

FUQUA CAMPBELL, P.A.

ATTORNEYS AT LAW

DAVID M. FUQUA
PHIL CAMPBELL
J. BLAKE HENDRIX
ABBIE DECKER RUCKER
PATRICK L. SPIVEY
ERIC R. GRIBBLE*
DEIDRA PARISH**+
WHITNEY F. MOORE
HALEY HEATH BURKS
CHRISTOPHER M. STEVENS
KAYLEN S. LEWIS
SAMUEL C. BABER

RIVIERA TOWER
3700 CANTRELL ROAD, SUITE 205
LITTLE ROCK, ARKANSAS 72202
Telephone: 501.374.0200
Facsimile: 501.975.7153
Web: www.fc-lawyers.com

ALLEN P. ROBERTS, of Counsel
MIKE MUNNERLYN, of Counsel
JAMES WILLIAM McLEOD, of Counsel +

+ 225 S. MAIN, SUITE 102
JONESBORO, ARKANSAS 72401
870.932.2177

Direct Dial: (501) 975-7122
Email: wmoore@fc-lawyers.com

* Also Admitted in Missouri

** Also Admitted in Texas

June 30, 2015

VIA REGULAR MAIL

AND EMAIL (Kendra.Clay@arkansas.gov)

Kendra Clay, General Counsel
Arkansas Department of Education
Four Capitol Mall
Room 404-A
Little Rock, Arkansas 72201

Dear Kendra:

Allen Roberts and I represent Texarkana School District (TSD). The TSD school board has again voted for the district not to participate in school choice under the 2013 Public School Choice Act, as amended in 2015. The reason is that TSD is the subject of a federal agency order. The desegregation obligations imposed by the agency orders prohibit TSD from taking any action, or refraining from taking any action, the natural and probable consequence of which would be a segregative impact within TSD (i.e., the creation, maintaining, or increasing of racially identifiable schools). Permitting school choice under the 2015 Act would have such an impact. Allowing school choice would, therefore, be in conflict with TSD's desegregation obligation still outstanding.

Under the 2013 Act, Ark. Code Ann. 6-18-1906(a)(1) previously provided a school choice exemption option for districts "subject to the desegregation order or mandate of a federal court or agency remedying the effects of past racial segregation." Act 560 eliminated the word "agency" and refers only to "court" orders. However, our view is that the Department is obligated to give equal weight to a federal agency order that says or does the same things as a court order, i.e. requires the school district to desegregate.

In that regard, and in support of this letter, I am enclosing several letters from the Department of Health, Education, and Welfare that detail TSD's past operation of a dual school system, its non-compliance with Title VI, the administrative enforcement proceedings conducted, and TSD's continuing obligations and responsibilities under Title VI to operate a system free from all forms of discrimination.

FUQUA CAMPBELL, P.A.

Page 2

Thank you very much.

Sincerely,

Texarkana School District

A handwritten signature in black ink that reads "Whitney Moore". The signature is written in a cursive style with a large, looped 'W' and 'M'.

Whitney F. Moore
Attorney for Texarkana School District

WFM/skd

cc: Dick Dodson (dickdodson@dodsondodson.com)
Allen Roberts (allen@aprobertslaw.com)



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

WASHINGTON, D.C. 20201

OFFICE OF THE SECRETARY

FEB 1 1968

Mr. Edward D. Trice
Superintendent
Texarkana Arkansas Schools
15th and Jefferson Street
Texarkana, Arkansas 75501

Dear Superintendent Trice:

After reviewing the Report of Anticipated Student and Staff Assignments for the 1967-68 school year (Forms OE 7001-02) which your school system submitted last spring, the Department advised you that if your school system did not make further progress toward the elimination of its dual school structure than was indicated in the report, it would be necessary for the Department to conduct a compliance review of your school system during the current school year.

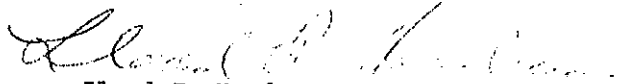
We have recently reviewed your system's Fall 1967 Report of its actual student and staff assignments (Forms OE 7001-02), and the reports indicate that your school system has not made substantial progress toward eliminating its dual structure since submitting the Spring Report.

Accordingly, I wish to notify you, pursuant to the procedures set forth in the Department's letter of December 8, 1967 to the Chairman of the Senate Education Subcommittee (copy attached), of the probable noncompliance of your school system with the requirements under Title VI, and of our intentions to initiate administrative proceedings for the termination of your school system's Federal financial assistance if appropriate steps are not taken to correct the situation. Should such action be initiated and an order of termination issued, the order would take effect 30 days after a report is made to congressional committees of the completion of the administrative proceedings, which may be during the 1968-69 school year.

This Office will conduct a compliance review of your school system as soon as possible. If the review confirms that your system is not in compliance with Title VI the staff will, if you wish, give you and your board every reasonable assistance in achieving compliance.

Needless to say, I hope your school system can draw up and implement a plan for the prompt elimination of its dual school structure, so administrative enforcement proceedings will not be necessary. If you wish advice or assistance in this matter, please contact Mr. Jerold D. Ward, Education Branch Chief, Office for Civil Rights, Region VII, 1114 Commerce Street, Dallas, Texas 75212. Mr. Ward's telephone number is (214) 749-3371.

Sincerely yours,



Lloyd R. Henderson
Education Branch Chief
Office for Civil Rights

cc: Chief State School Officer
Regional Civil Rights Director
Regional Director/DHEW
Regional Assistant Commissioner/OE



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

WASHINGTON, D.C. 20201

OFFICE OF THE SECRETARY

AUG 19 1969

Dear Superintendent Trice:

Thank you for your letter of July 29, 1968, in which you submitted a plan for the complete elimination of the dual school system in the Texarkana, Arkansas Public Schools.

Under this plan, it is our understanding that:

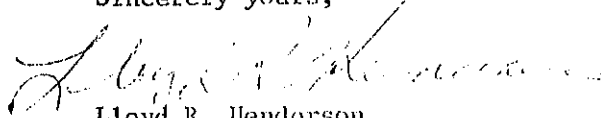
- 1) Beginning with the 1968-69 school year the W. T. Daniels Elementary School will be closed and its students will be desegregated according to HEW standards by disseminating them on the basis of freedom of choice into the other schools in the system, excluding the Carver Elementary School.
- 2) Beginning in 1968-69 buses now going from the Manville area to the Carver Elementary School will be diverted to the Kilpatrick Elementary School. A kindergarten and a remedial education center for the entire district will be established at Carver.
- 3) If freedom of choice fails to desegregate the Carver Elementary School, the Carver Elementary School will be closed over a two year period beginning in September 1969. Thus the school would be completely closed by September 1971 and several grades will be moved out of the school both in September 1969 and in September 1970.
- 4) If a bond issue to be submitted to the electorate in March 1969 is approved, Washington Junior High School and Jefferson Avenue Junior High School will be closed in 1970-71 and all junior high school students will be geographically zoned between the existing College Hill Junior High School and a new junior high school to be built with bond issue funds. If the bond issue is defeated, Washington Junior High School will be closed beginning with the 1969-70 school year. A freedom of choice plan then would be used to disseminate all junior high school students into the College Hill and the Jefferson Avenue Junior High Schools.

- 5) Beginning with the 1969-70 school year the Washington High School will be closed and grades 10-12 will be unitized at the Arkansas High School.
- 6) If the Washington High School is at some time converted to a vocational-technical high school, all students who desire this type of program will attend this school; vocational courses will not be offered elsewhere to high school students.
- 7) The bussing of students will be done without regard to race, color, or national origin.
- 8) The recruitment, hiring, assignment, promotion, and displacement of professional staff will be made without regard to race, color, or national origin.

It is the stated policy of this Office that an acceptable plan must anticipate the complete elimination of the dual school system by the opening of the 1968-69 school year, unless administrative difficulties warrant an extension of time to the 1969-70 or 1970-71 school year. In light of the construction requirements involved in the attainment of a unitary school system, an extension is acceptable in your case and your district will be in compliance with the requirements of Title VI of the Civil Rights Act of 1964 for the coming year, thereby remaining eligible to receive Federal financial assistance.

We commend you and your board for the leadership you have taken. We will be happy to work with you further should you wish to call upon us for assistance.

Sincerely yours,



Lloyd R. Henderson
Education Branch Chief
Office for Civil Rights

Mr. Edward D. Trice
Superintendent
Texarkana Arkansas Schools
15th and Jefferson Streets
Texarkana, Arkansas 75501

cc: Chief State School Officer
Regional Civil Rights Director

TEXARKANA SCHOOL DISTRICT NO. 7

OFFICE OF THE SUPERINTENDENT

TEXARKANA, ARKANSAS

July 29, 1968

Dr. Lloyd Henderson
Chief, Education Branch
Office of Civil Rights
Washington, D. C. 20202

Dear Dr. Henderson:

This acknowledges receipt of letter dated July 15, 1968, from Mr. Roberto Gonzales, Acting Regional Director of the Dallas Office of the Department of Health, Education and Welfare, advising that our desegregation plan submitted under date of June 26, 1968, had been disapproved. I refer you to the telephone conversation you had with Mr. John F. Stroud, Jr., our school attorney, and myself on July 25, 1968, and our subsequent conversation with Mr. Don Vernon on July 26, 1968. Based on those conversations, the School Board of Texarkana School District No. 7, Texarkana, Miller County, Arkansas, adopted the following revisions to our prior plan at a special meeting of the Board held on July 29, 1968.

Our Board has modified our existing freedom of choice plan in the following respects:

- (1) As stated in our prior plan, W. T. Daniels Elementary School will be closed beginning with the 1968-1969 school year. All students previously attending Daniels School will be desegregated in accordance with acceptable policies and standards of the Department of Health, Education and Welfare, and disseminated into the other schools in the system on the basis of freedom of choice, excluding Carver Elementary School.

Dr. Lloyd Henderson

July 29, 1968

Page 2.

(2) As stated in our prior plan, our Board proposes to submit a bond issue to the voters of the School District at the next school election in March of 1969 for the construction of a junior high school in the northern part of the city on a site previously acquired. If the bond issue should fail, we plan to close grades 7, 8 and 9 at Washington High School beginning with the 1969-1970 school year, and purchase temporary classrooms to be placed on the campus of Jefferson Avenue Junior High School. The students will be disseminated into College Hill Junior High School and Jefferson Avenue Junior High School on the basis of freedom of choice.

(3) The teachers at Daniels Elementary School will be assigned to teaching positions in the remaining schools of our School District beginning with the 1968-1969 school year. Any dismissal of professional staff shall be without discrimination on the grounds of race, color or national origin.

(4) Once our plan is fully implemented, the bussing of students shall be done without regard to race, color or national origin.

(5) When Washington High School has been completely vacated, it is our present intent to use the existing structure as a vocational-technical high school for all students who desire this type program.

(6) If freedom of choice fails to desegregate Carver Elementary School for the beginning of the 1969-1970

Dr. Lloyd Henderson
July 29, 1968
Page 3.

school year, we propose to phase out Carver Elementary School over a two-year period beginning with the 1969-1970 school year.

We trust that these changes in our previously adopted plan will keep our school in compliance with Title VI of the Civil Rights Act of 1964.

Sincerely,

Edward D. Stroud
~~John F. Stroud, Jr.~~

JFSjr/lb

cc: Mr. Jerold D. Ward
Chief, Dallas Education Branch
Office of Civil Rights
Department of Health, Education and Welfare
1114 Commerce Street
Dallas, Texas 75202



OFFICE OF
THE REGIONAL DIRECTOR

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

REGIONAL OFFICE

1114 COMMERCE STREET

DALLAS, TEXAS 75202

November 12, 1969

Mr. Edward D. Trice
Superintendent of Schools
Texarkana School District
15th and Jefferson Streets
Texarkana, Arkansas 75501

Dear Superintendent Trice:

Thank you for the courtesies extended to a member of our staff who conducted an on-site audit of the Unitary Plan commitments made by your Board in your letter of July 29, 1968.

In our letter dated August 19, 1968, approving your plan of desegregation, it was stipulated that for the school year 1969-70:

1. If freedom-of-choice fails to desegregate the Carver Elementary School, the Carver Elementary School will be closed over a two-year period beginning in September, 1969. Thus the school will be completely closed by September, 1971, and several grades will be moved out of the school both in September, 1969, and in September, 1970.
2. If a bond issue to be submitted to the electorate in March, 1969 is approved, Washington Junior High School and Jefferson Avenue Junior High School will be closed in 1970-71 and all junior high school students will be geographically zones between the existing College Hill Junior High School and a new junior high school to be built with bond issue funds. If the bond issue is defeated, Washington Junior High School will be closed beginning with the 1969-70 school year. A freedom of choice plan then would be used to disseminate all junior high school students into the College Hill and the Jefferson Junior High Schools.
3. Beginning with the 1969-70 school year the Washington High School will be closed and grades 10-12 will be unitized at the Arkansas High School.
4. If the Washington High School is at some time converted to a vocational-technical high school, all students who desire this

type of program will attend this school; vocational courses will not be offered elsewhere to high school students.

5. The bussing of students will be done without regard to race, color or national origin.
6. The recruitment, hiring, assignment, promotion, and displacement of professional staff will be made without regard to race, color or national origin.

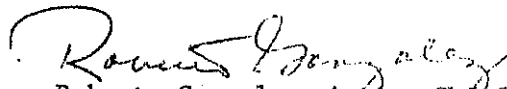
The results of the on-site audit revealed that Step 1 has not been implemented. Instead, the Carver Elementary remains as an all-Negro school in grades 1-6.

Therefore, in accordance with the procedures set forth in Subpart D, Section 24 of the enclosed Policies, your failure to carry out the commitments made to the Department in writing, leaves us no alternative under the law but to forward your district's file to our Washington Office with a recommendation that administrative enforcement proceedings be initiated under Section 602 of the Civil Rights Act of 1964. If such proceedings are initiated and if an order for termination of your system's Federal financial assistance is issued, the order could take effect any time during the 1969-70 school year, or immediately following the close of the 1969-70 school year. (This procedure is discussed in greater detail in the Department's December 8, 1967, letter to the Chairman of the Senate Subcommittee on Education, a copy of which is also enclosed.)

Please direct any further communications you may have in this matter to:

Dr. Lloyd R. Henderson, Chief
Education Branch
Office for Civil Rights
Department of Health, Education and Welfare
Washington, D. C. 20202

Sincerely yours,


Roberto Gonzalez, Acting Chief
Education Branch
Office for Civil Rights

cc: Chief State School Officers

Enclosures



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
WASHINGTON, D.C. 20201

OFFICE OF THE SECRETARY

DEC 23 1969

Mr. Edward D. Trice
Superintendent
Texarkana Public Schools
15th and Jefferson Streets
Texarkana, Arkansas 75501

Dear Superintendent Trice:

In a recent conversation with Mr. Ed Kelson of the U. S. Office of Education, we were informed that suggestions and recommendations for unitizing the Texarkana Public Schools would be presented to you on December 17, 1969.

As you know, on October 29, 1969, the United States Supreme Court, in the case of Alexander v. Holmes County Board of Education, ruled that it is the obligation of every school district to terminate dual school systems at once, and to operate now and hereafter only unitary schools. (A copy of the opinion is enclosed.)

The Fifth Circuit Court of the United States has ordered that school districts similar to yours must implement methods to terminate their dual systems by December 31, 1969. However, in view of the most recent Supreme Court decisions on school desegregation time tables, we are requesting that you notify us within ten days after receipt of this letter what methods your district will use to eliminate your dual school system by the semester break, or no later than February 1, 1970.

If we can be of assistance to you, please contact us.

Sincerely yours,

Lloyd R. Henderson
Education Branch Chief
Office for Civil Rights

cc: Chief State School Officer
Regional Civil Rights Director

12-29-69

TEXARKANA SCHOOL DISTRICT NO. 7
OFFICE OF THE SUPERINTENDENT
TEXARKANA, ARKANSAS

On January 13, 1970 the Board of Education of the Texarkana Arkansas Schools, acting in good faith, submitted a plan to the Department of Health, Education and Welfare for the unitization of the junior high schools by February 9, 1970 and the unitization of the elementary schools at the beginning of the 1970-1971 school year. On February 2, 1970 the Board received a letter from HEW requesting an amendment to the plan that would unitize both the elementary and junior high schools by February 9, 1970. The entire membership of the Board is of the opinion that this is not an educationally sound procedure to be implemented during the school year and has directed the Superintendent to notify HEW officials that no effort will be made this school year to unitize the elementary or junior high schools; but that a plan will be submitted by the Board, prior to the end of this school term, for complete unitization to begin with the opening of the 1970-71 school year.

The above statement was unanimously approved by the Board of Education, Texarkana Arkansas Schools in an emergency session, February 2, 1970.

Page 2 - Dr. Lloyd R. Henderson

In response to this request, the Board, in an emergency session on Monday night, February 2, 1970, unanimously approved the attached statement and directed that it be forwarded to you.

Yours truly,

Edward D. Trice
Superintendent

EDT:ch

enclosure



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

MAR 31 1970

Mr. Edward D. Trice
Superintendent
Texarkana School District No. 7
Texarkana, Arkansas 75501

Dear Mr. Trice:

We have received your letter of March 14, 1970, which requests an extension of time for the submission of a desegregation plan for the Texarkana School District No. 7 in Arkansas.

We understand the reason you request this extension is that the School Board is going through a reorganization. You further advise that the Arkansas General Assembly has raised the maximum interest rate from 6 percent to 7 percent on school bonds and thus you feel the bonds will be sold which will enable you to proceed with construction of a new junior high school.

We do not feel that the above reasons are a valid basis upon which to delay submission of a desegregation plan and an extension cannot be granted.

As you know, your amended plan must provide for complete desegregation by September 1970. It is very unlikely, even if the bond sale is successful, that the new facility will be ready for occupancy by September 1970. We would suggest the submission of a desegregation plan using existing facilities until such time as the new junior high is available.

Since an acceptable plan has not been submitted, we have no alternative except to recommend commencement of enforcement proceedings. Should you submit an acceptable plan which will desegregate the schools and faculty, we will request discontinuance of enforcement proceedings promptly.

Sincerely yours,

Lloyd R. Henderson
Education Branch Chief
Office for Civil Rights

cc: Chief State School Officer
Regional Civil Rights Director

I WILL CALL YOU THIS WEEK END RELATIVE TO
ADDITIONAL INFORMATION RECEIVED FROM HEW VIA
TELEPHONE - Edward D. Trice 4-3-70



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20201

MAY 20 1970

Mr. Edward D. Trice
Superintendent
Texarkana School District No. 7
Texarkana, Arkansas 75501

Dear Mr. Trice:

We have received your letter of April 22, 1970, which gives the details of the desegregation plan for the Texarkana School District No. 7, Arkansas. We find that the plan is not adequate to meet the requirements of Title VI of the Civil Rights Act of 1964.

Under this plan the following steps will be taken:

1. The Washington Junior High School will be closed.
2. All students in grades seven, eight and nine in the district will attend College Hill Junior High or Jefferson Avenue Junior High.
3. The Washington facility will be utilized for grades four, five and six.
4. A remedial center will be established for all fourth, fifth and sixth grade students in the district in the Washington facility. The Rapid Learning Centers will also be housed here. A minimum of 300 students from other elementary schools will be transported to this facility for one half day instruction in the remedial centers. The anticipated student enrollment in the Washington facility will be 37 per cent white and 63 per cent Negro.
5. The Carver school will house grades one, two and three; a remedial center for all first, second and third grade students in the system; and a kindergarten program for the entire system; a Special Education center for the entire system. The anticipated enrollment in the Carver school will be 59 per cent Negro and 41 per cent white.

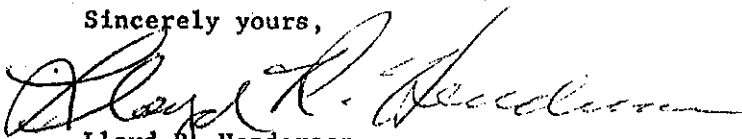
However, in the telephone conversation of May 5, 1970, between you and Mr. Walter S. Warfield you advised him that in the Carver school grades one, two and three and in the Washington school grades four, five and six will be segregated. Therefore, Mr. Warfield advised you that the plan does not meet the requirements of the law because of:

- a. The lack of assurance that the first, second and third grade classes at the Carver school will be desegregated.
- b. The lack of assurance that the fourth, fifth and sixth grade classes at the Washington school will be desegregated.
- c. The lack of assurance that the faculty and other professional staff will be desegregated in accordance with recent court cases and the Department's guidelines.

Mr. Warfield further advised in the telephone conversation that school systems are required to maintain substantially the same ratio of black to white teachers in each school as exists in the system as a whole.

Accordingly, since your Board has not submitted a desegregation plan which will completely eliminate the racial identifiability of the Carver Elementary School and the Washington school, we have no alternative except to continue processing your case for administrative enforcement proceedings.

Sincerely yours,



Lloyd R. Henderson
Education Branch Chief
Office for Civil Rights

cc: Chief State School Officer
Regional Civil Rights Director