The original documents are located in Box 9, folder "Desegregation - General" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

Desegregation
Blanchard,
Cong. James

THE WHITE HOUSE
WASHINGTON

March 12, 1975

Jay,

This letter came to Mr. Buchen today. I just had a call from Eloise Frier (WH Cong. Office) wanting a response to this very soon because the meeting or what have you is set for Friday of this week. Eloise can be reached on 2755.

Shirley

March 10, 1975

Dear Mr. Blanchard:

Thank you for your letter to the President of today's date concerning expected action by the Department of Justice to sue the Ferndale (Michigan) School District in order to bring about a court-ordered school desegregation plan.

You may be assured your letter will be presented for prompt consideration. I am certain it will be fully studied.

With kind regards,

Sincerely,

Vern Loen

Vernon C. Loen
Deputy Assistant
to the President

The Honorable James J. Blanchard
House of Representatives
Washington, D.C. 20515

bcc: w/incoming to Philip Buchen for appropriate handling.
bcc: w/incoming to James Cavanaugh - for your information.

VCL:EF:VO:vo

JAMES J. BLANCHARD
18TH DISTRICT, MICHIGAN

513 CANNON HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-2101

301 W. FOURTH STREET
ROYAL OAK, MICHIGAN 48067
(313) 543-1105

Congress of the United States
House of Representatives
Washington, D.C. 20515

March 10, 1975

President Gerald R. Ford
The White House
Washington, D.C. 20500

Dear Mr. President:

As a Member of the United States Congress, I am well aware that most of your time is now spent, as is ours, in an all-consuming search for workable solutions to our Nations's current economic and energy problems.

However, Mr. President, I hope you will understand my approaching you about a different problem. I refer to the United States Justice Department's announced intention to sue the Ferndale (Michigan) School District. I appeal to you for help in this matter, help which can avert a totally unnecessary and potentially disruptive situation for all of the residents of the Ferndale School District.

On Friday, March 7, 1975, the Justice Department announced its intention to sue the Ferndale School District in order to impose a court-ordered school desegregation plan in the city of Ferndale. It is expected that the suit will be filed within a week. This action is being taken in the wake of good faith and extensive efforts on the part of the Ferndale School District to voluntarily desegregate Grant Elementary School in a manner which recognizes the best interests of all of the residents of the Ferndale School District.

I come to you as a last resort, Mr. President. I respectfully request and plead with you to delay the Justice Department's anticipated litigation, if only long enough for you or your staff to review the Ferndale School situation and come to you own conclusion as to whether or not an involuntary court-ordered desegregation plan is warranted in this particular case. I sincerely believe, upon thorough review, you will find that it is not. After such an evaluation, I urge you to intervene and prevent the Justice Department from filing

suit in Ferndale, a suit which I believe will undermine attempts by the community to work out its own problems and achieve the purpose alleged to be the objective by the Justice Department.

On behalf of all of the citizens of Ferndale, I would like to request that someone in your office extend to us the courtesy of answering two relatively simple questions. One, will Attorney General Levi explain precisely what is the wisdom behind the Department of Justice in pursuing this case against the Ferndale School Board? Two, is anyone aware, and if they are, what are the estimates as to what this case will cost the already financially strapped Ferndale School District, the State of Michigan, and the effect of a court battle on a community which has, in good conscience, attempted to comply with the Justice Department's requests?

Ferndale's Junior High School and High School have been integrated since their creation, Mr. President. In February of this year, the Ferndale School Board approved a plan which will in fact desegregate Grant Elementary School. The Board has already enrolled 134 children, more than 100 of whom are white, in the Board's proposed fall program at the all black Grant School. It should be noted that Grant School presently now has only 250 students enrolled in it.

The voluntary plan developed by the citizens of Ferndale and the School Board has substantial support from the community at large. But, now, even when the enrollment figures prove that the plan is realistic and workable, the Justice Department has rejected the workability of such a plan.

I am further concerned by the fact that although officials from the Justice Department have indicated filing suit does not necessarily negate the possibility of working out an acceptable solution in the interim, such litigation will severely hamper continued negotiations and communications between the parties involved.

I think you should be aware, Mr. President, that both black and white citizens of the Ferndale School District have suffered since 1968 as a result of federal action in this matter. Health, Education and Welfare funds have been cut off to the District.

Various community groups have been formed, and have polarized over the decision to fight the federal bureaucracy. Yet, in the midst of this chaotic situation, the Ferndale School Board has been able to put togetner a workable elementary school desegregation plan which has considerable community support. It is totally incomprehensible to me how the Federal Government can now step in, unwilling to let the School Board implement its plan and unwilling to see if it will work.

The issue is further complicated by the fact that the Office of Revenue Sharing has asked the Department of Justice to bring suit to cut off the State of Michigan's Revenue Sharing Funds because a small portion of those go to a State Teacher's Retirement Program some of which benefits retired teacners in the Ferndale School District. I can only suggest, that such excessive federal pressure will inevitably hinder the kind of local solution which we would all prefer.

Mr. President, less than one year ago you campaigned against a number of Democrats, including me, announcing to the press that all of the Democratic opponents to the Republican incumbent were pro-busers. (In fact, all of us had strong anti-busing records). When the courts ordered busing in Boston, you said you disagreed with that decision. You have stated publicly, many times that you are a strong advocate of neighborhood schools. That is why I do not understand that the United States Justice Department, the legal arm of the executive branch of our government which you direct, is about to request a court ordered desegregation plan against the Ferndale School System.

In your role as the Chief Enforcement Officer of the United States and Chief Executive of the United States Mr. President, I respectfully request that you and your office immediately review this Ferndale School System situation. I would further hope that after such a review has been made, Ferndale would be allowed to implement its voluntary school desegregation plan with the cooperation of the Federal Government, rather than with its interference.

I sincerely appreciate any time you are able to devote to this matter.

Sincerely,

James J. Blanchard

JAMES J. BLANCHARD
Member of Congress

JJB/cm

Designation

3/7/75

To: Ken Lazarus

From: Phil Buchen

Department of Justice
Washington, D.C. 20530

March 3, 1975

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Indianapolis School Case

Attached is a copy of my memorandum governing our approach to this case.

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

Attachment

Department of Justice
Washington, D.C. 20530

February 28, 1975

TO: Sandy Ross

FROM: Stan Pottinger

SUBJECT: Indianapolis School Case

I have recommended to the Attorney General, and he has approved, the following approach to be taken in our upcoming brief in the case:

1) We will continue to resist the position of the district court that total consolidation is necessary or appropriate under Milliken and related Supreme Court decisions. Under Milliken the fear of white flight is clearly not an adequate inter-district violation, and in any event, the record does not disclose the probability that white flight will become a major factor.

2) We will take the position that the state ought to have the same authority to remedy an unconstitutional segregated system as it had at the time suit was filed and the state was on notice of its constitutional obligations. Because this date was 1968, the state must have the same authority to desegregate as then existed. This means that the power of annexation as then existing should be restored to the state, and by derivation, to the discretion of the district court to fashion an appropriate remedy.

3) Restoration of this authority does not necessarily mean the authority should be exercised. On the contrary, we should take the position that

this authority, coupled with other then-existing state authority (such as inter-district student transfers) imply a range of inter-district remedies available to IPS. Consistent with our earlier argument, we should take the position that to the extent practicable, desegregation within Indianapolis is preferable to inter-district arrangements, and preserves to the greatest degree possible the jurisdictional boundaries properly left to the state to decide. To the extent that clear and convincing evidence can be demonstrated that limited inter-district relief is more practicable, such relief within the ambit of the restored authority may be used.

4) The criteria for exercising limited inter-district relief ought to be spelled out. In a general sense, it should be that stated by the Supreme Court in Swann relating to the health and educational welfare of the children. More specifically, it ought to involve a showing that inter-district relief would, when compared to IPS-only desegregation, reduce the burden upon children and the school districts involved, e.g., by reducing the time and distance of busing, overcrowding, financial burdens, etc.

I made clear that on the record as it now exists, we do not know whether, or to what extent, inter-district relief would be warranted under these criteria. The record will have to be developed in this regard, perhaps in the course of drafting alternative plans, again with preference for the least disruption of existing boundaries.

I said that our research made clear that under prevailing Supreme Court interpretations of the Fourteenth Amendment, state action (of the kind taken by Indiana in 1969) may not constrain an otherwise existing constitutional duty to desegregate.

I also made clear, however, that while law and common sense would dictate this position, no matter how

carefully defined and legally compelling our position might be, we stood a significant chance of being misunderstood by the public and the Congress on this issue. While our position is consistent with Presidential and Congressional policy (both of which, of course, defer to controlling interpretations of the Fourteenth Amendment), it might be seen as in conflict with both policies. I suggested that the cautious nature of our position might well provoke initial criticism from the plaintiffs, but eventually the fact that we allow any form of inter-district relief, even if compelled by facts and law, could bring criticism from other quarters as well. I saw no alternative, however, short of imposing artificial barriers at the IPS line, in contravention of historic violations of record, and in contravention of both common sense legal remedies dictated by Supreme Court decisions.

CC: Jim Turner
Brian Landsberg

THE WHITE HOUSE

WASHINGTON

August 21, 1975

MEMORANDUM FOR: PHIL BUCHEN

FROM: BARRY ROTH BR

The attached correspondence to Harold Sawyer concerns a suit brought to compel HEW to withhold funds from a number of "Northern and Western" school districts on the basis that these school districts are guilty of discrimination in violation of Title VI of the Civil Rights Act of 1964. The writer apparently represents the Cleveland school board and he has requested Sawyer to arrange an appointment with you to discuss the case and to make sure the government vigorously responds to the suit. There is no transmittal letter or other indication of how this correspondence was sent to you.

Although HEW has recently been unsuccessful in a similar case here in the District Court, Adams, et al. v. Weinberger, et al., Justice is vigorously appealing that decision. I see no reason for this office to interject itself into this controversy particularly when no direct request has been made for a meeting with you. If a meeting is later requested, I believe it should be with Justice and/or HEW, and not yourself. In terms of Presidential policy in this area, Jim Cannon and Dick Parsons do have a proper jurisdictional interest.

Attachment

Squire, Sanders & Dempsey
Counsellors at Law
1800 Union Commerce Building
Cleveland, Ohio 44115

Cable "Squiresand"
TWX 810-421-8136
Area Code 216
696-9200

In Washington, D.C.:
Cox, Langford & Brown
21 Dupont Circle, N.W.
Washington, D.C. 20036

July 18, 1975

Harold S. Sawyer, Esq.
Warner, Norcross & Judd
900 Old Kent Building
Grand Rapids, Michigan 49502

Dear Harold:

I am sorry that John Lloyd of Cincinnati and I did not get a chance at the Sixth Circuit Judicial Conference to discuss with you the serious nature of the new law suit that has been filed by Joseph L. Rauh, Jr. in Washington against the HEW.

This law suit seeks an injunction ordering HEW to withhold funds to hundreds of what it calls "Northern and Western" school districts for the reason that these districts have not desegregated their schools. It also seeks mandatory orders requiring HEW to make certain allegedly required investigations.

There has been much publicity about this case and it has been announced as an effort to bypass desegregation cases in the North and West by one massive effort against HEW.

John Lloyd, of the Cincinnati law firm of Frost & Jacobs, represents the Cincinnati Board of Education in a case now pending in the Sixth Circuit Court of Appeals in which he sought an injunction to restrain HEW from cutting off its funds to Cincinnati.
of the same issues are involved and John is intimately familiar with the whole problem.

If the plaintiffs' law suit succeeds, it will materially and substantially effect every Northern and Western school district which receives HEW funds and will have a possibly overwhelming effect upon all pending Northern and Western desegregation cases.

Both Mr. Lloyd and I are concerned that the case be adequately and properly defended by the Department of Justice lawyers who represent HEW. We feel the case is probably one of presidential concern and would appreciate your efforts to arrange a meeting with Philip Buchen, the President's Counsel or with the President himself.

The case was originally assigned to Judge Waddy of the District Court, but has now been re-assigned to Judge Sirica. It is entitled Brown, et al. v. Weinberger, et al and bears docket No. 75 1068. I enclose herewith a copy of the complaint.

John Lloyd and I will be very willing to come to Grand Rapids to discuss this with you in full detail at your earliest convenience.

Again, I am sorry to impose upon you in this matter, but I know no one who is more knowledgeable in the United States on the implications of this case and who, in addition, is singularly respected by Mr. Ford and Phil Buchen.

Best personal regards,

Sincerely,

Charles Clarke

Charles F. Clarke/el

Enclosure: Complaint

cc: John Lloyd, Jr., Esq.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WADDY, J.

DARRYL W. BROWN and
DAVID BROWN, infants, by
their parent, JO ANN BROWN,
3050 Island Avenue
San Diego, California

SHUKA MILES-MSEMAJI,
infant, by his parent, KEN
MSEMAJI
7479 Black Oak Road
San Diego, California

DAMON McMILLAN, infant, by
his parent, TOKA D. McMILLAN
1265 Bittaker Street
Akron, Ohio

PAUL MACK and HOWARD MACK,
infants, by their parents,
CHARLES R. and JOSEPHINE MACK
448 Weeks Street
Akron, Ohio

ERIC JAMES DUNSON, infant, by
his parent, OLAS DUNSON
540 Linwood Avenue
Columbus, Ohio

TOMMIE LORRAINE O'BRIEN
and CHESTER O'BRIEN, III,
infants, by their parent,
WANDA KAY O'BRIEN,
654 Fairwood Avenue
Columbus, Ohio

DYAN ALEXANDER, infant, by
her parent, BILLIE J. ALEXANDER,
2324 Virginia Avenue
Richmond, California

DANETTE L. BARNES, infant,
by her parent, MATTHEW M.
BARNES,
2811 Moyers Road
Richmond, California

ALANDAS FOSTER, infant, by her
parent, JESTINE WILLIAMS,
731 - 9th Street
Richmond, California

FILED

JUL 3 1975

JAMES F. DAVEY, Clerk

75 -1068

Civil Action No. _____

RAY MORRIS, Infant, by his parent, JERALDENE MORRIS,
338 South 16th Street
Richmond, California

J. DAVID THOMAS, infant, by his parent, JULIAN THOMAS,
703 North Street
Racine, Wisconsin

GREGG ROGERS, infant, by his parent, PATRICIA ROGERS,
4646 Chickory Road
Racine, Wisconsin

SHARON HARRIS, infant, by her parent, JENNIE F. HARRIS,
133 Dover Street
Delano, California

LISA HOLLOWAY and LESLIE HOLLOWAY, infants, by their parent, IRENE UDELL,
2339 Santa Clara
Fresno, California

LAURA MERRITT, infant, by her parent, DIMPLE MERRITT
2567 South Lotus
Fresno, California

CHERYL SLATON, infant, by her parent, BERTHA TEEMER,
1850 W. La Sierra Drive
Fresno, California

ELIZABETH ANDREWS, infant, by her parent, BONNIE ANDREWS,
1215 McCulloch Street
Fort Wayne, Indiana

WENDOLYN WALKER, infant, by her parent, WARREN E. WALKER,
831 E. Madison Street
Fort Wayne, Indiana

Plaintiffs,

v.

CASPAR W. WEINBERGER, individually and as Secretary of Health, Education and Welfare, 300 Independence Avenue, S.W., Washington, D.C.

and

75 -1068

PETER E. HOLMES, individually, and as Director of the Office for Civil Rights, Department of Health, Education and Welfare, 330 Independence Avenue, S.W., Washington, D.C.

Defendants.

COMPLAINT FOR DECLARATORY AND OTHER RELIEF

JURISDICTION

1. Plaintiffs seek declaratory and other relief against defendants' default on their obligations under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§2000d et seq. (herein "Title VI") and under the Fifth and Fourteenth Amendments to the Constitution of the United States. This action arises under Title VI; the Fifth Amendment; the Fourteenth Amendment; 5 U.S.C. §§702-705; 28 U.S.C. §§1331, 1343(4), 1361, 2201 and 2202; and 42 U.S.C. §§1983 and 1985. The matter in controversy exceeds, exclusive of interest and costs, the sum or value of $10,000.

THE PARTIES

2. Plaintiffs are students (suing through their parents) who attend public schools receiving federal financial assistance which segregate and discriminate on the basis of race or national origin in violation of Title VI of the Civil Rights Act of 1964 and the Fifth and Fourteenth Amendments to the United States Constitution.

3. Plaintiffs sue for themselves and for the class of students presently attending, or who in the future will attend, public schools in the 33 Northern and Western states which receive federal financial assistance but segregate and discriminate on the basis of race or national origin in violation of Title VI of the Civil Rights Act of 1964 and the Fifth and Fourteenth Amendments

to the United States Constitution. As to the class represented by plaintiffs: (1) the class contains millions of students so that joinder of all members is impracticable; (2) there are identical questions of fact and law common to the class, including whether there has been a general and calculated default by HEW in the enforcement of Title VI since its passage in 1964 with respect to school districts receiving federal financial assistance in the Northern and Western (herein "Northern-Western") portions of the United States; (3) the claims of the representative parties are typical of the claims of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Plaintiffs' interests in a desegregated and non-discriminatory education in no way conflict with the interests of the class which plaintiffs seek to represent. This action is maintainable as a class action under Rule 23(b)(2) in that defendants are acting on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

4. Defendant Caspar W. Weinberger is Secretary of the Department of Health, Education and Welfare and defendant Peter E. Holmes is Director of the Office for Civil Rights of HEW. Both defendants directly exercise HEW's responsibility for enforcement of Title VI.

THE RIGHTS REQUIRING ENFORCEMENT

5. Section 601 of Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d) prescribes that:

> "No person in the United States shall, on the 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."

Section 602 of Title VI (42 U.S.C. §2000d-1) requires agencies such as HEW which extend federal financial assistance to issue rules, regulations or orders for the purpose of effectuating the rights contained in §601. Where voluntary compliance cannot be secured with such rules, regulations or orders, Section 602 directs HEW to use any means authorized by law to effectuate compliance, including specifically "termination of or refusal to grant or to continue assistance" to the segregating or discriminating institution.

6. The Fourteenth and Fifth Amendments to the United States Constitution prohibit segregation or discrimination on the basis of race or national origin in public education and prohibit federal or other public financial assistance to school districts which engage in such segregation or discrimination.

THE CAUSES OF ACTION HEREIN

7. HEW has for many years failed to implement its duty to enforce Title VI in the area of public education. In Adams v. Richardson, 480 F. 2d 1159, 1162 (1973), the United States Court of Appeals for the District of Columbia Circuit found that "HEW is actively supplying segregated institutions with federal funds, contrary to the expressed purposes of Congress," and affirmed the District Court which had found the record "replete with instances occurring over long periods of time since 1964, where defendants' efforts seeking voluntary compliance have either not been attempted or have been unsuccessful or have met with rejection. . . . Defendants now have no discretion to negate the purpose and intent of the statute by a policy described in another context as one of 'benign neglect' but, on the contrary, have the duty, on a case-by-case basis, to employ the means set forth in

§2000d-1 to achieve compliance." (351 F. Supp. 636, 641, 642 (1972)). While Adams involved HEW's failure to enforce Title VI with respect to school districts in the seventeen Southern and border states, HEW has also consistently failed to enforce Title VI against non-complying Northern-Western public school systems, as more fully set forth in this Complaint.

8. In their first cause of action plaintiffs allege that defendants have deliberately renounced and abandoned their Title VI duty to assure that no student or faculty segregation on the basis of race or national origin is practiced in Northern-Western public school systems receiving HEW assistance. The second cause of action asserts that defendants have failed in four specific respects to act effectively to implement Title VI in Northern-Western public education: they have failed to commence investigations where evidence gives cause to believe that Northern-Western school districts may be violating Title VI; they have failed to act expeditiously in completing Title VI investigations in Northern-Western public schools; they have failed to commence enforcement proceedings where HEW has found, or the evidence demonstrates, that Northern-Western school districts are violating Title VI; and they have failed to commence formal Title VI enforcement proceedings after having finally concluded that some Northern-Western school districts are ineligible for certain HEW assistance (under the Emergency School Aid Act) because they are practicing segregation or discrimination.

FIRST CAUSE OF ACTION

RENUNCIATION OF TITLE VI ENFORCEMENT AGAINST NORTHERN-WESTERN SCHOOL DISTRICTS WHICH PRACTICE STUDENT OR FACULTY SEGREGATION

9. Defendants have deliberately renounced and abandoned their Title VI duty to assure that in student and faculty assignments no segregation on the basis of race or national origin is practiced in Northern-Western

public school systems receiving HEW financial assistance. In large part as a result of this policy, in the 1972-73 school year (the most recent year for which HEW has published detailed statistics), most black students in majority white school districts attended schools with 50% or more minority enrollment. Specifically, in the 50 largest majority white Northern-Western public school districts, two out of every three black students attended schools with 50% or more minority (black and other minority) enrollment, one out of every two black students attended schools with 80% or more minority enrollment and one out of every 20 black students attended 100% minority schools (see Appendix A attached below). This situation is largely a product of HEW's deliberate policy of refusal to enforce Title VI against segregative student and faculty assignment practices in Northern-Western public schools. As set forth hereafter, that policy has been manifested in numerous ways and over long periods of time and particularly since 1969 when the Secretary of HEW publicly announced the Department's antipathy to the federal aid termination sanction upon which Title VI of the 1964 statute is predicated.

10. Plaintiffs in this first cause of action are the students (suing through their parents) listed in the caption. They are black students in eight Northern-Western school districts which receive federal financial assistance. As a consequence of defendants' unlawful renunciation and abandonment of their legal duty under Title VI, plaintiffs are attending public schools in school districts which practice student or faculty segregation.

11. Until April of 1968 when HEW's Office for Civil Rights established a separate branch for Northern-Western schools, HEW's posture toward segregation and discrimination in Northern-Western school districts was one of general inaction. Outside the South HEW had conducted only

four compliance investigations, and did not even begin collecting detailed racial and ethnic enrollment data until the fall of 1967 (Justice Delayed and Denied (herein "Justice,"), Appendix B below, p. 12). Thereafter, in 1968 HEW initiated compliance investigations in 27 Northern-Western school districts. But even the promise of this modest start was dashed after the 1969 announcement of HEW Secretary Finch and Attorney General Mitchell that HEW was discontinuing resort to its administrative powers under Title VI against public school segregation.

12. On July 3, 1969, HEW Secretary Robert H. Finch and Attorney General John N. Mitchell publicly expressed their disdain for the aid termination principle on which Title VI is based and set HEW's course in ensuing years against implementation of the statute in the area of public education. They announced the abandonment of the central threat and thrust of Title VI, disclosing a new policy to "minimize the number of cases in which it becomes necessary to employ the particular remedy of the cutoff of federal funds. . ." A Report subsequently issued by the United States Commission on Civil Rights, an agency authorized by law to monitor federal civil rights enforcement (42 U.S.C. 1975c), characterized the Finch-Mitchell statement and actions taken to implement it as a "major retreat in the struggle to achieve meaningful school desegregation" (Statement of the Commissioners on Federal Enforcement of School Desegregation, September 11, 1969, p. 2).

13. Following the 1969 Finch-Mitchell announcement, HEW's former enforcement of Title VI in public education in the South ground to a halt and its recently commenced minimal Northern-Western investigation program diminished. As concerns the South, as the District Court in Adams found, after enactment of Title VI in 1964, HEW had initiated

approximately 600 Title VI fund cutoff proceedings against noncomplying school districts, but after March 1970 no enforcement proceedings were initiated for eleven months, and only a token number were commenced thereafter. 351 F.Supp. at 640. And while 44 Southern school districts had been subjected to HEW fund termination action in 1968-69, only two cutoffs occurred in 1969-70 and none thereafter (id.). In the North and West, the very modest enforcement of Title VI before the Finch-Mitchell announcement became even less after the announcement. In the eleven years since the enactment of the statute, only five isolated school districts have been noticed for administrative enforcement proceedings in the 33 states of the North and West and only a single school district (with 676 minority students) has had HEW funds terminated. Meanwhile, even initiation of compliance investigations has decreased from 24 in 1968, to 18 in 1969, 16 in 1970, 11 in 1971, 10 in 1972, 2 in 1973, 13 in 1974 and 2 in 1975 (Appendix C attached). (All data in this Complaint is as of HEW's most recently published status report in February 1975.) Even where investigations have been commenced, a great many have never been resolved in the years since their initiation. Twenty-three of the 42 Northern-Western compliance reviews begun as long ago as 1968 and 1969 remain "pending" at HEW six and seven years later without the initiation of enforcement proceedings or any other resolution. Seventeen of the 36 investigations commenced between 1970 and 1972 remain similarly unresolved.

14. HEW's few Title VI investigations and proceedings respecting Northern-Western schools have been confined mostly to small school districts and have generally been limited to secondary civil rights problems rather than segregation of students or faculty. Meanwhile HEW has declined to initiate any Title VI activity at all concerning numerous medium-sized and larger Northern-Western school districts where there is reason to

believe that vast numbers of students and faculty are being subjected to segregative practices. Appendix D below lists some of these districts having large and disproportionate numbers of students in all minority or predominantly-minority schools. These statistics cannot be shrugged aside by HEW as showing only de facto segregation, for on similar facts reviewed in the context of the historical exercise of school attendance choices by Northern-Western school boards, federal courts have repeatedly found the racial concentrations to be the product of de jure discrimination. See, e.g., Keyes v. School District No. 1 (Denver), 413 U.S. 189 (1973); Milliken v. Bradley (Detroit), 418 U.S. 717 (1974); Spangler v. Pasadena City Board of Education, 311 F. Supp. 501 (C.D. Cal. 1970); United States v. Board of School Commissioners of Indianapolis, 474 F.2d 81 (7th Cir. 1973), cert. denied 413 U.S. 920 (1973); Morgan v. Kerrigan (Boston), 379 F. Supp. 410 (D. Mass. 1974), aff'd. 509 F.2d 580 (1st Cir. 1974), cert. denied, 43 LW 3601 (1975); Oliver v. Michigan State Board of Education (Kalamazoo), 508 F.2d 178 (6th Cir. 1974), cert. denied, 43 LW 3601 (1975); Davis v. School District of Pontiac, 309 F. Supp. 734 (E.D. Mich. 1970), aff'd., 443 F.2d 573 (6th Cir. 1971), cert. denied, 404 U.S. 913 (1971); United States v. School District of Omaha, ___ F.2d ___ (8th Cir. Nos. 74-1964, 74-1993 (June 12, 1975)).

15. HEW has been further precluded from enforcing Title VI in large Northern-Western school districts practicing student segregation by Presidential instructions. In April of 1971 the Supreme Court issued its ruling in Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, recognizing that transportation of students is a necessary and appropriate means of desegregating schools. Shortly thereafter, on August 3, 1971, President Nixon issued a policy statement disavowing a transportation plan

for Austin, Texas and ordering Federal administrators "to hold busing to the minimum required by the law." Under that instruction barring resort to an often necessary remedy for segregation HEW officials refused to initiate administrative enforcement proceedings against 42 Southern school districts whose segregated student bodies violated Swann. Adams, 351 F. Supp. at 638-39. HEW in its defense in Adams unsuccessfully sought to justify its non-enforcement of Title VI in the South on the basis of Presidentially-announced school transportation policies. (Appellants' Reply Brief, p. 30, Oral Argument to Court of Appeals.) A further statement of the Administration's policy occurred in March 1972 when the President proposed legislation (rejected by the Congress) to "downgrade busing as a tool for achieving equal educational opportunity." HEW's unlawful policy of defiance toward the constitutionally-mandated and necessary desegregation remedy has equally infected and immobilized its Title VI enforcement in major Northern-Western localities, where desegregation would plainly require resort to student transportation, to the extent that it has declined even to commence investigations of such districts. As the United States Commission on Civil Rights concluded in a recently issued report: "The Nixon administration consistently opposed the busing of students to achieve integration." (The Federal Civil Rights Enforcement Effort-1974, Vol. III "To Ensure Equal Educational Opportunity" (herein "CRC Report"), p. 52 n. 131.)

16. Defendants' deliberate policy of refusal to implement their duty to assure against unlawful segregative practices by aid recipients in the North and West was again invoked in 1973, when Secretary Weinberger sought to fund under the Emergency School Aid Act of 1972 ("ESAA") four major Northern-Western school districts with segregated faculties.

Because of discriminatory assignment of faculty, earlier in 1973 HEW officials had declared the school districts of Los Angeles, Detroit, Rochester, and Richmond (California) ineligible for assistance under ESAA. Thereafter, defendant Weinberger nevertheless sought to provide millions of dollars of ESAA assistance for these districts, granting them "waivers" of ineligibility although they intended to continue to operate racially identifiable faculties. In Kelsey v. Weinberger the Court of Appeals for the District of Columbia Circuit ruled such HEW action unlawful:

> ". . . in 1969, almost four years before the Secretary's revised regulation was promulgated, the Court declared that 'the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools.' Yet as we approach the twentieth anniversary of Brown I and Bolling, the Secretary's new regulation would indulge noncomplying school districts even more time for faculty desegregation." Kelsey v. Weinberger, 498 F. 2d 701, 709 (1974).

While Kelsey only enjoined HEW's grant of ESAA funds to the offending districts, Title VI makes these districts equally ineligible for HEW aid under any other statute. But despite the ruling in Kelsey, defendants have taken no steps to enforce the Title VI proscription against these districts, which it has found to be practicing racial discrimination.

17. Defendants have continued to evidence their renunciation of Title VI in pronouncements which disclose the deliberate character of their conduct. On the occasion of HEW's 1974 decision to seek judicial rather than administrative enforcement against the State of Louisiana's operation of a segregated system of higher education violating Title VI, defendant Holmes publicly stated:

> "A lot of the funds go to poor students and black schools. If we cut them off we would hit hardest those that most need the help." (Deposition of Peter E. Holmes, Adams v. Richardson, dated March 19, 1974, p. 13).

Similarly, defendant Weinberger publicly stated on September 6, 1974 concerning segregation in Northern school districts:

> "I think we have to face the fact that we are dealing with a very fierce opposition to desegregation in many Northern cities. . . . There are frequently many ways you can accomplish a great deal more by persuasion and discussion and negotiations to produce desegregation plans. There are many situations in which withdrawal of funds promotes more segregation." (New York Times, September 7, 1974, p. 28)

These pronouncements reflect HEW's continuing failure to accept Title VI and "the admitted effectiveness of fund termination proceedings in the past to achieve the Congressional objective" (Adams, 480 F. 2d at 1163 n. 4). That conclusion by the Court of Appeals was based on the record of effective HEW use of fund termination as a mechanism for securing compliance by recalcitrant districts until the remedy was abandoned following the 1969 Finch-Mitchell announcement.

18. As the United States Commission on Civil Rights has recently concluded, defendants have pursued and continue to pursue a policy against investigating student segregation in larger districts. (CRC Report, p. 24). Thus HEW reviews recently undertaken or planned in New York City, Philadelphia, Chicago, Los Angeles and other cities, avoid investigation of student segregation. As the Civil Rights Commission reports:

> "An outline of these reviews provided by OCR reveals that, while the scope of the reviews appears to cover thoroughly the extent of equal educational services provided students in the districts, once again OCR is ignoring the issue of assignment of pupils to schools on the basis of race or ethnicity in these reviews. Emphasis is placed primarily on ensuring so called 'quality education' for students, even in racially or ethnically isolated schools without attempting to desegregate such schools" (id. at 85).

The restricted focus of HEW's contemplated large city reviews is consistent with defendants' policy to renounce Title VI enforcement against Northern-

Western school segregation. As the Civil Rights Commission emphasizes:

> "Consideration of discrimination in the assignment of students to schools is now seldom a major part of a review, even where data indicate probable violations. This omission has meant that some districts are considered to be in compliance with Title VI while OCR ignores the existence of racially isolated schools in the districts" (id. at 65).

19. In the early years after the enactment of Title VI in 1964, HEW issued written guidelines which defined and clarified the obligations of school districts under Title VI. But none has issued since 1968. Nor have any such guidelines ever been directed to Northern-Western school districts setting standards to determine whether their segregated student bodies are de jure and within the reach of Title VI. HEW has not even issued any guidance for Northern-Western school districts with respect to the principles enunciated in Keyes v. School District No. 1, 413 U.S. 189, the Supreme Court's 1973 decision concerning Northern-Western school desegregation.

20. As a result of defendants' aforesaid acts and omissions, in the eleven years since the statute was enacted HEW has only secured compliance from segregated Northern-Western public school districts in relatively small school districts, having a total black and other minority student enrollment of 98,181. This figure contrasts with the 771,639 minority children attending medium-sized and larger Northern-Western school districts with disproportionate racial concentrations (Appendix D) where HEW has not even made Title VI investigations. It further compares with 323,748 such children attending schools in the 42 Northern-Western districts which have been pending for three to seven years under HEW's "investigation" process, and with 554,622 such children attending Northern-Western districts HEW has found to be guilty of racial practices in faculty

assignments, and disqualified for ESAA aid, without commencing any Title VI enforcement action.

21. As set forth in the preceding paragraphs, defendants have deliberately renounced and abandoned their statutory duty to assure that no student or faculty segregation on the basis of race or national origin are practiced in Northern-Western public school systems receiving federal assistance. The students who attend public schools in numerous Northern-Western school districts have been denied their rights under §601 of Title VI by virtue of continued HEW financial payments to districts wherein such segregation and discrimination is practiced.

22. Plaintiffs are irreparably injured by defendants' violations of their rights, as aforesaid. Accordingly, they seek as relief in this cause of action:

a. A declaration that defendants have violated plaintiffs' rights under Title VI by renouncing and abandoning their duty to assure that student or faculty segregation on the basis of race or national origin are not practiced in Northern-Western public school systems receiving HEW assistance; and

b. An order requiring defendants forthwith to commence good faith implementation of Title VI with respect to student or faculty segregation practices of Northern-Western public school systems by the investigation of all information and complaints indicating such practices, by the issuance of appropriate administrative determinations, and if voluntary compliance cannot promptly be secured by the initiation of formal Title VI enforcement proceedings.

all minority or predominantly minority schools. These statistics cannot be shrugged aside by HEW as showing only de facto segregation, for on similar facts reviewed in the context of the historical exercise of school attendance choices by Northern-Western school boards, federal courts have repeatedly found the racial concentrations to be the product of de jure discrimination. See cases listed in para. 14 above. The Supreme Court's 1973 decision in Keyes v. School District No. 1, 413 U.S. 189, has further facilitated the process of proving de jure segregation in Northern-Western cities. For under Keyes, the proof of de jure segregation in a meaningful portion of the school system shifts the burden to the school district to prove that such de jure motivation did not infect its actions in the remainder of the system (413 U.S. at 208). Despite the numerous districts listed in Appendix D whose student data reflect apparent violations of Title VI and the many cases including Keyes which have found de jure discrimination in Northern-Western school districts, HEW has failed even to initiate compliance investigations against these districts.

26. (i) Plaintiffs Darryl W. Brown and David Brown, ages 13 and 15, are black students attending the eighth and ninth grades of the Muirland Junior High School in the San Diego, California Unified School District. They sue through their parent, Jo Ann Brown. Plaintiff Shuka Miles-Msemaji, age 10, attends the fifth grade at the Audubon School in San Diego. He sues through his parent, Ken Msemaji. In 1972-73, 124,487 students were enrolled in San Diego's school system of whom 16,492 or 13.2% were black and 16,270 or 13.1% were other minority. No less than 67.5% of the black students attended schools with 50% or more minority students. 50.2% of the blacks attended schools 80% or more minority while 43.7% of the blacks were in schools 90% or more minority (see Appendix D). Upon information

and belief, such segregation in the assignment of students has continued to the present.

(ii) Plaintiff Damon McMillan, age 10, is a black student attending sixth grade in Robinson School in the Akron, Ohio school district. He sues through his parent, Toka D. McMillan. Plaintiffs Paul Mack and Howard Mack, ages 13 and 14, are blacks attending sixth and eighth grades in David Hill School and Camp Y Noah Goodyear Junior High School respectively in Akron. They sue through their parents, Charles R. and Josephine Mack. In 1972-73, Akron's school system included 54,329 students of whom 15,679 or 28.9% were black. No less than 65.2% of these black students attended schools with 50% or more minority students. 38.8% of the system's blacks attended schools 80% or more minority, 22% were in schools 90% or more minority while 3.6% of the blacks were in 100% minority schools (see Appendix D). Upon information and belief, such segregation in the assignment of students has continued to the present.

(iii) Plaintiff Eric James Dunson, age 12, is a black student attending seventh grade in Franklin Junior High School in the Columbus, Ohio School District. He sues through his parent, Olas Dunson. Plaintiffs Tommie Lorraine O'Brien and Chester O'Brien, III, ages 7 and 9, are black students attending the second and fourth grades respectively at Fairwood Elementary School in Columbus. They sue through their parent, Wanda Kay O'Brien. In 1972-73, 106,588 students were enrolled in the Columbus School System of whom 31,312 or 29.4% were black. No less than 70.6% of these black students attended schools with 50% or more minority students. 51.5% of the system's black students attended schools 80% or more minority while 37% of the blacks were in 90% or more minority schools (see Appendix D). Upon information and belief, such segregation in the assignment of students has continued to the present.

(iv) Plaintiff Dyan Alexander, age 8, is a black student attending fifth grade at Coronado School in the Richmond (California) Unified School District. She sues through her parent, Billie S. Alexander. Plaintiff Danette L. Barnes, age 15, is a black student attending tenth grade at Richmond Union High School in the Richmond, California School District. She sues through her parent Matthew M. Barnes. Plaintiff Alandas Foster, age 14, is a black student attending eighth grade at the Juan Crespi School in the Richmond, California School District. She sues through her parent, Jestine Williams. Plaintiff Ray Morris, age 16, is a black student attending eleventh grade at the J. F. Kennedy School in the Richmond, California School District. He sues through his parent, Jeraldene Morris. In 1972-73, Richmond's school system contained 39,952 students of whom 12,106 or 30.3% were black. No less than 58.9% of these black students attended schools with 50% or more minority students. 28.1% of the system's black students attended schools 80% or more minority, 25.6% were in schools 90% or more minority while 2.4% of the blacks attended 100% minority schools (see Appendix D). Upon information and belief, such segregation in the assignment of students has continued to the present.

27. In the summer of 1973, HEW's computers analyzed school district reports and isolated six separate categories of presumptive Title VI violations in numerous Northern-Western school districts. Yet HEW has generally failed to initiate compliance investigations concerning these apparent violations. These printouts revealed: (a) 121 districts in which the percentage of minority students in special education programs is at least twice as great as the percentage of non-minority students in special education; (b) 263 districts, each with thousands of national origin minority students enrolled, where few or none of these students received bilingual

instruction; (c) 29 districts with a disproportionate percentage of minority student expulsions in comparison with the percentage of non-minority student expulsions; (d) 188 districts with low faculty desegregation; (e) 11 districts with low classroom desegregation where there is high overall school desegregation; and (f) 37 districts with low student desegregation where extensive transportation of students occurs for purposes other than desegregation. One of those districts had four separate apparent violations, 25 districts had three such violations each and 81 districts had two each. Despite HEW's knowledge that hundreds of Northern-Western school districts have these Title VI deficiencies in one or more categories, HEW has generally failed to initiate Title VI compliance investigations in these districts.

28. Students in numerous school districts in violation of Title VI, wherein HEW has refused to initiate compliance investigations, have been and are being denied their rights under §601 of Title VI.

29. Plaintiffs are irreparably injured by defendants' violations of their rights as aforesaid. Accordingly, they seek as relief on section A of the second cause of action:

a. A declaration that defendants have violated plaintiffs' rights under §601 of Title VI by failing to initiate compliance investigations in Northern-Western school districts which they have reason to believe are in violation of Title VI by segregation or other discriminatory practices on the basis of race or national origin.

b. An injunction requiring defendants to initiate within 90 days Title VI compliance investigations of Northern-Western school districts (including those listed in Appendix D) which they have reason to believe are violating Title VI by segregation or other discriminatory practices.

c. An injunction requiring defendants to initiate within 90 days Title VI compliance investigations in each of the Northern-Western school districts identified in the computer printouts referred to in paragraph 27 above.

B. UNLAWFUL DELAYS IN INVESTIGATIONS

30. HEW has defaulted on its statutory duty to act expeditiously in completing its investigations into Northern-Western public school violations of Title VI.

31. The Supreme Court has ruled that "the time for mere 'deliberate speed' has run out", and "delays in desegregating school systems are no longer tolerable." Griffin v. County School Board, 377 U.S. 218, 234 (1964); Bradley v. School Board, 382 U.S. 103, 105 (1965); accord: Alexander v. Holmes County Board of Education, 396 U.S. 19, 20 (1969). In defiance of these rulings, and defendants' duty under Title VI, HEW has for years protracted its investigations into Title VI violations by Northern-Western public school districts which receive HEW assistance. Of 100 HEW investigations initiated in Northern-Western school districts since Title VI was enacted, 58 remain pending (the others having been closed for insufficient evidence or because HEW concluded that compliance was secured). Twenty-four of these 58 pending investigations are six to seven years old and 18 were begun three to five years ago. The average age of these 58 investigations was 44 months (as of HEW's last public report in February 1975). Unconscionable delays have occurred when these cases have been assigned to HEW's regional offices and also when they have reached the Office of the General Counsel in Washington (see Justice, infra Appendix B, pp. 54, 78-94). (See Appendix E).

32. Comparable unconscionable delays have occurred during the investigations and dispositions of the 42 cases which HEW has closed. The average duration of these cases has been 35 months.

33. (i) Plaintiff J. David Thomas, age 10, is a black student attending the fourth grade at Jerstad-Agerholm School in the Racine, Wisconsin School District. He sues through his parent, Julian Thomas. Plaintiff Gregg Rogers, age 7, is a black student attending the second grade at the Dr. Jones School in Racine. He sues through his parent, Patricia Rogers. HEW's review of the Racine, Wisconsin school system, initiated in December of 1969, is now almost six years old. An on-site investigation was conducted in July 1970 and virtually nothing has happened in the last five years. A series of HEW status reports in the years since 1970 have merely stated that the district is "under review" or "additional investigation required."

(ii) Plaintiff Sharon Harris, age 12, is a black student attending the eighth grade at the Cecil Avenue Elementary School in the Delano (California) Union Elementary School District. She sues through her parent, Jennie F. Harris. Defendants' review of the Delano Union Elementary School District, initiated in 1970, is almost five years old. OCR conducted four on-site compliance reviews in 1970, 1971, 1973 and 1974 and transmitted a letter of findings to the district in 1974. Despite its years of investigations, HEW, according to its February 1975 report, is still "awaiting response from school district. Negotiations continuing."

34. Apart from compliance investigations commenced on HEW's own instance, its regional offices also unlawfully protract action upon complaints from individuals. At the conclusion of calendar year 1974 33 complaints from Northern-Western districts were still unresolved after

six months, 23 remained unresolved after nine months, and 11 remained unresolved after at least 12 months.

35. The delays set forth in the above paragraphs have totally undermined HEW's enforcement of Title VI. As the Civil Rights Commission recently concluded: "Where compliance reviews have been conducted by OCR, the amounts of time consumed in the analysis of data, clearance for letters of noncompliance, and conduct of negotiations have served to undermine the effectiveness of the enforcement program (CRC Report, p. 360).

36. Further delays result from defendants' illegal policy of suspending their Title VI activities whenever private desegregation litigation is filed. Congress has provided that a school district is exempt from HEW's Title VI jurisdiction only where it is in compliance with "a final order or judgment of a Federal Court for the desegregation of the school or school system" (42 U.S.C. §2000d-5). Yet upon the mere filing of a judicial complaint by private parties alleging segregation by school districts, HEW generally suspends all investigations and other activities with respect to that district. The consequence of this policy is that black and other minority children who attend schools in these districts are deprived of desegregated and nondiscriminatory educations for years while cases wend their way through the litigation process. As described in Justice, Appendix B infra (pp. 67-68, 110) HEW commenced compliance investigations of two suburban Detroit school districts during 1968, a third suburban district in 1970 and spent several years investigating them. When these districts were considered for inclusion as three of numerous suburban districts in a possible court-ordered metropolitan desegregation plan for Detroit in 1972, OCR suspended its compliance investigation although no

corrective action had been secured. While more years passed until in June of 1974 the United States Supreme Court rejected a metropolitan desegregation plan for Detroit (Milliken v. Bradley, 418 U.S. 717), HEW's unlawful suspension policy caused a continuing infringement of the Title VI rights of the black students to be assigned to nonsegregated schools within each of the three school districts, an infringement which continues in two of these districts to this day.

37. As Judge Pratt declared in a recent Supplemental Order in Adams, in language equally applicable to HEW's investigations in Northern-Western public school districts, "HEW has often delayed too long in ascertaining whether a complaint or other information of racial discrimination constitutes a violation of Title VI." (Supplemental Order, March 14, 1975, p. 5). In his Order, Judge Pratt enjoined HEW to enforce Title VI in accordance with a specific timetable, requiring the agency (1) within 90 days of receipt of a complaint or other information of racial discrimination to determine for administrative purposes whether the district is in compliance with Title VI; and (2) wherever noncompliance is so determined, to attempt to secure compliance through voluntary means for an additional period not to exceed 90 days before commencing formal Title VI enforcement proceedings 30 days thereafter. (Supplemental Order, p. 6).

38. As set forth in the preceding paragraphs, students attending schools in Northern-Western districts where HEW fails to act expeditiously to conclude the investigative process have been denied their rights under §601 of Title VI.

39. Plaintiffs are irreparably injured by defendants' violations of their rights, as aforesaid. Accordingly, they seek as relief on Section B of the second cause of action:

a. A declaration by the Court that defendants have violated plaintiffs' rights under §601 of Title VI by failing expeditiously to complete HEW investigations into Northern-Western public school violations of Title VI.

b. A declaration by the Court that defendants have violated plaintiffs' rights under §601 of Title VI by suspending their Title VI investigations whenever private desegregation litigation is filed; and that such suspension may lawfully occur only where a school district becomes subject to a final order or judgment of a federal court for the desegregation of the school or school system and upon HEW's determination that the district is in compliance with such order or judgment.

c. An order requiring defendants (1) within 90 days of receipt of a complaint or other information of discrimination on the basis of race or national origin in a Northern-Western public school district to determine for administrative purposes whether the district is in compliance with Title VI; and (2) wherever non-compliance is so determined, to attempt to secure voluntary compliance for a period not to exceed an additional 90 days, and then to commence formal Title VI enforcement proceedings.

C. REFUSAL TO COMMENCE TITLE VI ENFORCEMENT PROCEEDINGS

40. HEW has defaulted on its duty to commence formal Title VI enforcement proceedings where it has found, or the evidence before it gives cause to believe, that a Northern-Western school district is violating Title VI and voluntary compliance has not been achieved over a substantial period of time.

41. Having once determined that a school district is in violation of Title VI, and having failed during a substantial period of time to achieve

voluntary compliance, defendants have a duty to commence the enforcement proceedings provided for by Title VI. The District Court so ruled in Adams (356 F. Supp. at 95). As the Court further found in its recent Supplemental Order, ". . . 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." (Supplemental Order, p. 1). Judge Pratt added, "HEW has . . . 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." (Id. at pp. 5-6). Accordingly, Judge Pratt ordered HEW to commence formal Title VI enforcement proceedings whenever within 210 days of receipt of a complaint or other information of racial discrimination non-compliance has been determined and voluntary compliance has not been secured. Just as in the case of the Southern districts at issue in Adams, defendants have found or the evidence before HEW has given cause to believe, that Northern-Western districts have been in violation of Title VI; and yet defendants have failed to commence Title VI enforcement proceedings after their efforts to seek voluntary compliance have "either not been attempted or have been unsuccessful or have met with rejection." Adams, 351 F. Supp. at 641.

42. There are numerous districts (see Appendix E infra) where after finding Title VI violations or evidence gives HEW cause to believe that districts are violating Title VI, defendants have "negotiated" for years without achieving voluntary compliance with Title VI; and yet defendants have commenced no enforcement proceedings.

43. (i) Plaintiffs Lisa and Leslie Holloway, twins age 7, are black students attending first grade at the Martin Luther King School in the Fresno, California School System. They sue through their parent, Irene Udell. Plaintiff Laura Merritt, age 5, is another black student attending kindergarten at Martin Luther King. She sues through her parent, Dimple Merritt. Plaintiff Cheryl Slaton, age 9, is a black student attending the third grade at the same school in Fresno. She sues through her parent, Bertha Teemer. HEW's review of the Fresno City Unified School District is now more than 7 years old following its initiation in May 1968. The agency conducted five separate on-site investigations in April 1969, May 1970, September 1970, March and July 1972. After nine months devoted to the writing of an investigative report, the case was presented to HEW's Office of the General Counsel in Washington in December 1972. On March 26, 1973, HEW sent the district a letter of "probable noncompliance." Negotiations have continued ever since with HEW conducting a sixth on-site review in June 1974. As of its February 1975 report, HEW noted that the district had failed to submit a required student assignment plan. Yet defendants have refused and failed to initiate formal enforcement proceedings against the Fresno district.

(ii) Plaintiff Elizabeth Andrews, age 12, is a black student attending sixth grade at the Glenwood Park School in the Fort Wayne, Indiana Community School System. She sues through her parent, Bonnie Andrews. Wendolyn Walker, age 15, is a black student attending the ninth grade in Shawnee Junior High School in the Fort Wayne Community School System. She sues through her parent, Warren E. Walker. In August 1968, HEW initiated a compliance review of the Fort Wayne School System. Thereafter, in October 1968 HEW's Office of General Counsel (OGC)

concluded that "a reasonable possibility exists that the Fort Wayne School System is not in compliance" with Title VI, and HEW's Office for Civil Rights decided that a more complete review of the system should be conducted. A full scale compliance review was conducted for 10 days in April 1969. But after one and a half years then passed without HEW action, HEW's Washington Office in November 1970 concluded that the case file was stale and that the file should be returned to the Region for updating. After a second on-site review was conducted in the spring of 1971, the file returned to OGC in Washington which in turn transferred the file back to the Region for further investigation. After that occurred, OGC reviewed the Region's Report for almost all of 1972. At the end of 1972, the file was returned to the Region for still further investigation. At some point in the last two years, HEW referred the Fort Wayne case to the Justice Department, but HEW's February 1975 report indicates that a "reinvestigation was set for February, 1975." (See Justice, Appendix B, pp. 81-82). Despite the seven years of investigation, and the noncompliance found by HEW, defendants have refused and failed to initiate formal enforcement proceedings against the Fort Wayne district.

44. Notwithstanding such protracted unsuccessful negotiations with non-complying districts defendants have noticed administrative enforcement proceedings against Northern-Western public school districts only five times since the statute's enactment in 1964. As the Civil Rights Commission recently concluded: "HEW's reluctance in recent years to utilize the administrative sanction process where school districts are known to be in noncompliance has caused irreparable damage to the strength of the Title VI program and to minority children in those districts." (CRC Report p. 131)

45. As set forth in the preceding paragraphs, HEW having long ago found or having evidence giving it cause to believe that the statute is being violated in numerous Northern-Western school districts and having defaulted on its duty to commence formal Title VI enforcement proceedings, the students attending schools in these districts have been denied their rights under §601 of Title VI.

46. Plaintiffs are irreparably injured by defendants' violations of their rights as aforesaid. Accordingly, they seek as relief on section C of this second cause of action:

a. A declaration that defendants have defaulted on their duty to commence formal Title VI enforcement proceedings where they have found, or the evidence before them gives them cause to believe, that Northern-Western school districts are violating Title VI and voluntary compliance has not been achieved after a substantial period of time; and

b. An order requiring defendants within 60 days to commence formal Title VI enforcement proceedings against each school district listed in Appendix E in which HEW compliance reviews are more than 210 days old; and

c. An order requiring defendants within 210 days of receipt of a complaint or other information of discrimination on the basis of race or national origin to commence formal Title VI enforcement proceedings wherever non-compliance is determined and voluntary compliance has not been secured.

D. REFUSAL TO COMMENCE TITLE VI ENFORCEMENT PROCEEDINGS AFTER FINAL HEW DETERMINATION UNDER ESAA OF DISCRIMINATION

47. HEW has defaulted on its duty to commence formal Title VI enforcement proceedings after having finally concluded in its enforcement of the Emergency School Aid Act that Northern-Western school districts are practicing segregation or discrimination.

48. As previously described in paragraph 16, in 1973 HEW declared school districts in the cities of Los Angeles, Detroit, Rochester, and Richmond (California) ineligible for assistance under ESAA because of their assignments of faculties on the basis of race. Plaintiffs Alexander, Barnes, Foster and Morris (see paragraph 26(iv) above) are enrolled in the Richmond, California Unified School District. On July 2, 1973, HEW's Associate Commissioner of the Office of Education, upon the advice of the Office for Civil Rights, wrote the Richmond Unified School District that it was ineligible for ESAA assistance because the district had assigned its faculty so that schools were identifiable on the basis of race. In Kelsey v. Weinberger, 498 F. 2d 701 (1974), the Court of Appeals for the District of Columbia found no basis for excusing that racial discrimination and granting Richmond and the other districts federal aid under ESAA. In his recent Supplemental Order, Judge Pratt ordered HEW to commence formal Title VI enforcement proceedings against six Southern districts previously found ineligible for federal assistance under ESAA because of civil rights violations (Supplemental Order, pp. 3-4). Nevertheless, HEW has taken no steps to commence Title VI enforcement against the Northern-Western school districts involved in Kelsey though they receive HEW assistance under numerous other statutes and have not discontinued their discriminatory faculty assignments.

49. HEW has also declared other Northern-Western districts ineligible for ESAA because of their discriminatory practices, for example, the school districts of Jeffersonville (Indiana), Chicago (Illinois), and Princeton (Ohio). Despite its finding that these districts are ineligible for ESAA because of their discriminatory practices and although they receive HEW assistance under numerous other statutes, HEW has failed to initiate Title VI enforcement proceedings against them.

50. As set forth in the preceding paragraphs, in Northern-Western school districts finally found ineligible for funding under ESAA because of their discriminatory practices students have been denied their rights under §601 of Title VI by defendants' failure to commence Title VI proceedings against such districts.

51. Plaintiffs are irreparably injured by defendants' violations of their rights, as aforesaid. Accordingly, they seek as relief on section D of the second cause of action:

a. A declaration that defendants have defaulted on their duty to commence formal Title VI enforcement proceedings after they have finally concluded that Northern-Western school districts are ineligible for assistance under ESAA because they are practicing segregation or discrimination on the basis of race or national origin; and

b. An order requiring defendants to commence within 60 days formal Title VI enforcement proceedings against each school district which has finally been found ineligible by HEW for ESAA assistance because of its discriminatory or segregatory practices.

* * * *

52. Each of the defaults on defendants' duties under Title VI hereinbefore set forth in the first and second causes of action is also a violation of the Fifth and Fourteenth Amendments to the United States Constitution. Title VI was enacted by the Congress to implement fundamental Fifth and Fourteenth Amendment proscriptions on government support or aid to discrimination. That right is not illusory, for Congress sought by Title VI generally to encourage desegregation and non-discrimination by those receiving federal assistance, and experience has shown that genuine enforcement of Title VI can have that salutory effect. The student plaintiffs herein, attending public schools engaging in unlawful segregation and discrimination on the basis of race or national origin, have express rights under §601 of Title VI which are being violated and require judicial vindication.

RELIEF

WHEREFORE, plaintiffs pray that this Court grant them:

A. The declaratory relief requested in paragraphs 22a, 29a, 39a, 39b, 46a, and 51a above;

B. The injunctive and mandatory relief requested in paragraphs 22b, 29b, 29c, 39c, 46b, 46c, and 51b above;

C. A reasonable attorney's fee, and the costs of this action;

D. Such other and further relief as the Court may deem appropriate and just.

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VERIFICATION

City of Washington)
) ss:
District of Columbia)

I, James Lyle DeMarce, being duly sworn, depose and state that I have read the above Complaint for Declaratory and Other Relief. I have reviewed statistical data and status reports published by the Department of HEW and other materials from HEW files. I believe the factual allegations contained in the Complaint derived from those data and materials are true and correct. With respect to the factual allegations concerning the individual plaintiffs, I am informed and believe that they are true and correct.

James Lyle DeMarce

Sworn to and subscribed before
me this 1st day of July, 1975.

Eva N. Bothwell
Notary Public

My Commission Expires: July 31, 1978