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The Honorable Joseph Califano, Jr.
Secretary, United States Department of
Health, Education and Welfare
330 Independence Avenue, S. W.
Washington, D. C. 20201

Re: Application for ESAA Waiver by the
School District of Kansas City, Missouri

Dear Secretary Califano:

The enclosed Application for Waiver of Ineligibility is hereby submitted on behalf of the School District of Kansas City, Missouri for your consideration pursuant to the Consent Order entered by the Honorable William H. Becker, Senior Judge of the United States District Court for the Western District of Missouri in Case No. 77-0238-CV-W-B, The School District of Kansas City, Missouri v. The United States Department of Health, Education, and Welfare, et al., which provides that:

"The Secretary of the Department of Health, Education and Welfare shall consider any application for a waiver of ineligibility submitted by the plaintiff pursuant to 20 U.S.C. §1605(d) (1) as if the application had been timely submitted prior to the end of Fiscal Year 1977."

The order further provides that the application shall be ruled upon within twenty days of its receipt.

A copy of the Integration Program itself, containing complete data regarding assignments, has been sent to the Office for Civil Rights pursuant to instructions from Dr. Herman Goldberg.

If additional information is needed in order to evaluate the waiver application, please notify us and we will see that it is made available.

Thank you for your consideration of this matter.

Sincerely,

Robert R. Wheeler
Superintendent of Schools

cc: Mr. David Tatel

CLERK U.S. DISTRICT COURT

Exhibits
P 2697 D

Case No. 77-0420-CV-W-4

Application for Waiver
of Ineligibility for
Emergency School Aid Act Funds

The School District of Kansas City, Missouri applied for two grants of Emergency School Aid Act funds during fiscal 1977. The District was notified by Herman R. Goldberg, Associate Commissioner for Equal Educational Opportunity Programs, by letter dated August 12, 1977, that it failed to meet the ESAA eligibility requirements on the basis of a December 22, 1976 Administrative Law Judge's initial decision "that your district had failed to dismantle its former dual school system in 1955 and had not done so at any time thereafter," and that "since 1955 the district had taken actions which intentionally maintained or increased segregation of students throughout the district."

Dr. Goldberg's letter concluded that:

"These findings of noncompliance with Title VI place the district in violation of section 185.43(d) of the ESAA regulations and ineligible for the funding sought in its pending application."

The applications were therefore denied, and the District was advised of its right to seek a "waiver" of ineligibility, pursuant to ESAA Regulations.

Section 185.44(f) of the ESAA Regulations provides that:

"In the case of ineligibility under §185.43(d), an application for waiver shall contain evidence that the practice, policy, or procedure prohibited by §185.43(d) has ceased to exist or occur and that the effects of such practices, policy, or procedure have been remedied or eliminated."

The Administrative Law Judge, Rollie D. Thedford, in his findings of fact, acknowledged that the policy, practice and procedure of assigning students to schools on the basis of race was discontinued by School Board action in March of 1955. (Finding No. 11, p. 67, Decision of Administrative Law Judge Rollie D. Thedford, Docket No. S-92).

Judge Thedford further ruled, however, that the change to a single set of neighborhood attendance zones in 1955 failed to eliminate all remnants of the past dual system, and that, since 1955, "The administration of the District's neighborhood school policy maintained and created segregation by reason of optional zones, liberal transfer policies, gerrymandering of attendance zones, irregular feeder patterns, and transportation policies." (Finding No. 11, p. 67, Decision of the ALJ).

In regard to the degree to which segregation existing in the Kansas City Schools at the time of the hearing was an effect of the practices, policies, or procedures found to have been discriminatory and therefore in need of being remedied pursuant to §185.44(f), Judge Thedford commented that the constitutional violation of the District was limited to "that degree of segregation which would have developed in the absence of other extrinsic causes, such as housing, lending policies, block busting, etc. . . ." (ALJ Decision Page 64.) Judge Thedford, anticipating the subsequent Supreme Court ruling in Dayton Board of Education v. Brinkman, 45 LW 4910 (1977), which requires an explicit finding identifying the specific existing segregation which was caused by actions found to have been intentionally discriminatory, implicitly ruled that the degree to which more than 50% of the minority students in the District were enrolled in schools which were more than 80% minority in 1974-75 represented the remaining "effects" which required remedy. (Judge Thedford, at page 64 of the Decision, commented: "We believe that our determination of the adequacy of desegregation of the District is consistent with the findings of the Austin case," obviously reading Austin to establish the rule which later was established by Dayton.)

The "adequacy of desegregation" determination to which Judge Thedford refers is found at page 76 of the opinion, wherein he holds:

"Assignment of at least fifty percent of the minority students to schools in which the minority enrollment is eighty percent or less . . . constitutes adequate desegregation."

Reading these two comments together, it is clear that while Judge Thedford believed the District guilty of past intentional acts of segregation, he also recognized that other factors, beyond the control of the district, were contributing factors and that the "constitutional violation" related to only a portion of the existing segregation.

Although the District believes the allegations of OCR regarding intentional segregatory acts by the District subsequent to 1955 are unwarranted, believes that all effects of the pre-1955 dual system were eliminated long ago, and appealed Judge Thedford's decision to the HEW Civil Rights Reviewing Authority a year ago (no decision has as yet been rendered), the District has nonetheless taken voluntary action to improve racial balance in the schools. Even assuming Judge Thedford's decision to have been correct, and the District denies that it was, actions have been taken or commitments herein made which rescind all policies, practices or procedures alleged to be discriminatory and which adequately correct what Judge Thedford found to be the effects of the constitutional violation.

Included as an Appendix to this Request for Waiver and incorporated herein is the enclosed School Integration Program for the School District of Kansas City, Missouri, adopted by the District on March 20, 1977, and implemented in the fall of 1977.

As study of the plan will indicate, the alleged segregatory optional zones, transfer policies, gerrymandering of attendance zones, irregular feeder patterns and transportation policies have been eliminated.

Optional Zones

The optional zones referred to by Judge Thedford have all been eliminated. The plan implemented contains two zones in which an option is available, but in each case the possible assignment offered as an option to the residential zone assignment is an integrative option. Each optional area is an all-minority residential area in which students are geographically close to a predominately minority school, but are offered an option to attend a more distant, better integrated school.

Transfer Policy

The district has adopted and implemented a stringent transfer policy which prohibits transfers having a negative effect on integration except in specified extreme cases when an exception may be granted. The policy encourages majority to minority transfers, providing free transportation for these voluntary transfers. The policy is administered by a racially balanced board of School District administrators. Records are available for review.

Gerrymandering of Attendance Zones

Attendance zones in the plan have been drawn on the basis of distance and building capacity, with adjustments to improve integration where possible. In no case has a boundary line been drawn in a manner which would cause a student to attend a more distant school when attendance at a school closer to his place of residence would create increased integration. In the limited number of cases in which a student is assigned to a school other than the one closest to his home, the assignment improves integration.

Irregular Feeder Patterns

Pursuant to the plan adopted and now in effect, irregular feeder patterns are no longer utilized in the District. Seventh grades have been removed from all elementary schools, and no elementary or junior high attendance areas are bisected by secondary school attendance areas.

Transportation Policies

As study of the plan will indicate, none of the District's transportation is segregative in effect; transportation is utilized to accomplish increased integration.

Elimination of Effects of Past Alleged Discriminatory Actions

As indicated by the above sections, the District has, through past actions and through adoption of the plan outlined in the Appendix, discontinued the policies, practices and procedures found to have caused segregated schools.

Judge Thedford's determination that effects of the past allegedly discriminatory actions remained was made on the basis of statistical evidence relating to the 1974-75 school year. At that time, according to Judge Thedford's findings, the minority enrollment was 62.2%, and 80% of the minority students were enrolled in schools which were 90% or more minority.

At the present time, after implementation of the Integration Program, the District has a 68.6% minority enrollment. In spite of the 6.4% increase, 44% of the minority students are now enrolled in schools less than 80% minority -- 47% at the high school level, 48% at the junior high level, and 39% at the elementary level (kindergarten and special education students were not included in pairing and clustering, decreasing the statistical results at the elementary level.) These results were achieved in the following manner:

Senior High

Improved integration at the senior high level was accomplished through one school closing, boundary changes, changes in feeder patterns, and voluntary transfers with free transportation.

Of the ten senior high schools and one magnet secondary school in the District, five are now within 20% of the District minority enrollment of 68.6% -- one is 55%, one 49.6%, one 79.3%, one 75%, and one 74%. Two other schools have increased their minority percentage by 20% or more -- one from 23% to 44.4% minority, and one from 4% to 29.9% minority.

Prior to implementation of the plan, one high school was 98% minority and four were 99% minority. One of the 99% minority schools, Manual, was closed and approximately 1,165 students assigned elsewhere on the basis of geographic assignment zones. The school had been a "temporary" arrangement since 1969 when the former Manual building was replaced by a District-wide magnet school, the Kansas City Vocational Technical Center. Reassignment under the 1977 plan allowed students to enroll in buildings closer to their homes, in most cases to better integrated schools.

Approximately 25% of the students at Central High School were zoned into other schools or reassigned because of feeder pattern changes. Central remains 99% minority, but now enrolls 425 fewer students.

Lincoln, another 99% minority school, was also rezoned somewhat and now serves 172 fewer students. Plan projections had anticipated a 20% reduction in Lincoln enrollment, a decrease of 247 students, but enrollment exceeded expectations.

Southeast, a 98% minority school, was projected to lose approximately 25% of its enrollment (592 students) through rezoning and school feeder pattern changes. However, actual enrollment was only 327 fewer students than last year, an approximately 15% reduction in enrollment.

Paseo, a 99% minority school, is the only one of the five high schools to remain substantially unchanged in 1977-78, enrolling 1,560 students as compared to 1,565 in 1976-77, and remaining 99% minority.

Two high schools whose enrollments were near the District-wide percentages prior to implementation, West and Westport, are now 79% and 75% minority, remaining close to the present high school 71.1% minority percentage.

The existing magnet school, the Kansas City Vocational-Technical Center, has a 74% minority enrollment as compared to 73% last year.

Under the present stage of implementation, approximately 47% of the minority secondary students in the District attend schools which are less than 80% minority.

Junior High Schools

At the junior high level, improved integration was achieved through boundary changes, changes in elementary school feeder patterns, establishment of four additional junior high schools, and voluntary transfers with free transportation. The District now has eight junior high schools in the 30% to 80% minority range; four remain more than 80% minority.

In 1976-77, only 20% of the junior high minority students were enrolled in schools which were less than 80% minority. Under the new plan, in spite of an increase in minority percentage from 63.2% to 66%, 48% of the minority junior high students are now enrolled in schools which are less than 80% minority.

Elementary Schools

Increased integration at the elementary school level has been achieved through boundary changes, voluntary transfers with free transportation, school closings, and pairing and clustering of schools. Although minority enrollment at the elementary level has increased from 64.7% in 1976-77 to 68% in 1977-78, the number of minority children attending racially isolated schools has been significantly reduced. In 1976-77, 19% of the minority elementary students were in schools less than 80% minority. After implementation of the plan, 39% of the minority students in the District are enrolled in schools which are less than 80% minority.

Commitments for Additional Integration

As a part of the waiver application, the District affirms that if ESAA funds are granted, it will proceed with plans for establishing magnet schools as a means of building upon and increasing the integration accomplished through the plan already implemented.

The one District-wide magnet school presently in operation has been a successfully integrated school for more than five years. The District has reason to believe that Kansas City offers a good opportunity to succeed with other magnet school forms, and has committed itself to their establishment if ESAA funds are made available. The District believes that in order to successfully operate magnet schools, time and funds must be allowed for research and planning. Once this is done, an estimate of the probable degree of increased integration can be given to HEW and the District can proceed in its attempts to achieve the goal. The District would like to establish such a center at Lincoln High School in order to eliminate the nearly all-minority status of the one high school which was a black school in the dual school system, as well as at other locations deemed feasible after research.

The District is also willing to expand the program of voluntary transfers to improve integration. Since the 1975-76 school year, students have been allowed to transfer from a school in which their race was in the majority to one in which they would be in the racial minority, with free transportation provided by the District. The program has been a significant factor in improving integration. Increased funding could allow expansion of the program through activities to acquaint students and parents with other schools and to encourage such voluntary transfers.

The District is of the opinion, reinforced by education and desegregation consultants, that the steps already taken and the additional steps proposed constitute the best possible plan for achieving the maximum degree of stable, educationally sound integration in this inner city district. The District is presently plaintiff in a federal court

action through which it seeks to accomplish integration of Kansas City area schools on a metropolitan basis, the only feasible means of actually eliminating the racial isolation which exists in the Kansas City District as a whole. Until or unless this can be accomplished, the District believes that it has an absolute obligation to avoid actions which it believes would have a negative effect on the progress it is attempting to accomplish in the areas of improved integration and improved education. The attitude it holds in this regard has been strongly reinforced by the Report of the National Conference on School Desegregation in Metropolitan Areas sponsored by HEW in March of 1977. Kansas City has experienced most of the problems of inner city schools discussed at that conference. It is a central city, predominately minority district with a declining enrollment and declining tax base, surrounded by suburban districts with fewer problems and greater resources. Geography and patterns of governmental boundaries make escape from the central city school district extremely easy in the Kansas City area. The percentage of middle class black and white students is decreasing, and the percentage of disadvantaged students needing special help is increasing.

The ever increasing percentage of minority enrollment in the Kansas City District, regardless of cause, is a factor which the District is compelled to consider in any integration plan. An all-minority district is desegregated only in theory. A successful program of integration can be achieved only if this as well as all other factors peculiar to this District are considered. The District has attempted to obtain a delicate balance, based upon studies of enrollment patterns in its own schools and its best perception of the practicalities of the situation, between achievement of maximum integration and preserving the stability of its present racial percentages. The changes which have been implemented cannot objectively be viewed as "minimal." The changes have been extensive, affecting the entire district and requiring major adjustments. A significant percentage of enrollment was lost with implementation of this plan, but, because of the careful planning, the enrollment retained was near plan projections.

It has been suggested that at least one of the remaining 98-99% minority high schools be "integrated" by reassignment of at least 10% non-minority students to a selected school. Examination of the statistics indicates the practical difficulties of such an exercise. The District presently enrolls only 4,036 non-minority high school students, a drop of 1,036 (20%) from the 1976-77 school year. Of this number 1,168 are enrolled at Van Horn High School, a school which is located in the City of Independence, separated from other high schools in the District by geography and by an industrial area. Van Horn enrollment jumped from 4% to 29.9% minority under the plan implemented this year, with a decrease in the projected non-minority enrollment of approximately 150 students. Opportunities for further integration

involving that area of the District are extremely limited. Of the remaining non-minority high school students, 2,050 are enrolled in schools which are 50% or more minority, and the final 818 are enrolled at Northeast High School, which is 44.4% minority. Reassignment of non-minority students from these schools in numbers sufficient to accomplish meaningful integration in any additional school would, in the opinion of the District, its consultants, and many experts in the area of desegregation, raise the minority percentage at the remaining schools to a level which would create a substantial risk of destroying the degree of integration which has presently been achieved.

With the affirmative steps which have now been taken, the schools of the Kansas City District are clearly better integrated, considering the housing patterns in this and most urban areas, than they would have been in the absence of the pre-1955 dual system and the alleged subsequent discriminatory actions of the District. The "policies, procedures and practices" complained of are no longer in effect, and the "effects" have been corrected. On this basis, a waiver of the finding of ineligibility is requested.

