IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

ROE, et al., Plaintiffs vs. BOARD OF DIRECTORS OF SEATTLE SCHOOL DISTRICT NO. 1, et al., Defendants	NO. 839530 838291 PETITION TO SUBMIT MEMORANDUM AS AMICUS CURIAE

The Attorney General, on behalf of the Secretary of the United States Department of Health, Education and Welfare, hereby petitions for an order granting it leave to submit the attached memorandum as amicus curiae in support of defendants in the above-entitled matter.

Respectfully submitted,

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DATE: June 1978

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

ROE, et al., Plaintiffs, vs. BOARD OF DIRECTORS OF SEATTLE SCHOOL DISTRICT No. 1, et al., Defendants.	NO. 839530 838291 PETITION TO SUBMIT MEMORANDUM AS AMICUS CURIAE

INTEREST OF THE UNITED STATES AS AMICUS CURIAE

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d-4, requires that each federal agency which is empowered to extend federal financial assistance to any program or activity, ensure that recipients of federal funds do not discriminate on grounds or race, color or national origin.

The Office for Civil Rights (OCR) of the United States Department of Health, Education, and Welfare (HEW), is particularly charged with obtaining compliance with Title VI by local educational agencies receiving federal funds, and with withholding such funds from those agencies which are found to be in non-compliance with the Act. Although Title VI has as its ultimate sanction, fund termination, the principal thrust of the Act is on voluntary compliance.

In carrying out its responsiblities under Title VI, OCR is vested with jurisdictional authority over 31,000 public and private elementary and secondary schools. Minority students protected by Title VI number over 7 million. Since its inception, OCR has conducted compliance reviews and obtained desegregation plans from thousands of school districts. When school districts fail to submit voluntary desegregation plans after findings of non-compliance have been issued, OCR refers such cases for enforcement proceedings either to the Department of Justice or to the General Counsel's Office, Civil Rights Division, HEW.

The Seattle School District has voluntarily developed a comprehensive and creative desegregation plan which is intended to significantly reduce segregated patterns of student assignment in the Seattle public schools. The plan is consistent with the principles embedded in Title VI and could well provide a model for other similarly sized cities where problems of racial isolation of minority students in schools are at least as acute as they are in Seattle. As a consequence of the School Board's voluntary action, OCR has concluded that a compliance review of the Seattle School District, previously scheduled to commence in the fall of 1978, is not necessary at this time.

For these reasons, HEW believes it is important that the Seattle School District desegregation plan be implemented this fall. Plaintiffs' complaint should not be permitted to delay or frustrate this schedule.

We also respectfully submit that OCR's extensive experience in enforcing Title VI, puts it in a unique position to offer expertise and assistance to the Court in dealing with the legal and educational issues underlying the instant ligitation.

WHEREFORE, petitioner, the United States, for the Secretary of the Department of Health, Education, and Welfare, by and through its undersigned counsel, hereby petitions this Court for authority to submit the attached memorandum as amicus curiae in support of defendants in the above-captioned case. This petition is based on the affidavit of Marlaina Kiner, Director, Office for Civil Rights, Region X (Seattle), filed herewith.

Respectfully submitted,

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DATE:

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

ROE, et al.,	)	
Plaintiffs,	)	NO. 839530 838291
vs.	)	
BOARD OF DIRECTORS OF SEATTLE SCHOOL DISTRICT	)	ORDER PERMITTING SUBMISSION OF AMICUS CURIAE MEMORANDUM BY UNITED STATES
Defendants.	)	

The matter of submission of an amicus curiae memorandum in support of defendants' position in the above-entitled matter came before the Court through the petition and affidavit of the United States dated June_____, 1978. Having considered the petition, the Court in the exercise of its discretion determines that consideration of the position of the United States will assist in resolving the present matter, and it is therefore

ORDERED

That the Petition of the United States to file and have considered by this Court its amicus curiae memorandum in support of defendant's position in the above - captioned matter is hereby GRANTED.

_____

JUDGE

DATE: June_____, 1978.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

ROE, et al.,	)	
	)	NO. 839530
Plaintiffs	)	838291
	)	
vs.	)	
BOARD OF DIRECTORS OF SEATTLE SCHOOL DISTRICT NO. 1, et al.,	)	

MEMORANDUM OF THE UNITED STATES AS AMICUS CURIAE

STATEMENT

The Office for Civil Rights' concern with racial segregation in the Seattle school system had its genesis in 1975 when the School District submitted to HEW an application for a grant of federal funds under the Emergency School Aid Act, (ESAA), 20 U.S.C. 1601, P.L. 92-318. In assessing the application, HEW found that the School District was assigning disproportionate numbers of minority teachers to schools with predominantly minority students enrollments. HEW determined that this practice was violative of ESAA and its implementing regulation, 45 C.F.R. Part 185. Accordingly, on June 12, 1975, the Seattle School District was found ineligible for ESAA funding. 1/

Shortly thereafter on July 3, 1975, a civil complaint was filed in the United States District Court for the District of Columbia, on behalf of a class of minority students in elementary and secondary public schools in the northern and western states. Brown v. Weinberger, 417 F. Supp. 1215 (D.D.C. 1976).

1/ The School District's failure to provide adequate educational opportunities for students whose principal language was other than English, was also deemed to be a violation of ESAA. See 45 C.F.R. 185.51 et seq. See also Lau v. Nichols, 414 U.S. 563 (1974).

Counsel for plaintiffs, the Legal Defense Fund, National Association For the Advancement of Colored People and the Center for National Policy Review, alleged that HEW had abandoned its Title VI duty to assure that no student or faculty segregation on the basis of race or national origin was practised in the northern and western public school systems receiving federal financial assistance. 2/ Specifically, as the first cause of action, plaintiffs charged HEW with failing to conduct compliance investigations where it possessed statistical data indicating that in the 50 largest majority with white northern and western school districts, most minority students were attendings schools with 50 percent or more minority enrollment. Attached to the complaint was a chart listing the Seattle School District among those 50 districts, and showing that 55.6 percent of minority student enrollment in Seattle were assigned to schools which ranged from 50 to 100 percent minority in the 1972-73 school year.

That same month, as a consequence of the determination that the Seattle School District was in violation of ESAA, OCR, Region X (Seattle), concluded that Seattle's faculty assignment practices also violated Title VI. Accordingly, a letter of findings to that effect was issued to the District on July 28, 1975. 3/

After negotiations between OCR and School District officials failed to produce an acceptable resolution of this issue, formal Title VI administrative proceedings were initiated on March 1, 1976.

2/ The complaint in Brown v. Weinberger was patterned after a similar action filed by the same plaintiffs in 1970, charging HEW with failure to enforce Title VI in the 17 southern and border states. See p. 4. n. 4, infra.

3/ A letter of findings charging the School District under Title VI, with a failure to provide adequate bilingual educational services to non-English speaking students issued in September 1975.

Negotiations continued even after that date, and in May 1976 a settlement was reached in which the School District agreed to reassign its faculty on a non-racial basis. 4/

Although negotiations focused on the District's faculty assignment practices, OCR representatives were mindful of the relationship between those assignments and racially imbalanced student populations in the Seattle schools. In fact, HEW reports showed that segregation was increasing. OCR also was aware that the District was attempting through a variety of voluntary desegregation programs to reduce this growing racial imbalance. For a number of years, the school district supported a voluntary transfer program by which students would be transported to any school in which their race was the minority. Compulsory assignments to middle schools were made and magnet schools were developed. The School Board's subsequent resolution to eliminate racial imbalance through a comprehensive, mandatory desegregation plan stems in large part from the Board's recognition that voluntary measures to achieve intregration were not sufficiently successful.

Then, on April 20, 1977, the National Association for the Advancement of Colored People (NAACP), Seattle Branch, filed a complaint with OCR, Region X, alleging that actions of the Seattle School District were continuing or intensifying racial segregation in the city's public schools in violation of the Fifth, and Fourteenth Amendments and Title VI. The Regulation promulgated by HEW which implements Title VI, requires that OCR promptly investigate complaints alleging discrimination on the basis of race, color or national origin by recipients of federal financial assistance. 45 C.F.R. 80.7(c). Additionally, under the terms of a court order entered in Adams v. Mathews, _____F. Supp._____(D.D.C. June 14, 1976), OCR was obliged to process each new complaint within

4/ An agreement with respect to the provision of bilingual educational services was reached on June 11, 1976.

a period of time not to exceed 225 days. 5/ Given its obligations under the Title VI Regulation and the Adams order, and bearing in mind the charges raised in the Brown complaint, OCR, in April 1977, scheduled a large-scale compliance review of the Seattle School District to commence in the fall of 1978.

Subsequently, Marlaina Kiner, OCR Regional Director in Seattle, was advised by the School District that it had adopted a resolution declaring that racial imbalance would be eliminated in the District's schools by the fall of the 1979-80 school year and that studies would commence to develop desegregation strategies. 6/ Thereafter, copies of a proposed desegregation plan dated December 2 and a revision dated December 13, 1977 were forwarded to OCR for its information. After careful review, the Regional Director concluded that the plan promises to significantly reduce segregation in the Seattle school system and is consistent with the objectives of Title VI. Amendments to the plan, adopted by the School Board at its March 8, 1978 meeting, do not appear to alter this conclusion. Accordingly, HEW has entered into a

5/ In 1970, the Legal Defense Fund commenced litigation charging HEW with willfully refusing to enforce Title VI against educational institutions in the seventeen southern and border states. One of the many court orders entered in this litigation affirmed an agreement among the parties that OCR would investigate each complaint within 225 days from the date of receipt. Although the Adams Order initially applied only to the formerly de jure states, OCR decided to apply the same timeframes to its complaints nationwide. In December 1977, a revised order was entered in Adams, but the complaint timeframes were unchanged. The Adams Order was entered verbatim as a separate consent order in the Brown case in January 1978, thereby officially extending the timeframes to all complaints.

6/ The Seattle Plan, involving a revision of attendance zones and pairing, clustering or closure of schools, calls for implementation over a period of two school years. See Resolution 1977-9, attached as Exhibit 3 to Seattle Branch, NAACP, Petition to Intervene as Additional Defendants (hereinafter Petition to Intervene)

Memorandum of Understanding with the School District (attached to the Affidavit as HEW Exhibit A) in which the Department agrees to postpone its previously planned compliance review subject to implementation of the Seattle desegregation plan.

SUMMARY OF ARGUMENT

The United States Department of Health, Education and Welfare urges this Court to grant defendants', Seattle School District, Motion for Summary Judgment, for in so doing the School District will be permitted to implement a desegregation plan which promises to significantly reduce racial segregation in its schools.

We show below that it is well settled that mandatory desegregation plans such as Seattle's are lawful. Even absent a showing of prior discrimination, constitutional guarantees of equal protection are not offended when school boards utilize race-conscious techniques to design mandatory desegregation plans which are intended to ameliorate conditions in racially - segregated schools.

We further submit that Seattle's desegregation plan is totally consistent with the objectives of Title VI of the Civil Rights Act of 1964 and the Emergency School Aid Act. The Regulations interpreting these statutes expressly sanction voluntary efforts by recipients of federal financial assistance.

The Seattle School District hopes to accomplish voluntarily what many school systems accept only after resistance. The District's desegregation plan promises to benefit all students by providing a racially and culturally diverse school environment, thereby effectuating the principles at the core of the Fourteenth Amendment and Title VI. Accordingly, the plan warrants the endorsement of this Department.

ARGUMENT

I. THE SEATTLE SCHOOL DISTRICT SEGREGATION PLAN IS FULLY CONSISTENT WITH THE FOURTEENTH AMENDMENT

A. Judicial Precedent Uniformly Upholds The Authority Of School Boards To Implement Desegregation Plans

In the landmark case, Brown v. Board of Education, of Topeka, Kansas, 347 U.S. 483 (1954) the Supreme Court found that

> Segregation of white and colored children in public schools has a detrimental effect upon colored children .... A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore has a tendency to [retard] the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system. Id. at 494.

Although Brown involved de jure segregation, its conclusion as to the detrimental effect of racial separation is unequivocal: separate educational facilities are inherently unequal. The distinction between de jure and de facto segregation assumes significance only when a court's coercive authority must be invoked. Here, however, the issue is not what the Seattle School District must be compelled to do, but what it may do voluntarily within the permissible scope of the Fourteenth Amendment and Title VI.

In recognition of the principles at the core of Brown, federal and state courts have given abundant support to the proposition that school boards may determine that racial diversity is a sound educational goal, and that to achieve this goal, mandatory desegregation plans are valid and necessary. This is true even where there has been no showing of prior discrimination. 7/ As the Supreme Court observed:

> ...school authorities have wide discretion in formulating school policy, ... that as a matter of educational policy, school authorities may well conclude that some kind of racial balance in schools is desirable quite apart from any constitutional requirements. North Carolina State Board of Education v. Swann, supra, 402 U.S. at 45.

B. As A Matter of Educational Policy, School Boards May Employ Racial Factors To Achieve Positive Educational Goals

The goal of achieving a multi-racial student society cannot be pursued under most circumstances without taking into account racial considerations. However, it has been held constitutionally acceptable

7/ See e.g., North Carolina State Board of Education v. Swann, 402 U.S. 43, 45 (1971); McDaniel v. Barresi, 402 U.S. 39, 41 (1971); Boston Chapter, NAACP Inc. v. Beecher, 504 F. 2d. 1017, 1027 (1st Cir. 1974) cert. denied, 421 U.S. 910; Offerman v. Nitkowski, 378 F. 2d. 22 (2nd Cir. 1967); Springfield School Committee v. Barksdale, 348 F 2d. 261 (1st Cir. 1965); Deal v. Cincinnatti Board of Education, 369 F. 2d 55, 61 (6th Cir. 1966); Citizens Against Mandatory Busing v. Palmason, 495 P. 2d 657 (Sup. Ct. Wash. 1972); State ex rel Citizens Against Mandatory Busing v Brooks, 492 P. 2d 536 (Sup. Ct. Wash. 1972).

for school boards to consider racial factors in taking steps to increase racial diversity in schools, even where they may have no constitutional obligation to do so:

> School authorities are traditionally charged with broad power to formulate and implement educational policy and might well conclude for example, that in order to prepare students to live a pluralistic society each school should have a prescribed ratio of Negro to white students reflecting the proportion for the district as a whole. To do this as an educational policy is within the broad discretionary powers of school authorities; [even] absent a finding of a constitutional violation... Swann v. Charlotte Mecklenburg Board of Education, 402 U.S. 1, 16 (1971)

See also, Offerman v. Nitkowski, supra; Deal v. Cincinnatti Board of Education, supra at 61; Springfield School Committee v. Barksdale, supra at 263; State v. Brooks, supra at 542 n3.

Resort to racial criteria by state authorities even without a finding of de jure discrimination has recently been validated in United Jewish Organizations of Williamsburg, Inc. v Carey, 97 S. Ct. 996 (1977). There, the Supreme Court rejected a challenge to the constitutionality of a state statute using racial criteria in legislative redistricting, although no past discrimination was shown, where it was designed to assure non-white majorities in certain districts. The Court stated that "racial awareness is not the...equivalent of discriminatory intent"...nor is "permissible use of racial criteria...confined to eliminating the effects of past discriminatory...treatment" where such use is reasonably related to the advancement of a valid state interest. United Jewish Organizations, supra at 1017 (Stewart J., concurring opinion).

If the Fourteenth Amendment does not "mandate any per se rule against using racial factors in districting and apportionment" United Jewish Organizations, supra at 1007, it certainly cannot mandate any per se rule against the use of racial criteria in eradicating racial imbalance in public schools.

C. Seattle's Desegregation Plan Serves Compelling Educational and Public Policies.

In fulfilling its responsibility to formulate sound educational policy, the Seattle Board of Education, on December 14, 1977, approved Resolution 1977-28 which states in pertinent part:

> ...the Board of Directors of Seattle School District No 1 has determined that the best interests of the children of Seattle School District No 1 will be served by providing all students with the opportunity for a quality education in a multiracial setting;.... so as to better prepare students to live in a pluralistic society;.... 8/

The detrimental effects of racial isolation upon students white and black has been thoroughly documented. See 1 U.S. Commission on Civil Rights, Racial Isolation in the Public Schools 114 (1967); Senate Select Committee on Equal Educational Opportunity, Part III, Inequality in Education, 95, Sen. Rep. No. 92-000. 92nd Cong. 2d Sess. (1972); J. Coleman et al., Equality of Educational Opportunity, 298-304 (1966); See also Hobson v. Hansen, 269 F. Supp. 401 (D.D.C. 1967), aff'd sub nom Smuck v. Hobson, 408 F. 2d 175 (D.C. Cir. 1969).

8/ See Resolution attached as Exhibit 4 to NAACP Petition to Intervene at 12.

Moreover, the responsibility for creating segregated school conditions is largely irrelevant since the educational, psychological and social disadvantages to minority students clustered in racially isolated schools are the same whether those schools are segregated de facto or de jure.

Therefore, the Seattle desegregation plan, which causes no harm to white students United Jewish Organizations, supra at 1013, but rather is designed to benefit all students by providing a culturally diverse school environment, implements a reasonable educational goal, and thus, is constitutionally permissible.

Plaintiffs, parents of children attending Seattle public schools, complain, however, that "they and their children will be substantially effected [sic] by being involved with the fixed assignments or mandatory busing program adopted by Seattle School District Number One."

The principal techniques proposed by the Seattle School District to implement its desegregation plan involve redefining attendance zones, and pairing, clustering and closure of schools. Student reassignments made deliberately to accomplish integration will necessarily involve busing. 9/ These corrective measures

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9/ See NAACP Petition To Intervene, Exhibit 4.

are permissible tools in light of the objectives sought and have received judicial sanction. Swann v. Charlotte Mecklenburg Board of Education, supra at 23-25. Moreover, the Supreme Court of this State has made it clear that no student has a right to attend a particular school. Citizens Against Mandatory Busing v. Palmason, supra, 495 P. 2d at 663.

It would indeed be anomalous if the Seattle School District, could decide within the bounds of the Constitution, that a mandatory desegregation plan was the only way to achieve desirable objectives and then be denied the means to attain those objectives. But, as the authorities cited above indicate, the Seattle School District is on firm constitutional ground in devising race-conscious actions that are designed to abolish the barriers which separate and isolate students.

II. SEATTLE SCHOOL DISTRICT'S DESEGREGATION PLAN COMPORTS WITH TITLE VI AND THE ELEMENTARY SCHOOL AID ACT

A. The Legislative History of Title VI and HEW's Implementing Regulation Encourage Voluntary Plans

Section 601 of the Civil Rights Act of 1964 42 U.S.C. 2000d, provides:

> No person in the United States shall, on ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Enactment of Title VI served to statutorily implement the command of the fourteenth amendment as interpreted in Brown v. Board of Education. See United States v. Jefferson County Board of Education, 372 F. 2d 836,-82-53 (5th Cir. 1966), aff'd. en banc, 380 F. 2d. 385, cert. denied sub nom Caddo Parish School Board v. United States, 389 U.S. 840 (1967).

As Senator Pastore, Senate floor manager of Title VI, explained, Title VI was designed to put on end to federal support of discrimination and "to insure that Federal funds are spent in accordance with the Constitution and our public policy." (110 Cong. Rec. 7062, 1964)

Section 602 of Title VI, 42 U.S.C. 2000d-1, set forth in broad terms the manner in which the non-discrimination requirement in Section 601 is to be enforced. Although fund termination is the ultimate sanction in Title VI, heavy reliance is placed first on voluntary efforts to achieve compliance with the statute's objectives. See e.g. H.R. Rep. No 914, supra at 18; 110 Cong. Rec. 13700 (1964) (remarks of Senator Pastore; id. at 6546 (remarks of Senator Humphrey, floor manager for the entire Civil Rights bill).

Section 602 also requires federal agencies to promulgate regulations implementing the statute. HEW has issued such regulations which were approved by the President 10/ and codified at 45 C.F.R. 80 et seq. 11/ Included in the Regulation is a provision prohibiting recipients of federal funds from utilizing methods of administration which have the

> effect of subjecting individuals to discrimination because of their race, color or national origin or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color or national origin. 45 C.F.R. 80.3(b)(2). 12/

10/ After adoption of regulations cited in this memorandum, the President delegated the authority to approve Title VI regulations to the Attorney General by Executive Order 11764, January 21, 1974, 39 Fed. Reg. 2575.

11/ The Supreme stated that in assessing remedial legislation, Departmental regulations are entitled to great weight. Lau v Nichols, supra, 414 U.S. at 571.

12/ The Court applied this Regulation in Lau v. Nichols, supra, holding that a school board's failure to provide English - language instruction to Chinese - speaking students violated their rights under Title VI. Significantly, the Lau Court emphasized that the Regulation validly proscribes acts which have a discriminatory effect even though no purposeful design to discriminate is present. See also Washington v. Davis, 426 U.S. 229 (1976) which suggests that disproportionate impact may be sufficient to establish a prime facie violation of Title VII of the Civil Rights Act.

If, then, OCR were to determine that Seattle's policy of assigning students to neighborhood schools was a method of administration which had a racially discriminatory effect on minority students, it might well be that the School District would be found in non-compliance with Title VI and the applicable regulation.

In that event, section 602 imposes upon HEW an affirmative duty to see to it that Federal funds are not used to support recipients which discriminate in violation of section 601. Adams v. Richardson, 480 F. 2d. 1159, 1162, 1166 (D.C. Cir. 1973). Thus, where there is a finding of non-compliance, HEW is obligated to enforce the statute by seeking the termination of federal funds to that recipient or by other means. Under the proviso to that section, however, HEW may not take such action without first determining "that compliance cannot be secured by voluntary means." See also 45 C.F.R. 80.7(d) The School District would be asked to "take affirmative action to overcome the effects of prior discrimination." 45 C.F.R. 80.3(6)(i). Thus, if unlawful discriminatory practices were found, the Seattle desegregation plan now voluntarily offered, would not be just permissible, it would be obligatory. 13/

13/ Two Congressional enactments prevent HEW from requiring that school districts transport students to other than neighborhood schools to remediate purposeful segregation. See Education Amendments of 1974, Title II, Equal Educational Opportunities Act, 20 U.S.C. 714, P.L. 93-380, and the 1978 HEW-Labor Appropriation Act, P.L. 92- 205. However, Title VI permits HEW to refer cases for enforcement to the Department of Justice. Sec. 602 of Title VI provides for enforcement either by administrative hearings or "by any other means authorized by law." 45 C.F.R. 80.8(a) explains that such means may include a referral to the Department of Justice. Further, Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c-2000c-6 vests independent authority in the Attorney General to initiate legal proceedings where complaints are received alleging discrimination in public education. Since that Department brings actions in courts of the United States, the full range of equitable remedies is available once a denial of Fifth or Fourteenth Amendment rights is established. See Sec. 203(b), Equal Educational Opportunities Act of 1974.

HEW's Regulation also provides that even in the absence of prior discrimination, a recipient of federal funds "may take affirmative action to overcome the effects of conditions which resulted in limiting participation [in the program] by persons of a particular race, color, or national origin." 45 C.F.R. 80.3(b)(6)(ii). A revealing commentary on this section of follows in 45 C.F.R. 80.5 j:

> Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In such circumstances, an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefit of its program more widely available to such groups, not then being adequately served.

B. Other Civil Rights Legislation Also Endorses Voluntary Desegregation Plans

The Emergency School Aid Act of 1972, 20 U.S.C. 1601, P.L. 92-318, (ESAA) was enacted specifically to (1) provide financial assistance to school districts which were in the process of eliminating minority group segregation; (2) encourage the voluntary elimination, reduction or prevention of minority group isolation and (3) aid school

children in overcoming the educational disadvantages of minority group isolation. ESAA, Sec. 702(a). Eligibility for federal funds is dependent on the applicant school district's implementing a plan which is undertaken pursuant to court order, Title VI, or when

> ... without having been required to do so [the district] has adopted and is implementing, or will, if assistance is made available to it under this title, adopt and implement a plan for the total group elimination of minority group isolation in all the minority group isolated schools...ESAA, Sec. 706 (a)(1)(B).

Thus, school districts stand on equal footing for ESAA funding regardless of whether the segregation they propose to eradicate is de jure or de facto.

The Regulation interpreting the ESAA provisions define "complete elimination of minority group isolation" as " the condition in which no school operated by a local educational agency has, or will have (upon implementation of the plan) a minority group enrollment of more than 50 percent,..."

45 C.F.R. 185.11(b). In resolving to eliminate racial imbalance so that by the 1979-80 school year, the minority enrollment of no school will exceed 50 percent of the student body (Resolution 1977-8, attached as Exhibit 2, NAACP Petition to Intervene) the Seattle School District brings itself within the standard set forth in the ESAA Regulation. 14/ See also 45 C.F.R. 185.11(5).

The Equal Educational Opportunities Act of 1974, Section 217, 20 U.S.C. 714, P.L. 93-380, also makes clear that school districts are in no way prohibited from voluntarily adopting desegregation plans which do not use the neighborhood school as the appropriate basis for student assignment, nor is HEW prevented from approving implementation of such plans.

The Seattle School District's desegregation plan is a notable step forward in effectuating national policy expressed in Fourteenth Amendment case law, in Title VI, and in ESAA and is not inconsistent with the Equal Educational Opportunities Act. Plaintiffs' suit merely seeks to frustrate or delay implementation of this plan. Should defendants' Motion for Summary Judgment be granted, this Court would be making a significant contribution to the attainment of equal educational opportunity for students in Seattle's public schools.

14/ The Seattle School District obtained substantial funding under ESSA in both 1976 and 1977. In its application for 1978, the District is seeking over 6 million dollars in ESAA assistance. (See Kiner Affidavit)

CONCLUSION

For the foregoing reasons, the United States, as amicus curiae, respectfully submits that the Seattle School District Motion for Summary Judgment should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on this _____day of June, 1978, copies of the foregoing Petition to Submit Memorandum as Amicus Curiae, Memorandum Amicus Curiae and Affidavit were hand delivered to the following counsel:

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