



THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE
WASHINGTON, D. C. 20201

March 24, 1978

Mr. Robert Wheeler
Superintendent
Kansas City School District
1211 McGee Street
Kansas City, Missouri 64106

Dear Superintendent Wheeler:

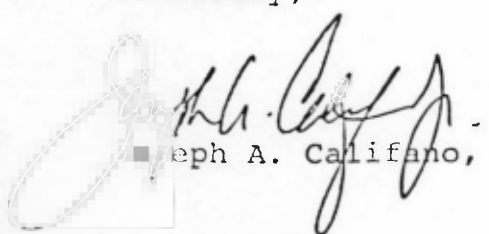
I am pleased to inform you that I have granted a waiver of ineligibility for assistance under the Emergency School Aid Act (ESAA) to the Kansas City School District, Kansas City, Missouri.

I have taken this action on the assurances by your district that it will conform to the requirements of the ESAA statute and Regulation and that it will comply with the terms of the agreement between this Department and the Kansas City School District upon which this waiver is based. The terms of this agreement, which I have approved and incorporated in this letter by reference, are set forth in the enclosed report from Mr. David S. Tatel, Director of the Office for Civil Rights (HEW).

The appropriate Congressional Committees have been advised of my determination to grant the waiver of ineligibility. I congratulate you on the positive actions taken by your district which have made this waiver possible. I can assure you that this Department stands ready to be of assistance at all times to help further the goals of equal educational opportunity for all students.

If you desire further assistance or clarification of the terms of this waiver, please do not hesitate to contact Mr. Tatel or other appropriate officials of this Department.

Sincerely,


Joseph A. Califano, Jr.

Enclosure

cc: Chief State School Officer
Regional Commissioner/OE
Director, Office for Civil Rights, Region VII

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OFFICE OF THE SUPERINTENDENT



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

Waiver of Ineligibility for Assistance Under the
Emergency School Aid Act to Kansas City School District,
Kansas City, Missouri

On August 12, 1977 and September 14, 1977, Herman R. Goldberg, Associate Commissioner, Equal Educational Opportunity Programs, Office of Education, upon the advice of the Office for Civil Rights, informed the Kansas City School District that it was ineligible for ESAA assistance because it had engaged in practices which were in violation of the requirements for eligibility contained in the Act and the implementing regulation. Specifically, the school district's noncompliance is the result of discrimination on the basis of race in the assignment of students to schools by not dismantling its former dual system and by adopting various policies and procedures which operate to segregate further the system in violation of 45 CFR 185.43(d) of the regulation. (Section 706(d)(1)(D) of the Act (20 U.S.C. 1605(d)(1)(D))).

On April 14, 1975, after conducting a full on-site investigation, OCR notified the district that it was in violation of Title VI of the Civil Rights Act of 1964 for (1) failing to dismantle its former dual system and to eliminate all vestiges of that system, (2) adopting various policies and procedures which operated to segregate further that system, and (3) affording educational opportunities to minority students in predominantly minority schools that were inferior to the educational opportunities provided in nonminority schools.

After OCR rejected a desegregation plan submitted by the district on June 10, 1975, an administrative hearing was held in early 1976. On December 22, 1976, the Administrative Law Judge (ALJ) entered an Initial Decision and Order which found that the district failed to dismantle its former dual school system in 1955 and that it had not done so at any time thereafter. The ALJ also found that since 1955 the district had taken actions which intentionally maintained or increased segregation to students throughout the district. With regard to the Department's third allegation concerning failure to pro-

vide equal educational services, the ALJ found for the district. Both the district and the Department have filed appeals from the ALJ's Initial Decision with the HEW Reviewing Authority (Civil Rights).

The facts which supported the ALJ's finding of noncompliance with Title VI also supported the findings of ineligibility under ESAA set forth in the letters of August 12, 1977 and September 14, 1977. These facts established a violation of Section 185.43(d) of the regulation.

Section 185.44(f) of the regulation provides that, when a district is found in violation of Section 185.43(d), it must submit the following information with its application for a waiver of ineligibility:

. . . evidence that the practice, policy or procedure prohibited by Section 185.43(d) has ceased to exist or occur and that the effects of such practice, policy, or procedure have been remedied or eliminated.

A new desegregation plan ("Interim Plan C"), approved by the district's Board of Directors on March 20, 1977, and implemented at the beginning of the 1977-78 school year, was submitted with the district's waiver application. "Interim Plan C" had been submitted earlier to attain compliance with Title VI.

In a letter dated February 22, 1978, OCR notified the district that "Interim Plan C" would be adequate to ensure compliance with Title VI if it were modified to include the following provisions:

1. Effective September, 1978, nonminority students enrolled at Lincoln High School will be no less than 15 percent nor more than 30 percent of the student body. The district may assign students to Lincoln using the "magnet" school device or such other plan or combination of plans selected by the Board, provided only that the target percentage of nonminority students is achieved.
2. Beginning with the 1978-79 school year all site selections for new educational programs offered at the elementary level will be made to promote desegregation of the overwhelmingly or entirely black schools.

3. Effective the 1978-79 school year, the policy or practice of permitting senior high school students a transfer option solely because of their senior status shall be discontinued.
4. The policies and practices controlling faculty assignments, recorded in the school district's 1973 ESAA waiver assurance, shall be fully operative. The district shall establish administrative procedures to obtain compliance with such policies at each school of the district.
5. Effective 1978-79, the district will implement and maintain procedures which ensure that each health and child care transfer is not used as a device for inhibiting desegregation.
6. The district will continue nondiscriminatory optional zones and ensure that all students assigned within the optional zones remain in that school assignment unless application for transfer is made through the district's intra-district transfer procedure.

On February 23, 1978, the district's Board of Directors adopted a resolution approving the modification of "Interim Plan C" set out in OCR's letter of February 22, 1978.

As modified, the district's desegregation plan has been accepted by OCR as adequate to remedy the Title VI violations found by the ALJ. The modified plan also meets the requirements of the Emergency School Aid Act and Section 185.44(f) of the regulation.

Based upon the foregoing, we have concluded that the district has met the requirements of the Emergency School Aid Act. The waiver of ineligibility should be granted on the basis of the assurances and information in the district's ESAA application for waiver as well as the assurances in the district's ESAA application (as required by 45 CFR 185.13(1)(5)) that the district will comply with the terms of the agreement upon which this waiver is based.

Cynthia G. Brown for

David S. Tatel