.

Sincerely,

Director
Office for Civil Rights

ADMINISTRATIVE PROCEEDING
IN THE
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
NATIONAL SCIENCE FOUNDATION

RECEIVED
SEP 13 1976
SUPERINTENDENT'S OFFICE
#2

DOCKET NO. S-79
MOTION FOR DISMISSAL

IN THE MATTER OF UNIFIED SCHOOL DISTRICT NUMBER 501, SHAWNEE COUNTY KANSAS

and

STATE DEPARTMENT OF EDUCATION, STATE OF KANSAS
RESPONDENTS
Respondents

The Department of Health, Education, and Welfare, petitioners herein, by its General Counsel, respectfully moves the Administrative Law Judge, to dismiss the above entitled matter, without prejudice.

As grounds therefore, the General Counsel states:

That the Respondent School District adopted a plan to remedy the violations of Title VI of the Civil Rights of Act of 1964 alleged in the Notice of Oportunity for hearing in this matter.

RESPECTFULLY SUBMITTED,
FOR THE GENERAL COUNSEL,
Department of Health,
Education, and Welfare

DATED: September 9, 1976