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THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR THE PRESIDENT

FROM : JIM CANNON

SUBJECT : Ferndale, Michigan Desegregation Situation

You asked today for additional background on the Ferndale situation.

The attached summary, by Assistant Attorney General Stanley Pottinger, gives the essential facts plus a lengthy account of the efforts made by the Justice Department to persuade Ferndale School officials to come forth with a Constitutionally acceptable desegregation plan.

It is my understanding that Ed Levi personally reviewed this matter and made the decision to file the suit.

Attachment

Assistant Attorney General

Department of Justice
Washington, D.C. 20530

May 21, 1975

MEMORANDUM FOR

Mr. James M. Cannon
Assistant to the President
for Domestic Affairs
The White House

Subject: Inquiries by Congressman Esch concerning action by the Department of Justice with respect to the School District of the City of Ferndale, Michigan

I understand that Congressman Esch has raised with the President a question of the propriety of the position of the Justice Department in the Ferndale, Michigan desegregation case.

The essential factors in this case are as follows:

1. Ferndale has 3,527 elementary students, of which only 8 percent are black. Virtually all of these children (94 percent) have been deliberately placed in one school, the Grant school.

2. There is no dispute whatsoever as to the de jure nature of the school district's segregation. The school district had a full hearing in 1970 before an Administrative Hearing Officer and lost; the district appealed to the Departmental Reviewing Authority and lost; the district appealed to the Secretary of HEW and lost; the district appealed to the United States Court of Appeals and lost; the district then appealed to the United States Supreme Court and certiorari was denied.

3. The Ferndale school system has had 6 years to desegregate this one school. It has refused to negotiate any plan whatsoever with HEW, the Department of Treasury (under the Revenue Sharing Act), or the Justice Department, until December of last year.

4. The only remaining issue is what kind of remedy should be proposed. It should be clear that this is not a busing case. There are three virtually all-white schools within 1.4 miles of the all-black Grant school, at least two of which are within walking distance. In other words, the Grant school can be fully desegregated on a constitutional basis within a neighborhood school concept, and without the necessity for busing. Compared to virtually all other urban school districts which I have seen, the methods for desegregating this small district are the easiest.

In addition, because busing is not required, Ferndale can come into constitutional compliance by methods consistent with the priorities set in the Esch Amendment to the Equal Educational Opportunity Act of 1974 (this Amendment sets priorities for desegregation methods, starting with the least difficult and ending with busing as a last resort).

5. The school district has proposed to operate a free choice "open classroom" program at the Grant school, and to offer the black students attending that school a free choice to transfer to any of the nine white elementary schools. Enrollments for next year have already been made, and under the school district's proposal, there would be two programs, rather than a unitary program, operating at Grant with the racial compositions indicated below:

School		Grades	Black	White	Total
Grant	a.	K-6 - open classroom	27	170	197
	b.	K-6 - traditional	234	0	234

Only one black student chose to transfer from the Grant school. The faculty in the traditional program at Grant would remain virtually all black.

We informed the school officials (and Congressman Esch) that the open classroom program would be acceptable as part of a complete desegregation plan, but that the present proposal, as a whole, was clearly not acceptable because it would maintain "within school segregation" in clear violation of section 204(a) of the Equal Educational Opportunity Act of 1974 and in clear violation of the Fourteenth Amendment.

In our various communications with school board officials, with Congressmen Esch and Blanchard, and in meetings with Congressman Blanchard and the Attorney General, the Department has consistently maintained that it would be as flexible and generous toward the school district's proposal as it lawfully could be, but that we could not compromise clear constitutional standards and expose the Department and the Administration to embarrassing liability for failing to enforce the law. At the same time, we have consistently offered to negotiate for an acceptable plan and file it as a consent decree, thereby avoiding litigation over this issue. That offer, of course, still stands.

Our most recent efforts to obtain an acceptable plan was undertaken shortly after the effective date of the EEO Act of 1974. We sent the school board a notice letter on November 13, 1974, explaining that it was obliged under various federal laws and the Fourteenth Amendment to take steps to desegregate the Grant school. We have also informed Congressmen Esch and Blanchard of this clear conclusion.

At the school board attorney's request, we extended the time for response. On December 10, 1974, he informed us that the board was considering a number of alternative plans. We granted further extensions for a month and

a half, and on January 30-31, 1975, an attorney from the Education Section of the Civil Rights Division met with the representatives of the school district in Ferndale and discussed their proposals informally. We again requested that the board promptly send a formal proposal to the Justice Department.

On February 11, 1975, the board attorney sent us a letter explaining the open classroom proposal, and on February 21, 1975, we informed the board again that its proposal was not a constitutionally acceptable desegregation plan. The board then requested a meeting in Washington, and such a meeting was arranged through Congressman Blanchard's office for March 6, 1975. At that meeting, in addition to the school officials and attorneys from the Civil Rights Division, Congressman Blanchard and an aide of Senator Griffin were in attendance. None of the participants approached the meeting as a negotiation session, but as an attempt to convince Department attorneys to accept the board's earlier proposal. Justice attorneys again informed Ferndale officials that the proposal was clearly not constitutional nor acceptable, and therefore not one that we legitimately could accept.

The board has not requested other meetings on the matter, but there have been a number of further efforts by Congressmen Esch and Blanchard to influence the Department not to file suit.1/ At his request, I met with Congressman Blanchard on March 21, 1975, and again explained to him why the board's proposal was not lawful or acceptable. He then requested and obtained a meeting with the Attorney General personally which I attended on April 10, 1975. At that time we again explained the deficiencies of the board's proposal.

1/ As you probably know, there have also been a number of other previous contacts with White House officials.

On April 24, 1975, Congressmen Blanchard and Esch sent a letter to the Attorney General requesting the Department to delay filing suit in Ferndale in light of certain developments in the Detroit desegregation case. On May 19, 1975, the Attorney General responded to the Congressmen stating that we had considered the matters that they had raised, and that while we would continue to negotiate with school officials for an acceptable plan and consent decree to avoid litigation, we were legally obliged to file suit because of the inadequacies of the plan as proposed. (Attorney General Levi's letter is attached.)

On May 19, 1975, I was informed by the Attorney General's office that he signed the complaint and forwarded it to us for filing. It should be understood that the Attorney General personally has reviewed this case and finds no alternative to filing in light of refusal of the board to propose a constitutional plan.

This case is extraordinary enough to warrant just a couple of additional comments.

The proposed segregated within school plan of Ferndale is esentially indistinguishable from plans that have been proposed for years by many southern school districts. Those plans have uniformly been rejected by the courts, by HEW, and by the Justice Department, and there can be no question that this kind of within school desegregation was prohibited by the Congress in the EEO Act of 1974. It is not an exaggeration to say, as I have said repeatedly to Congressman Blanchard, that should the Justice Department accept a segregated school plan of this kind, fairness would require the Department to acknowledge to hundreds of southern school districts that such plans are now acceptable throughout the South as well. Doing so, of course, would constitute a nightmare of "unraveling" of law enforcement which I doubt even Congressmen Esch or Blanchard are ready to advocate.

In more than five years of law enforcement in this business covering hundreds of school districts throughout the country, I have never seen a case more easily resolved factually, nor a school district more intransigent and hostile -- perhaps excepting Boston -- than the Ferndale school system. This case is more than half a decade old. The Ferndale school board has been on notice since 1969 that the Grant school is unlawfully segregated. Two complete school years have passed since the board exhausted its judicial appeals, yet prior to our notice letter of November 13, 1974, the school board had not even considered any steps to eliminate segregation. On the contrary, the board has chosen to lose its federal financial assistance from HEW rather than desegregate this one relatively small school.

The facts and law are so clear in this case that for the Justice Department to delay action without good cause, or for the White House to be induced to "carry the mail" for Ferndale and counsel delay (which it has not) in my judgment would mean nothing but embarrassment, and trouble for all of us.

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

Attachment

cc: Mr. Buchen
Mr. Friedersdorf
The Attorney General

May 19, 1975

Honorable Marvin L. Esch
House of Representatives
Washington, D. C. 20515

Dear Congressman Esch:

I am writing in response to your expression of views relating to possible court action by the Department of Justice with respect to the public schools of the School District of the City of Ferndale, Michigan. My office and the Civil Rights Division have given careful consideration to the matters you have raised.

First, I understand that you have asked about this Department's position on the applicability to the Ferndale matter of § 215(a) of the 1974 Education Amendments (the Esch Amendment), 20 U.S.C. § 1714. It is our view that Congress, although limiting court-ordered transportation of students to the school closest or next closest to their place of residence, made clear in § 203, 20 U.S.C. § 1702, that it did not intend to limit relief found necessary by courts to achieve full enforcement of the Fourteenth Amendment. We will therefore be guided by § 1714 to the extent that it is consistent with the Fourteenth Amendment. Fortunately, we believe that in this case appropriate relief can be fashioned which can meet the requirements of both the Fourteenth Amendment and the Esch Amendment.

Second, we are aware of the pending motions in the Detroit school case and have considered their relationship to our proposed suit. Our opinion is that further delay in filing would neither be warranted nor in the interest of the Ferndale school district. Should the question of inter-district relief arise sometime in the future in the Detroit case, we will take appropriate steps to ensure that the Ferndale school officials are not subjected to conflicting court orders.

I appreciate your concern and wish to assure you that this Department will, as in the past, work closely with the responsible school officials to resolve any problems that might arise from the implementation of a desegregation plan. The desegregation plans previously proposed by the Ferndale school board, however, do not satisfy the requirements of federal law and the Fourteenth Amendment, and I have therefore determined that this Department must file suit in order to obtain the necessary compliance. We will, of course, continue to negotiate with the Board in an effort to resolve this matter by the entry of a consent decree if agreement can be reached.

Thank you for providing me with your views on the Ferndale school system. Please do not hesitate to contact us if you have any further questions on this matter.

Sincerely,

Edward H. Levi
Attorney General

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May 19, 1975

Honorable James Blanchard
Member of Congress
House Office Building
Washington, D.C. 20515

Dear Congressman Blanchard:

We were pleased to meet you on April 10, 1975 to obtain your views on possible court action by this Department with respect to the public schools of the School District of the City of Ferndale, Michigan. The matters which you raised at that meeting have been given careful consideration by my office and by the Civil Rights Division.

We appreciate the concerns which you expressed and wish to assure you that the attorneys of this Department will, as in the past, work closely with the responsible school officials to resolve any problems that might arise from the implementation of a desegregation plan that fully complies with federal law and the Fourteenth Amendment. As we discussed at our meeting with you, if there had been an acceptable plan devised, this would have been included in a consent decree which could have been filed at the same time as the suit was filed. No such acceptable plan, however, has been proposed. The plans proposed by the Ferndale Board to date do not meet the requirements of federal law, and we have, therefore, determined that this Department must file suit in order to obtain the necessary compliance.

We are aware of the pending motions in the Detroit school case and have considered their relationship to our proposed suit. Our honest opinion is that further delay in filing would neither be warranted nor in the interest of the Ferndale school district. Should the question of interdistrict relief arise in the future in the Detroit case we will, of course, take appropriate steps to insure that the Ferndale school officials are not subjected to conflicting court orders. We will, of course, continue to negotiate with the Board in an effort to resolve the suit by the entry of a consent decree if we can reach agreement.

Thank you for providing me with your views on the Ferndale school system. Please do not hesitate to contact us if you have any further questions on this matter.

Sincerely,

Edward H. Levi
Attorney General