

391 F.Supp. 269 (1975)

**Kenneth ADAMS et al., Plaintiffs,
v.
Caspar W. WEINBERGER, Individually and as Secretary of the
Department of Health, Education and Welfare, et al., Defendants.**

Civ. A. No. 3095-70.

United States District Court, District of Columbia, Civil Division.

March 14, 1975.

270*270 Joseph L. Rauh, Jr., John Silard, Elliott C. Lichtman, Washington, D. C., for plaintiffs.

David J. Anderson, Dept. of Justice, Washington, D. C., for defendants.

SUPPLEMENTAL ORDER

JOHN H. PRATT, District Judge.

This cause came before this Court upon plaintiffs' Motion for Further Relief and the Opposition of the defendants thereto. After a review of the entire 271*271 record, the Court inclines to the belief that substantial progress has been made in this difficult and complex area. On the other hand, without deprecating the value of voluntary settlement of these problems, there appears to be an over-reliance by HEW on the use of voluntary negotiations over protracted time periods and a "reluctance in recent years to use the administrative sanction process where school districts are known to be in non-compliance * * *" Report of United States Commission on Civil Rights, January 22, 1975, page 131, n. 1. Having considered the motion and opposition and the record before it, this Court enters the following findings and remedial provisions.

A. 125 Substantial Racial Disproportion Districts.

As this Court found in its February 16, 1973 Order,^[1] the Supreme Court in [Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 \(1971\)](#) enunciated "a presumption against schools that are substantially disproportionate in their racial composition." In Appendix B of that February 16, 1973 Order, the Court listed 85 southern school districts having one or more schools substantially disproportionate in their composition (because at least a 20% disproportion existed between the percentage of local minority pupils in the schools and the percentage in the entire school district). HEW not having required any of these 85 school districts to explain or rebut the substantial racial disproportions in the schools, this Court enjoined HEW to communicate with each of the districts

within 60 days, putting them on notice to rebut or explain the disproportions in one or more of their schools. HEW took appropriate action pursuant to this Order and substantial compliance progress resulted therefrom. However, the record now reveals an additional 125 southern "HEW school districts" with one or more schools substantially disproportionate in their racial composition (see Attachment A), where HEW has not sought an explanation or rebuttal from the school district.

WHEREFORE, in supplementation of ¶ III B(1) of this Court's Order of February 16, 1973, defendants, their successors, agents and employees are required and enjoined within 60 days of the date of this Order to communicate with each of the 125 districts listed in Attachment A, putting them on notice to rebut or explain the substantial racial disproportion in one or more of the districts' schools.

B. 293 Districts With Allegations of Miscellaneous Violations.

Plaintiffs' Motion for Further Relief alleges that there are 293 additional districts where HEW has found presumptive Title VI violations. The deposition and affidavit of Dr. Lloyd R. Henderson, indicate however that the statistical data^[2] on which this allegation is based demonstrate possible Title VI problems and not presumptive violations. We accept for the present HEW's assertion that one of the purposes of the Enforcement Analysis Tables compiled on a nationwide basis was to provide an indication of those districts which might be likely candidates for Title VI compliance activity and to aid in the determination of priorities.

WHEREFORE, plaintiffs' request for further relief in this area is denied at this time.

C. 6 ESAA Districts.

With respect to 116 elementary and secondary school districts, where HEW had found probable violations of Title VI, this Court's February 16, 1973 Order held that the time permitted by Title VI for securing voluntary compliance before commencing enforcement ^{272*272} proceedings had long since passed (¶¶ II A(5); III(A)(7)). HEW had found the districts in violation or presumptive violation of Title VI and had failed during substantial periods of time to achieve voluntary compliance. Accordingly, the Court ordered HEW within 60 days to commence enforcement proceedings by administrative notice of hearing or any other means authorized by law against each of the districts in order to effect compliance with Title VI. In the spring of 1973, HEW declared 17 HEW districts in the south ineligible for funding under the Emergency School Aid Act of 1972 because of substantial civil rights violations. Nine districts were the subject of HEW enforcement activity pursuant to specific directives of this Court's February 16, 1973 Order. Since the filing of the present Motion for Further Relief, Orangeburg, South Carolina has been found eligible for ESAA funding and Charles County, Maryland, has submitted a student assignment plan acceptable to HEW. In the remaining 6 districts, however, HEW has made no efforts to effectuate compliance with Title VI after indication of substantial civil rights violations.

WHEREFORE, in supplementation of ¶¶ II B(1) and III B(2) of this Court's Order of February 16, 1973, defendants, their successors, agents and employees, are required and enjoined within 60 days of the date of the Supplemental Order to commence enforcement proceedings by administrative notice of hearing or any other means authorized by law against each of the school districts identified in Attachment B, in order to effect compliance with Title VI.

D. 39 Unresolved Swann Districts.

In its February 16, 1973 Order, this Court found 85 school districts presumptively in violation of *Swann* and Title VI because they had one or more schools substantially disproportionate in their racial composition. This Court ordered defendants to communicate with each of these districts promptly, putting them on notice to rebut or explain the substantial racial disproportions (¶ III B(1)). HEW has done so. Thirty-one of these districts have since been found in compliance by HEW, and 15 others are in litigation or under court order. Thirty-nine^[3] of the districts remain unresolved more than 25 months after the issuance of this Court's Order, but HEW has not initiated enforcement proceedings against any of them. The time for securing compliance by merely voluntary means in these districts has passed.

WHEREFORE, defendants, their successors, agents and employees, are required and enjoined within 60 days from the date of this Order to commence enforcement proceedings by administrative notice of hearing or any other means authorized by law, in order to effect compliance with Title VI by each of the school districts identified in Attachment C.

E. Hundreds of School Districts Subject to Court Desegregation Orders.

This Court's Order of February 16, 1973 (¶ V B(2)) required HEW to bring its findings of court order violations to the attention of the court concerned. Since that Order issued, HEW has identified numerous southern districts subject to judicial desegregation orders which, in violating or apparently violating Title VI, are in violation of said court orders.

In cases where the United States is a party, HEW has referred some of this information of violations or presumptive violations of court orders to the Justice Department, but none of the information has been brought to the attention of the 273*273 courts concerned. In cases of orders resulting from private litigation, such information has not been conveyed either to the courts or to the private attorneys of record.

WHEREFORE, in supplementation of ¶ V B(1) and (2) of this Court's Order of February 16, 1973, defendants, their successors, agents and employees, through the Justice Department or other means, are required and enjoined within 120 days of the date of this Supplemental Order to call to the attention of the courts concerned

each of the violations or presumptive violations of court orders, unless defendants have made an administrative determination of compliance by the school district within the 120-day period.

F. Future HEW Compliance with Title VI.

This Court has ruled in this case that HEW has a duty to commence prompt enforcement activity upon all complaints or other information of racial discrimination in violation of Title VI, and that where it appears that a school district is in violation or presumptive violation of Title VI the agency has a duty under Title VI to commence enforcement proceedings by administrative notice of hearing or any other means authorized by law where efforts to obtain voluntary compliance do not succeed within a reasonable period.

HEW has often delayed too long in ascertaining whether a complaint or other information of racial discrimination constitutes a violation of Title VI. HEW has also frequently failed to commence enforcement proceedings by administrative notice of hearing or any other means authorized by law although the efforts to obtain voluntary compliance have not succeeded during a substantial period of time. As shown in Section D above, in 39 "unresolved" *Swann* districts, HEW, having failed during a substantial period of time to achieve voluntary compliance, has not commenced enforcement proceedings by administrative notice of hearing or any other means authorized by law. Apart from the school districts expressly covered by this Court's February 16, 1973 Order, HEW has not initiated a single administrative enforcement proceeding against a southern school district since the issuance of this Court's Order 25 months ago.

WHEREFORE, defendants, their successors, agents and employees are required and enjoined hereafter to carry out their Title VI enforcement activities affecting public school districts in the 17 southern and border states according to the following schedule:

- (a) Within 90 days of receipt by HEW of a complaint or other information of racial discrimination, determine for administrative purposes whether the district is in or out of compliance with Title VI;
- (b) Wherever there is not a determination of compliance by the 90th day, attempt to secure compliance through voluntary means for an additional period not to exceed 90 days;
- (c) Where such compliance is not secured within 180 days of the receipt of the complaint or other information of racial discrimination, commence within 30 days thereafter an enforcement proceeding through administrative notice of hearing or any other means authorized by law.

G. Supplemental Reporting Provision.

Supplementing the reporting provisions in this Court's Order of February 16, 1973, defendants, their successors, agents and employees, are required and enjoined to

provide in verified form to counsel for plaintiffs within 150 days of the date of this Supplemental Order, and at the time of all subsequent reports required by this Court's February 16, 1973 Order, a summary of all steps taken to comply with the injunctive provisions set forth in the preceding paragraphs.

274*274 **Attachment A**

SUBSTANTIAL RACIAL DISPROPORTION DISTRICTS

ARKANSAS Jonesboro School District # 1 DELAWARE Caesar Rodney De La Warr School District Newark FLORIDA Levy County Monroe County GEORGIA Madison County Thomasville City KENTUCKY Covington City Elizabethtown Independent Warren County LOUISIANA Allen Parish Vernon Parish MARYLAND Baltimore County Caroline County Cecil County Public Schools Frederick County Howard County Montgomery County Pub. Sch. Talbot County Washington County MISSISSIPPI Lee County MISSOURI Cape Girardeau Public # 63 Joplin R-8 Poplar Bluff R-1 Special Sch. Dist. of St. Louis Springfield R-12 NORTH CAROLINA Burke County Caswell County Chatham County Hoke County Jackson County Madison-Mayodan City Onslow County Pender County Polk County Bd. of Educ. Randolph County Roanoke Rapids Graded School Rowan County Schools Shelby City Schools Stanly County Swain County Schools Union County Vance County Wayne County Wilkes County OKLAHOMA Altus Bristow Claremore City Durant Public Schools Enid Public Schools Moore Moton Norman Sapulpa City Schools Shawnee SOUTH CAROLINA Aiken County Bamberg County 01 Charleston County School Dist. Edgefield County Greenwood County 50 Marion County 01 Orangeburg County 02 Pickens County Richland County 01 Richland County School Dist. # 2 Spartanburg County 02 Spartanburg County 06 Spartanburg County 07 TENNESSEE Athens City Schools Dyer County Hamilton County Hardeman County Bd. of Educ. Lincoln County Morristown City Williamson County 275*275 TEXAS Alamo Heights ISD Alice Ind. School Dist. Amarillo ISD Arlington ISD Bay City ISD Brazosport Independent School Cleburne ISD Cotulla Ind. School Dist. Dumas ISD East Central ISD Edinburg CCN Ind. Sch. Distr. El Campo Independent School Dist. El Paso Independent School Dist. Gainesville Ind. School Dist. Gregory-Portland ISD Harlandale ISD Harlingen CISC Hereford Indept. School Dist. Irving Independent Kerrville ISD La Porte Indep. Sch. Dist. Livingston Independent School Marfa Ind. School Dist. McAllen Ind. School District Morton Ind. School Dist. New Boston ISD New Braunfels ISD North Forest ISD Palestine Ind. School District Pampa Indep. Sch. Dist. Pasadena Ind. School Dist. Pecos-Barstow Consolidated ISD Pleasanton ISD Round Rock ISD Sherman Ind. School District South San Antonio ISD Southwest ISC Tulooso-Midway Ind. School Dist. United Independent School Dist. Vernon Consolidated Independent Wharton Ind. Sch. Dist. Ysleta Independent Sch. Dist. VIRGINIA Fairfax County Prince William County WEST VIRGINIA Fayette Co. Bd. of Educ. Marion County Bd. of Educ. Mineral County Mingo County Ohio County

Attachment B

EMERGENCY SCHOOL AID ACT DISTRICTS

ARKANSAS Bearden PS MARYLAND Caroline Co. NORTH CAROLINA Chatham
SOUTH CAROLINA Lexington Co. # 2 SD Spartanburg Co. # 7 TEXAS Harlandale
PS

Attachment C

UNRESOLVED SWANN DISTRICTS

ARKANSAS Hot Springs § 6 South Miss FLORIDA Martin Co. GEORGIA Hall Co.
Normandy Co. MARYLAND St. Mary's Co. Worcester Co. Baltimore MISSISSIPPI
Greene Co. MISSOURI Webster Grove Columbia St. Louis Kansas City University
City Kirkwood Maplewood-Richmond Ritenour Consol. S. D. 276*276 NORTH
CAROLINA Kings Mountain City Cherokee Co. SOUTH CAROLINA Union Co. Horry
Co. Florence Lancaster Co. Anderson # 5 TEXAS Harding-Jefferson San Antonio
Northside McKinney Monahans-Wickett-Pyoke Fort Bend Lamar Texarkana
Plainview Brownwood Kingsville Galveston Jacksonville Sweetwater WEST
VIRGINIA Kanawha Co.

[1] [Adams v. Richardson, 356 F.Supp. 92 \(D.C. 1973\)](#), affirmed in pertinent part, [480 F.2d 1159 \(D.C.Cir. 1973\)](#).

[2] The data were extracted from Office of Civil Rights 1972-1973 Enforcement Analysis Tables.

[3] Defendants have admitted that 21 of these 39 districts remain unresolved, claiming that 18 districts of the 39 are now in compliance. Since we are not advised either of the names of said districts or the reasons why they should not be still included, they are covered by this Order.