April 3, 1986

Gary K. Sebelius
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Topeka, Kansas 66612

Dear Gary:

Since the Court has now put off the Brown trial until the fall, I thought it might be useful to raise the possibility of settlement with you. It has always seemed to me that Brown was a very settleable case. The minority population is relatively small. The segregation is neither total nor extreme. I detect few serious racial tensions and a great deal of good will in Topeka. The city is relatively compact, geographically, and there are fewer opportunities for "white flight" than in larger cities with developed suburbs. Our survey shows, I think properly, that Topekans are relatively satisfied with their schools and you new Board and new superintendent have an opportunity to address the questions raised by Brown free of past baggage. For all of these reasons, it seems to me that we ought to be able to find agreement on a method of improving education for all of Topeka's students.

Any settlement must be based on a few very clear principles. First, any plans ought to be developed with substantial and broad-based community involvement. One clear lesson of prior cases is that community involvement contributes to success. National Education Association, Three Cities That Are Making Desegregation Work, 1984. Second, one of the goals of a settlement ought to be to eliminate racial identifiability of schools. Assignments would need to be adjusted so that no school varied more than 15% from the average percent of minority students in Topeka. Similarly, the Board should adopt and implement a policy of nondiscrimination in assignment of teachers and staff. The system should adopt as a goal, and make progress toward, achieving a minority percent of faculty and staff in each school that roughly approximates the percent of students. Third, the district should provide compensatory programs to students previously assigned to minority schools. These programs would presumably be along the lines of those ordered in Milliken II, but should be specifically tailored to meet the specific deficits in Topeka. I think we do not know enough today to outline such programs. We may thus have to agree on the principle, a method of assessing specific needs, and a method for developing and

adopting a plan to meet those needs. Fourth, any changes should be made so that their impact does not fall disproportionately on minority students. In other words, a plan can't simply require black students to move into white schools, but must also require white to move. Fifth, the Board should adopt a formal policy that any future decisions will be race-conscious, that it that they will be designed to perpetuate integrated shcools. Finally, any plans must be accompanied by careful, court-supervised monitoring.

As you can see, a great deal of work would need to be done before a final decree could be entered. Plaintiffs would not be willing to adjourn the trial further to negotiate over the principles of a settlement. I would thus suggest that we first concentrate on reaching agreement on the principles. We have no interest in forcing the district to concede fault. We would, however, have to insist that 501 agree to the need for a plan that incorporates the principles. If that agreement could be reached, I think we could obviate the need for a pre-remedy trial and begin work immediately on the appropriate and best means for implementing the principles. That process will be somewhat time consuming because of the need for community involvement. I'd suggest that plaintiffs and defendants have initial joint community meetings. Then, your experts or staff, and our experts could sit down together and draft a plan or plans. That plan could then be presented to a wide range of community groups in Topeka for reaction and, hopefully, support. Once a plan is then agreed upon, defendants will need to implement it. This would presumably include fairly extensive preparation including training of relevant staff, counseling of affected staff, students, and families, and community education.

After the plan is begun, we ought to have in place a joint monitoring committee to observe implementation, assist the defendants where necessary, and ensure compliance. The committee should, among other things, look at the ways in which a Brown plan could be subverted including tracking and special education assignments, testing, and suspension and discipline. That examination would be solely for the purpose of ensuring that we haven't merely substituted some problems for others.

Monitoring in general would have to continue for several years, I would think, but hopefully at reduced intensity.

If, after this outline, you believe it would be fruitful to discuss this further, please let me know. I would be inclined not to include either State defendant at this stage, but would be open to your thoughts on that. Finally, you should know that the ACLU and I take the position that it is unethical to discuss fees at this stage of settlement. We would want to discuss that if we are able to first reach agreement on the substantive questions.

This letter is, of course, confidential and not to be disclosed to the Court, the public or the press without my permission.

I look forward to hearing from you.

Sincerely,

Chris Hansen

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