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August 13, 2015

Via Email and U.S. Mail

Kendra Clay, General Counsel
Arkansas Department of Education
Office of Legal Services
Four Capitol Mall, Room 301-A
Little Rock, Arkansas 72201
kendra.clay@arkansas.gov

Jennifer Davis, Staff Attorney
Arkansas Department of Education
Four Capitol Mall, Room 301-A
Little Rock, AR 72201
jennifer.davis@arkansas.gov

Re: Act 560 of 2015

Dear Ms. Clay and Ms. Davis:

This firm represents the Brinkley School District (“District”). This letter is to amend and supplement our letter to Jeremy Lasiter dated April 23, 2015. The District’s Board of Directors has determined that the District not participate in school choice under the School Choice Act of 2013, as amended in 2015 by the General Assembly in passing Act 560 (collectively, the “Acts”). The reasons are that the District continues to be subject to the original directive from the United States Supreme Court in *Brown v. Board of Education of Topeka, Kansas*, 347 U.S. 483 (1954), and its progeny, that the maintenance of racially dual public schools was unconstitutional and directing that racially segregated schools be dismantled; and the desegregation plan approved in the Administrative Proceeding before the United States Department of Health, Education and Welfare, *In the Matter of Brinkley School District No. B*, HEW Docket No. CR-842 to the same effect. The desegregation obligations of these cases and proceedings prohibit the District from taking any action, or refraining from taking any action, the natural and probable consequence of which would be a segregative impact within the District (*i.e.*, the creation, maintaining, or increasing of racially identifiable schools). Permitting school choice under the Acts would have such an impact. Allowing school choice would, therefore, be in conflict with the District’s desegregation obligation still outstanding. The District further relies upon Ark. Code Ann. § 6-18-317(a), which prohibits transfers if either the

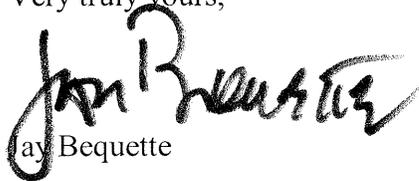
Jeremy C. Lasiter, Esq.
August 13, 2015
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resident or residing district has ever been under a desegregation-related court order. *See Edgerson on behalf of Edgerson v. Clinton*, 86 F.3d 833 (8th Cir. 1996).

In that same regard, I am enclosing documents from the HEW Administrative Proceeding to support this letter. I believe all the information specified by Ark. Code Ann. § 6-13-113(b) is included in the enclosures. If not, please let me know and I will furnish it. I know review of these old desegregation proceeding files is impractical, and sometimes impossible, because of their age and volume.

Thank you for your cooperation. Please do not hesitate to contact me should you have questions concerning this matter.

Very truly yours,



Jay Bequette

Enclosures

cc: Dr. Arthur Tucker



BRINKLEY PUBLIC SCHOOLS

Member North Central Association

BRINKLEY ARKANSAS 72021

Office of the
Superintendent

**TO: Mr. A. W. Ford, Commissioner
State Education Department
Little Rock, Arkansas**

**SUBJECT: Letter of intent for Brinkley Public Schools,
Brinkley District #B, Brinkley, Arkansas**

This letter will serve as an official action by the Board of Directors of Brinkley School District #B, taken in a meeting held May 4, 1970. It is the intent of the said board to comply with Title VI of the Civil Rights Act in eliminating the dual system of schools in this district.



President



Supt. of Schools

To: Mr. A. W. Ford, Commissioner of Education

Subject: Desegregation Plan for Brinkley School District #B, Brinkley, Arkansas to be effective September 1, 1970.

SCHOOL FACILITIES

I. C. B. Partee Elementary School

A. The part of the Brinkley School System known as the Partee Elementary School, located on Center Street contains 32 classrooms, one library and one cafetorium. This facility will accomodate all students and faculty in grades 1 through 4 inclusive. Approximately 425 Blacks and 420 Whites will be assigned to this building. All staff members presently employed were offered contracts for 1970-71. This total was 9 Blacks and 21 Whites, two of the 21 Whites are presently teaching in the Black school. Assignment of students and staff will be made without regard to race, creed or color.

The principal is white.

II. Brinkley Junior High School (Grades 5 - 8)

A. This campus is presently used as an all Black school except for three staff members - one principal and two teachers who are white. Approximately 424 Whites and 345 Blacks will be assigned to this facility. It is located on South Grand Avenue approximately 8 blocks from the other campus. This facility contains 30 classrooms, two libraries, one gymnasium, one vocational agri building which contains one classroom and one shop area, and one large cafeteria. There will be 28 teaching positions in this school. There are presently 11 Black teachers and 1 Black librarian working in grades 5 - 6- 7 - 8. All will be assigned to this school. There will be 17 Whites assigned. The principal will be White, the assistant principal will be Black. All assignment of students and staff will be made with regard to race, creed or color.

III. Brinkley Senior High School

A. This facility is presently used for grades 7 - 12, which is predominately White. It is located adjacent to Partee Elementary School, separated by play area and street. There are 28 classrooms, 1 gymnasium, 1 agri building, 1 Industrial arts building, 1 home economics and band building and one cafeteria.

The principal will be White and the assistant Principal will be Black.

Approximately 255 Blacks and 335 Whites will be assigned to this facility. Twelve Black and twenty-two White teachers will be assigned.

All students and teachers will be assigned to classes and sections without regard to race, creed, or color.

SUMMARY

This plan is a complete unitization of the Brinkley Public Schools. This plan will be in effect when school opens September 1970. There will be no school which can be identified by race or color. All student activities will be represented by both Black and White students. All school transportation facilities will be operated on a totally integrated basis.

If, as a result of a program for complying with Title VI, there is to be a reduction in the total professional staff of a school system, or professional staff members are to receive assignments of lower status or pay, the staff members to be released or demoted must be selected from all the school system's professional staff members without regard to race, color, or national origin and on the basis of objective and reasonable standards. In addition, in such a situation, no staff vacancy may be filled through recruitment from outside the system unless school officials first determine that none of the displaced staff members is qualified to fill the vacancy.

ADMINISTRATIVE PROCEEDING
IN THE
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
NATIONAL SCIENCE FOUNDATION

In the Matter of BRINKLEY SCHOOL DISTRICT :
NC. B, ARKANSAS :
(hereinafter called "School District") :

and :

STATE DEPARTMENT OF EDUCATION OF ARKANSAS :
(hereinafter called "State Agency") :

Respondents .

DOCKET NO. CR-842

ORDER OF DISMISSAL

Upon consideration of the Motion to Dismiss submitted by the General Counsel, Department of Health, Education, and Welfare dated January 31, 1972, IT IS HEREBY ORDERED that the above captioned proceeding be dismissed on the ground of the submission by the Respondent School District of a final desegregation plan determined by the Responsible Department Official concerned to be adequate to effectuate the purposes of Title VI of the Civil Rights Act of 1964 and of the Regulations thereunder.

Dated: 2/10/72


Member

Reviewing Authority (Civil Rights)

CERTIFICATE OF SERVICE

I hereby certify that I caused one copy of the attached document
to be mailed this date to the following persons at the addresses given:

Hon. Everett J. Hammerstrom
BHA, Social Security Administration
Suite 700, Midland Bank Building
401 Second Avenue South
Minneapolis, Minnesota 55401

Robert V. Light, Esq.
Smith, Williams, Friday & Bacon
1100 Boyle Building
Little Rock, Arkansas 72201

Superintendent
Brinkley School District No. B
800 South Main
Brinkley, Arkansas 72021

Commissioner of Education
State Department of Education
Little Rock, Arkansas 72201

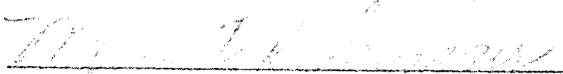
Director
National Science Foundation
Attention: Charles F. Brown, Esq.
1800 G Street, N. W.
Washington, D. C. 20550

Civil Rights Hearing Clerk
Room 4519, HEW North Building
330 Independence Avenue, S. W.
Washington, D. C.

Irving Wilner, Attorney
Room 3271, North Building
Department of Health, Education, and Welfare
330 Independence Avenue, S. W.
Washington, D. C. 20201

DOCKET NO. CR- 842

Date: February 11, 1972


(Mrs.) Margaret B. Seymour
Hearing Clerk
Reviewing Authority (Civil Rights)
330 Independence Avenue, S.W.
Room 4519, HEW North Building

ADMINISTRATIVE PROCEEDING
IN THE
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
NATIONAL SCIENCE FOUNDATION

-----X
: In the Matter of: :
: : :
: BRINKLEY SCHOOL DISTRICT NO. B, : :
: ARKANSAS : : DOCKET NO. CR-842
: (hereinafter called "School District") : :
: and : :
: STATE DEPARTMENT OF EDUCATION, : : STIPULATION
: ARKANSAS : :
: (hereinafter called "State Agency"), : :
: Respondents. : :
: : :
-----X

The Respondent School District and the Department of Health, Education, and Welfare (hereinafter the Department), in the above styled matter, agree and stipulate to the following:

1. The Respondent agrees to implement fully the desegregation plan embodied in a memorandum addressed to Mr. A. W. Ford, Commissioner of Education, entitled "Desegregation Plan for Brinkley School District No. B, Brinkley, Arkansas, to be effective September 1, 1970." (A copy is attached hereto as Exhibit A), by the opening of the 1970-71 school year. Specifically, Respondent agrees to implement the plan by the opening of the 1970-71 school year by taking the following action:
 - a. Assign all students and staff in Grades One through Four to the C. B. Partee Elementary School.
 - b. Assign all students and staff in Grades Five through Eight to the Brinkley Junior High School (formerly the all-black Marion Anderson School).

c. Assign all students and staff in Grades Nine through Twelve to the Brinkley Senior High School.

2. The Department agrees to lift immediately the deferral on applications for Federal financial assistance.

3. The Respondent and the Department agree that Respondent is currently operating a segregated dual school system; that the agreed upon plan, if implemented by the opening of the 1970-71 school year, will satisfactorily eliminate all vestiges of the dual school system and that Respondent then will be in compliance with the Civil Rights Act of 1964; and that failure to implement the agreed upon plan by the opening of the 1970-71 school year will be a failure to comply with the Civil Rights Act of 1964 and the Regulation of the Department (45 CFR 80) adopted pursuant thereto.

4. The Respondent expressly agrees that, if the above desegregation plan is not implemented by the opening of the 1970-71 school year, all Federal financial assistance administered by the Department and by the National Science Foundation to Respondent's program of elementary and secondary instruction - not including adult education - would be administered in a discriminatory manner or would support a program infected by a discriminatory environment, or would be so affected by discriminatory practices elsewhere in its system so as then to become discriminatory.

5. The Respondent agrees that the Director, Office for Civil Rights, may file with the Hearing Clerk (Civil Rights) and serve on the Respondent and all other parties his written determination that the

school year 1970-71 has commenced and that Respondent has failed to implement the above desegregation plan.

6. Upon entry of the determination described in paragraph 5, Respondent agrees that the Initial Decision of the Hearing Examiner filed on February 13, 1970, shall, pursuant to 45 CFR 80.10(f), constitute the final decision and order terminating and refusing to grant Federal financial assistance to Respondent's program of elementary and secondary instruction.

7. Respondent hereby withdraws the Exceptions to Initial Decision of Hearing Examiner filed by Respondent on March 2, 1970, and stipulates that said Exceptions shall not be considered in these proceedings.

8. Respondent expressly waives the right to further hearing on the question of noncompliance and expressly waives review of the above decision by the Reviewing Authority (Civil Rights) under 45 CFR 80.10 and 45 CFR 81.103.

9. Respondent reserves the right to request the Secretary of Health, Education, and Welfare to review the final decision, in accordance with 45 CFR 80.10(e) and 45 CFR 81.106. Respondent also reserves the right to appeal the final Department action to the appropriate Federal court, pursuant to section 603 of the Civil Rights Act of 1964.

10. Respondent expressly waives a hearing prior to final Department action on whether steps other than the agreed upon plan should change the decision of the Director, Office for Civil Rights, or whether said steps place the Respondent in compliance. Respondent agrees to utilize the post-termination proceeding, provided in 45 CFR 80.10(g) and 45 CFR 81.121,

to determine adequacy of alternative steps. Such post-termination proceedings, however, shall not stay the termination of assistance.

11. The Respondent and the Department agree to stay proceedings in this matter pending the implementation of Respondent's desegregation plan. The Department agrees to dismiss this proceeding upon its determination that the agreed upon plan has been implemented or that Respondent is operating a unitary school system. If the Department has not filed the determination described in paragraph 5 or dismissed this proceeding by December 31, 1970, the matter shall be dismissed.

FOR THE DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE:

DATED: May 27, 1970

By:


Roderick H. Potter, Attorney
Office of the General Counsel

FOR RESPONDENT, BRINKLEY SCHOOL
DISTRICT NO. B:

DATED:

By:



The Following Is A Notice Being Sent To Parents Of All Students In The Brinkley Schools

Brinkley School District No. B
Brinkley, Arkansas

NOTICE OF SCHOOL DESEGREGATION PLAN UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

This notice is made available to inform you about the desegregation of our schools. Keep a copy of this Notice. It will answer many questions about school desegregation.

1. Desegregation Plan in Effect

The Brinkley School District No. B public school system is being desegregated under a plan adopted in accordance with Title VI of the Civil Rights Act of 1964. The purpose of the desegregation plan is to eliminate from our school system the racial segregation of students and all other forms of discrimination based on race, color, or national origin.

2. Thirty-day Spring Choice Period

Each student or his parent, or other adult person acting as parent, is required to choose the school the student will attend next school year. The choice period will begin March 25, 1968, and close April 25, 1968.

3. Explanatory Letters and School Choice Forms

On the first day of the choice period, an explanatory letter and this notice will be sent by first class mail to the parent, or other adult person acting as parent, of each student then in the schools who is expected to attend school the following school year. A school choice form will be sent with each letter. Additional copies of the letter, this notice and the choice form are freely available to the public at any school and at the Superintendents office.

4. Returning the Choice Form

Parents and students, at their option, may return the completed choice forms by hand to any school or by mail to the Superintendent's office, at any time, during the 30 day choice period. No preference will be given for choosing early during the choice period. A choice is required for each student. No assignment to a school can be made unless a choice is made first.

5. Choice Form Information

The school choice form lists the names, locations and grades offered for each school. The reasons for any choice made are not to be stated. The form asks for the name, address and age of the student, the school and grade currently or last attended and the school chosen for the following year, the appropriate signature, and whether the form has been signed by the student or his parent. Any letter or other written communication which identifies the student and the school he wishes to attend will be deemed just as valid as if submitted on the choice form supplied by the school system. The names of students and the schools they choose or are assigned to under the plan will not be made public by school officials.

6. Course and Program Information

To guide students and parents in making a choice of school, listed below, by schools, are the courses and programs which are not given at every school in this school system.

Marian Anderson High School offers Sociology, Economics, Business English and third year French.

Brinkley High School offers Journalism, Speech, and Physical Science.

7. Signing The Choice Form

A choice form may be signed by a parent or other adult acting as parent. A student who has reached the age of 15 at the time of choice, or will next enter the ninth or any higher grade, may sign his own choice form. The student's choice shall be controlling unless a different choice is exercised by his parent before the end of the period during which the student exercises his choice.

8. Processing of Choices

No choice will be denied for any reason other than overcrowding. In cases where granting all choices for any school would cause overcrowding, the students choosing the school who live closest to it will be assigned to that school. Whenever a choice is to be denied, overcrowding will be determined by a uniform standard applicable to all schools in the system.

9. Notice of Assignment, Second Choice

Should any student be denied his choice because of overcrowding he will be promptly notified and given a choice among all other schools in the system where space is available.

10. Students Moving into the Community

A choice of school for any student who will be new to the school system may be made during the 30 day choice period or at any other time before he enrolls in school. An explanatory letter, this notice and the school choice form will be given out for each new student as soon as the school system knows about the student. At least seven days will be allowed for the return of the choice form when a choice is made after the 30 day choice period. A choice must be made for each student. No assignment to any school can be made unless a choice is made first.

11. Students Entering First Grade

The parent, or other adult person acting as parent, of every child entering the first grade is required to choose the school his

child will attend. Choices will be made under the same free choice process used for students new to the school system in other grades as provided in paragraph 10.

12. Priority of Late Choices

No choice made after the end of the 30 day choice period may be denied for any reason other than overcrowding. In the event of overcrowding, choices made during the 30 day choice period will have first priority. Overcrowding will be determined by the standard provided for in paragraph 8. Any parent or student whose first choice is denied because of overcrowding will be given a second choice in the manner provided for in paragraph 9.

13. Tests, Health Records, And Other Entrance Requirements

Any academic tests or other procedures used in assigning students to schools, grades, classrooms, sections, courses of study, or for any other purpose, will be applied uniformly to all students without regard to race, color or national origin. No choice of school will be denied because of failure at the time of choice to provide any health record, birth certificate, or other document. The student will be tentatively assigned in accordance with the plan and the choice made, and given ample time to obtain any required document. Curriculum, credit, and promotion procedures will not be applied in such a way as to hamper freedom of choice of any student.

14. Choices Once Made Cannot be Altered

Once a choice has been submitted, it may not be changed, even though the choice period has not ended. The choice is binding for the entire school year to which it applies, except in the case of (1) compelling hardship, (2) change of residence to a place where another school is closer, (3) the availability of a school designed to fit the special needs of a physically handicapped student (4) the availability at another school of a course of study required by the student, which is not available at the school chosen.

15. All other Aspects of Schools Desegregated

All school connected services, facilities, athletics, activities and programs are open to all on a desegregated basis. A student attending school for the first time on a desegregated basis may not be subject to any disqualification or waiting period for participation in activities and programs, including athletics, which might otherwise apply because

he is a transfer student. All transportation furnished by the school system will also operate on a desegregated basis. Faculties will be desegregated, and no staff member will lose his position because of race, color or national origin. This includes any case where less staff is needed because schools are closed or enrollment is reduced.

16. Attendance Across School System Lines

No arrangement will be made, or permission granted, by this school system for any student living in the community it serves to attend school in another school system, where this would tend to limit desegregation, or where the opportunity is not available to all students without regard to race, color, or national origin. No arrangement will be made, or permission granted, by this school system for any students living in another school system to attend school in this system, where this would tend to limit desegregation, or where the opportunity is not available to all students without regard to race, color or national origin.

17. Violations to be Reported

It is a violation of our desegregation plan for any school official or teacher to influence or dissuade any person from choosing a school where a desegregated education can be obtained, or to threaten any person with penalties or promise favors for any choice made. It is also a violation of Federal regulations for any person to intimidate, threaten, coerce, retaliate or discriminate against any individual for the purpose of interfering with the free making of a choice of a desegregated school. Any person having any knowledge of any violation of these prohibitions should report the facts immediately by mail or phone to the Office For Civil Rights, U. S. Office of Education, Washington, D. C. 20202 (Telephone 202 - 962 - 0333). The name of any person reporting any violation will not be disclosed without consent. Any other violation of the desegregation plan or other discrimination based on race, color, or national origin in the school system is also a violation of Federal requirements, and should likewise be reported. Anyone with a complaint to report should first bring it to the attention of State or local officials, unless he feels it would not be helpful to do so. If State or local officials do not correct the violation promptly, any person familiar with the facts of the violation should report them immediately to the Department of Health, Education and Welfare at the above address or phone number.