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MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND

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August 22, 1975

James R. Schlesinger
Secretary
Department of Defense
Washington, D. C. 20301

Dear Secretary Schlesinger:

I'm writing to express my concern over the decision of Mr. H. Minton Francis, Deputy Assistant Secretary of Defense, to dismiss Mr. William J. Perez, Director for Policy and Program Development (Civilian).

The decision to dismiss Mr. Perez has had a serious effect on the Hispanic community. Mr. Perez was the first Hispanic to be appointed to a top level position in the Office of the Secretary. To have this highly efficient professional dismissed without any showing of incompetency or non-feasance has left the community with the feeling that the Department of Defense discriminates against Hispanics.

I request that your office investigate this incident and to inform me as to the reasons Mr. Perez was dismissed.

Anticipating your assistance and cooperation, I remain

Sincerely,

Al I. Perez
Al I. Perez
Associate Counsel

AIP:rm

cc: Fernando de Baca
White House



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October 10, 1975

Mr. Fernando E. C. de Baca
Special Assistant to the President
for Hispanic Affairs
The White House
1600 Pennsylvania Avenue
Washington, D. C.

Dear Fernando:

Enclosed are some documents that deserve your immediate attention. The enclosed "Fact Sheet" gives you a brief narrative of the issues. Can you help?

Sincerely,

Al I. Perez
Al I. Perez
Associate Counsel

AIP:rm

Enclosure

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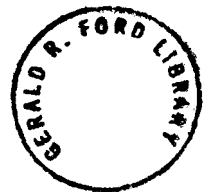
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October 7, 1975

MEMO TO: Interested Parties

FROM: Al Perez, Associate Counsel

SUBJECT: Processing of National Origin Complaints by Office for
Civil Rights, Department of Health, Education and Welfare

The Office of Civil Rights/HEW has taken several steps which are of great importance to Mexican Americans. The following Memorandum and documentation set out the issues involved.

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2. Fact Sheet
3. Affidavit of Peter Holmes, Director, OCR
4. Relevant Portions of Deposition of Peter Holmes
5. OCR Press Release
6. Letter to Mr. Jimmy Martinez
7. Letter to Superintendent, Hondo Independent School District, Texas
8. Letter to Mr. George Korb, Associate Counsel, MALDEF San Antonio, Texas; also Affidavit of Jimmy Rincon, a Chicano Mistreated by Employee of Beeville Independent School District



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SUMMARY OF ISSUES

In the first week of October, 1975, the Office for Civil Rights (OCR) of the U. S. Department of Health, Education, and Welfare began to implement a policy¹ of:

1. Postponing indefinitely the investigation of complaints filed with it by national origin complainants, especially Mexican American in Texas and New Mexico.
2. Postponing the investigation of school districts in Texas and New Mexico that are not in compliance with the U.S. Supreme Court's decision in Lau v. Nichols; the Lau case essentially calls for language services to national origin minorities.

The reason being given by OCR for this policy is that the Supplemental Order by the U. S. District Court for the District of Columbia in Adams v. Weinberger² required that OCR give priority to complaints based on racial discrimination.

1

The issues outlined in this memorandum also apply to Title IX cases; Title IX deals with sex discrimination.

2

Formerly Adams v. Richardson.



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FACT SHEET

THE AGENCY AND THE LAWS

The Office for Civil Rights (OCR)* of the U.S. Department of Health, Education and Welfare is responsible for implementing certain laws prohibiting discrimination in educational institutions. Title VI of the Civil Rights Act of 1964 prohibits discrimination in any federally assisted program or activity on the grounds of race, color, or national origin. The bulk of OCR's coverage includes approximately 16,000 public school districts, 2,874 institutions of higher learning, and 30,000 institutions and agencies involved in health and social services.

Title IX of the Education Amendments of 1972 generally prohibits discrimination on the basis of sex in federally assisted education programs and activities. (See also Section 799A of the Public Health Services Act.)

Executive Order 11246 prohibits discrimination on the basis of race, color, national origin, religion or sex by government contractors or by contractors performing under federally assisted construction contracts. It is generally administered by the Department of Labor's Office of Federal Contract Compliance, but compliance responsibilities with respect to educational institutions, medical and health-related institutions social service facilities, etc., have been delegated to OCR/HEW.

OCR staff positions have steadily grown in size. In 1966, OCR staff totaled less than 100. In 1970, there were 400 professional and clerical employees; by 1975, the number had grown to 850, distributed among the Washington, D. C. office and 10 regional offices. For Fiscal Year 1976, OCR requested of Congress no additional positions for the Elementary and Secondary Division and requested 6 new positions for the Higher Education Division for the enforcement of sex discrimination cases. By 1975 there were 240 employees in the Elementary and Secondary Division of OCR.

THE PROBLEM

In August of 1970, the NAACP Legal Defense and Educational Fund filed a lawsuit against HEW for HEW's failure to enforce Title VI of the 1964 Civil Rights Act. The U.S. District Court for the District of Columbia (Judge John Pratt) ruled for the plaintiffs in 1973. Adams v. Richardson, 356 F. Supp. (1973). In March, 1975, the same Court issued a Supplemental Order which stated that:

*

The present Director of OCR is Mr. Peter Holmes



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"...HEW has a duty to commence prompt enforcement activity upon all complaints or other information of racial discrimination in violation of Title VI, and that where it appears that a school district is in violation or presumptive violation of Title VI the agency has a duty under Title VI to commence enforcement proceedings by administrative notice of hearings or any other means authorized by law where efforts to obtain voluntary compliance do not succeed within a reasonable period"
(Emphasis added) Adams v. Weinberger, Civil Action No. 3095-70 (U.S.D.C., 1975)

The Court, in its Supplemental Order, then sets out a schedule by which HEW is required to act in resolving racial complaints or take appropriate enforcement action. Please note that the original Order and the Supplemental Order are aimed at resolving racial complaints in an expeditious manner. Mexican American complainants are grouped under national origin complaints.

On June 4, 1975, HEW published in the Federal Register (Vol. 40, No. 108) proposed regulations dealing with the handling of discrimination complaints. In the preamble to the proposed regulations, HEW stated that it would attempt to modify the Supplemental Order or to get out from under it but that

"If this effort does not result in a change in the Order, that Order will have a significant impact on all other civil rights activities of the Office for Civil Rights, since it will divert available resources from other compliance activities."
(Emphasis added.)

In an Affidavit (at p. 6) by Mr. Peter Holmes dated June 3, 1975, Mr. Holmes stated, inter alia, that OCR could not comply with the Supplemental Order "without foregoing other critical civil rights obligations:." (See attached Holmes Affidavit.) On page 18 of the same Affidavit Mr. Holmes states:

"The only way in which [OCR can comply with the Supplemental Order] would be to divert large numbers of professional staff members.... However, such diversion would severely set back other vital civil rights programs....



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In a Deposition (at pp. 31-33) taken of Mr. Holmes on June 7, 1975, he was asked:

"Is it the position of the Department [HEW] that if this paragraph [the paragraph setting timetables for handling racial complaints] is affirmed on appeal that the Department will not apply the timetables in this paragraph to national origin discrimination situations?

While declining to expressly answer the question, Mr. Holmes responded:

"With regard to the Department [HEW] policy... let me generally outline to you the course of action we have taken. With regard to [the Order], we have attempted to prioritize the handling of complaints over the handling of other information.

We have...prioritized the handling of race complaints...over national origin discrimination complaints... . Thus...there will be a delay... in the processing of the Lau Districts as we attach priority first to complaints...pertaining to the race discrimination." (See attached relevant portions of Holmes Deposition)

In a Press Release (See attached Press Release.) issued on October 1, 1975, OCR stated that Mexican Americans in the Southwest (Texas, Louisiana, Arkansas, New Mexico and Oklahoma) who have lodged civil rights complaints with OCR/HEW will have their complaints held in abeyance indefinitely (i.e., they will not be investigated) because the Court Order gives priority to the investigation of complaints based on racial discrimination.

The policy contained in the Press Release was implemented in letters going out to Mexican American complainants. One of these letters stated:

"We had anticipated conducting a review of the district [Beeville ISD in Texas] in the near future. However, the Federal Court Order in the case of Adams v. Weinberger has necessitated allocation of a major portion of Region VI OCR staff resources to the task of resolving problems of race discrimination." (See attached letter to Mr. Jimmy Martinez sent by OCR on October 1, 1975; this letter illustrates the type of letters being sent to Chicano complainants.)



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Also, on October 1, 1975, OCR started sending letters to school districts in Texas and New Mexico stating that OCR's review of the districts' compliance with the Lau v. Nichols case (e.g., providing language services to national origin minority students) would be delayed due to "priorities imposed on our office by the Adams v. Weinberger Court Order". (See attached letter to the Superintendent of the Hondo School District in Texas.)

On October 1, 1975, OCR sent a letter to MALDEF stating that:

"I share your concern about the seriousness of the allegations regarding the Beeville School District... . As you will note... it was our intent to pursue the matter expeditiously. However, the alteration of our proposed work plan to meet the...requirements imposed on this office by the Adams v. Weinberger Court Order has caused a delay in setting a date for the investigation. (See attached letter to Mr. George Korbel from Dorothy D. Stock and Affidavit of Mr. Jimmy Rincon.)

On Friday, October 3, 1975, Messrs. Al Perez, Sandy Rosen (from MALDEF) and Herb Teitelbaum (from the Puerto Rican Legal Defense and Educational Fund) met with Messrs. Peter Holmes and Martin Gerry of OCR to discuss OCR's new policy. The OCR people essentially repeated what was reflected in the press release and in the letters. They also stated that there had been ample opportunity for the plaintiffs' attorney in the Adams case to include national origin in the prayer for remedies but that the attorney had narrowed the scope of the remedies to racial complaints. OCR was emphatic in the policy that it was following and did not see any immediate change in this policy.

OCR has stated that the Order dictates the setting of priorities. While the Order does stipulate certain time limitations by which racial complaints must be handled, it does not state that priority should be given to racial complaints at the expense of national origin complaints. This policy of postponing the processing of national origin complaints while racial complaints are being processed is an administrative determination that does not necessarily follow from the provisions of the Court Order.

The strategy being employed by OCR is to get Chicano groups to sue so that it can use the suit to do what it is seeking: that is, modify the Supplemental Order which is on appeal or get out entirely from under this Order.



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It is not apparent how high up the HEW-White House hierarchy the decision to follow the above policy was made. Mario Obledo (Secretary of California's Health & Welfare Department) met Monday with the Secretary of the U.S. HEW Department; Mario was going to bring up this subject with the Secretary.

Whatever motives lie behind OCR's/HEW policy, the fact remains that Chicanos once again have been placed on the backburner. The issue warrants the attention of all Chicanos and all Chicano organizations. Your fullest attention and assistance to this matter are needed; this is particularly true in dealing with the Congress (a non-lobbying activity) and with the Administration.



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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KENNETH ADAMS et al.

Plaintiffs,

v.

CASPAR W. WEINBERGER, individually,
and as Secretary of the Department
of Health, Education, and Welfare
et al.

Defendants.

Civil Action No. 3095-70

AFFIDAVIT

City of Washington, District of Columbia

SS



AFFIDAVIT OF PETER E. HOLMES

Peter E. Holmes, being first duly sworn, states: I am the Director of the Office for Civil Rights (OCR) of the Department of Health, Education and Welfare, and I am a defendant in the case of Adams v. Weinberger, Civil Action No. 3095-70 in the U.S. District Court for the District of Columbia.

As Director of OCR, I am responsible for carrying out the various duties of the Department of Health, Education, and Welfare to eliminate discrimination based on race, color, national origin, and physical or mental handicap in all programs receiving Federal financial assistance from this Department pursuant to Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973. This responsibility also includes the elimination of discrimination based on race, color, or national origin with respect to the employment practices of all Federal contractors for which this Department is the Compliance Agency pursuant to current Department of Labor regulations under Executive Order 11246.

I am responsible for carrying out the duties of the Department to eliminate discrimination based on sex in all education programs and health training programs receiving Federal financial assistance from this Department pursuant to Title IX of the Education Amendments of 1972, Sections 799-A and 845 of the Public Health Service Act, and with respect to employment practices of all Federal contractors for which this Department is the Compliance Agency pursuant to Executive Order 11246.



I am also responsible for enforcing the requirements of Section 407 of the Alcohol and Drug Abuse and Treatment Act of 1972 and Section 321 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, which prohibit discrimination by certain recipients of Federal financial assistance on the basis of addictive status, and am responsible for enforcing nondiscrimination requirements of Executive Order 11246 pertaining to discrimination with respect to the employment practices of Federal contractors on the basis of religion.

In addition to the responsibility for enforcing the aforementioned nondiscrimination requirements, I am responsible for enforcing the affirmative action obligations of Executive Order 11246 with respect to all Federal contractors for which this Department is the Compliance Agency and for carrying out substantial pre-grant programmatic responsibilities in connection with the eligibility of prospective grantees of the Emergency School Aid Act of 1972 (ESAA).

These various statutory and Executive Order authorities have created a universe of institutions subject to the Civil Rights compliance monitoring responsibilities of the OCR which includes approximately 21,000 public and private elementary and secondary education institutions; 4,000 higher education and post-secondary education institutions; over 40,000 health care and 5,000 social service providers. Persons protected by the various statutes and Executive Orders currently enforced by this Office include approximately 35 million persons who are members of racial/ethnic minority groups, over 50 million females of school age, and approximately 25 million physically and mentally handicapped persons.



With respect to elementary and secondary education institutions, the population of persons protected by Title VI, Title IX, and Section 504 includes 4 million black students in the 17 southern and border states; 3 million black students in the remaining 34 states; 3 million national origin minority group students and 23 million female students throughout the country.

I. RESPONSIBILITIES UNDER THE ORDER

A. Compliance with Supplemental Order

By the Supplemental Order of the Court of March 14, 1975, in Adams v. Weinberger, I am directed:

(1) to communicate by May 13, 1975 with each of the 125 school districts listed in Attachment A of the Court's order to request that each rebut or explain substantial racial disproportion in one or more of the district's schools; and

(2) to commence enforcement proceedings by May 13, 1975 against each of the 45 school districts identified in Attachments B and C of the Court's order in order to effect compliance with Title VI; and

(3) to call to the attention of the courts concerned by July 12, 1975, any information I possess regarding violations or presumptive violations of desegregation court orders by school districts which I have determined are violating or apparently violating Title VI and which have not been determined by me to be in compliance with Title VI before July 12, 1975; and

(4) to affirmatively determine, within 90 days of receipt of any complaint or other information of racial discrimination by any public school district in the 17 southern and border states, whether such public school district is in compliance with Title VI; and with respect to those



districts that are not determined to be in compliance with Title VI, to attempt to secure compliance through voluntary negotiation for a period of 90 days and, wherever compliance has not been secured, to commence an enforcement proceeding within 210 days from the date of receipt of each complaint or other information of discrimination. The mandate of this order applies to the approximately 187 unresolved Title VI (race) complaints and all other information related to public school districts in the 17 southern and border states which OCR had in its possession on March 14, 1975 and all future Title VI (race) complaints and other information related to public school districts in the 17 southern and border states which comes into the possession of OCR subsequent to the date of the Court's orders. The impact of this order will be felt by four of the ten regional offices of the Department: Region III, headquarters in Philadelphia; Region IV, headquarters in Atlanta; Region VI, headquarters in Dallas; and Region VII, headquarters in Kansas City.

Since the date of the order, this office has fully complied with each of the responsibilities outlined in points 1, 2 and 3 above (parts A, C, D and E of the Court's order).

B. Compliance with Part A

With respect to point one (part A of the Court's order), members of my staff and I reviewed compliance reports of all school districts within the 17 southern and border states filed with this office during the 1973-74 school year and determined that a total of 73 school districts met the criteria outlined by the Court but were not included in the list of 125 districts incorporated in the Court's order. Working with a list of 198 districts, the compliance reports of these districts for the

1974-75 school year were reviewed and it was determined that a total of 83 school districts as of that school year had no further responsibility to desegregate. These 83 districts were then subtracted from the list, and on May 13, 1975, consistent with the Court's order, I notified each of the remaining 115 districts that they must rebut or explain the substantial racial disproportion of schools within the district. I am awaiting the response of the districts and consistent with the Court's order a significant commitment of staff resources in the Elementary and Secondary Division in each of the four regional offices early in FY 76 will be made in order to evaluate the legal sufficiency of each response.

C. Compliance with Parts C and D

With respect to point two (parts C and D of the Court's order), I have reviewed each of the districts listed in Attachments B and C of the order, and have determined with respect to three of the six districts listed in Attachment B that the finding of ineligibility for funding under the Emergency School Aid Act of 1972 (ESAA) made by this office did not entail a finding of a major Title VI violation; and have determined further that on the basis of the information before me, no current Title VI violation exists. On May 13, 1975, I commenced enforcement proceedings by administrative notice of hearing against the three remaining districts listed in Attachment B. With respect to the 39 school districts listed in Attachment C, I determined that 31 districts are currently operating under



voluntary desegregation plans consistent with the requirements of Swann v. Charlotte Mecklenburg. With respect to 15 of these districts, I have determined that further desegregation of racially disproportionate schools is not feasible or required; with respect to 15 of these districts, I have accepted voluntary desegregation plans calling for the elimination of existing substantially disproportionate schools; and in one instance, the question of compliance with Title VI is now before a Federal district court. On May 3, 1975, the Department commenced formal administrative enforcement proceedings against the remaining 8 districts.

D. Compliance with Part E

With respect to point three (part E of the Court's order), since the date of the order, members of my staff and I have brought to the attention of the courts concerned each of the violations or presumptive violations of desegregation court orders by school districts within the 17 southern and border states which have come to my attention. Most of the information received by this office indicating violations or presumptive violations of such court orders has been received as part of the ESAA post-grant review activities of the regional office staff.

II. INABILITY TO COMPLY WITH PART F

With respect to point four (part F of the Court's order), I have conscientiously sought to carry out all responsibilities set forth in the order, but have found I am unable to comply with the June 12 deadline for processing complaints without foregoing other critical civil rights obligations.



A. Current Status of Complaints

Under the terms of the Court's order, all of the 187 unresolved Title VI complaints alleging race discrimination by public schools in the 17 southern and border states not resolved as of March 14, 1975 would have to be fully investigated and a determination of discrimination or nondiscrimination made before June 12, 1975. Having to resolve this exceptionally large number of complaints as if they were filed at one time has imposed substantial strains on the resources of OCR. Of these 187 complaints, only 31 complaints have been resolved, to date (i.e., compliance determinations made and, where appropriate, enforcement action taken), 14-17 complaints are being investigated and will be resolved by the end of the fiscal year, June 30, 1975, and 67 complaints (or approximately 35% of the total) are under active investigation but are virtually impossible to resolve on or before June 30. In fact, in Regions III, IV, and VII, 100% of all the unresolved Title VI complaints on hand as of March 14, 1975, (1) have been resolved, (2) will be resolved by June 30, 1975, or (3) are under active investigation but are unlikely to be resolved before June 30. In Region VI, however, only 30 of the 121 unresolved Title VI complaints on hand as of March 14, 1975 have been resolved or will be resolved by June 30, 1975, and only 10 are under current investigation. Additionally, although I am mindful that part F also applies to each new complaint received since March 14, no investigations have been initiated as to such complaints because all staff capacities have been and continue to be addressed to resolving the backlog, complying with the other parts of the order and processing ESAA applications.



B. Inadequacy of Staff Resources in Education Branch

In order to resolve all of the remaining unresolved complaints, I estimate that the following number of persondays would be required: Region III (exclusive of Pennsylvania) - 240 days; Region IV - 510 days; Region VI - 1,870 days; and Region VII (Missouri only) - 105 days. These estimates are based on our experience that the resolution of Title VI complaints involves a total of 20 persondays--15 days of investigation and compliance evaluation and 5 days of negotiation. While some complaints may be resolved by as little as a telephone call, others required many more than 20 days of onsite investigation alone. These figures also reflect the assumption that approximately 25% of the requisite staff time has already been expended with respect to complaints currently under investigation.

The FY 75 authorized professional positions for the Elementary and Secondary Education branches in these four regions are as follows: Region III - 14; Region IV - 22; Region VI - 24; Region VII - 9. This represents approximately 45% of all FY 75 authorized professional positions in the Elementary and Secondary Education branches of the 10 regional offices.

Even if 100% of the authorized professional staff in the Elementary and Secondary Education branches in each of these affected regions are utilized exclusively for the investigation of current unresolved Title VI complaints dating from March 14, 1975, a minimum of ¹⁷20 days would be required in Region III; 23 days in Region IV; 78 days in Region VI; and 12 days in Region VII to investigate and resolve such complaints. In Regions III, IV and VI, it would be impossible to complete the final resolution of these complaints by June 12, 1975, and, in Region VI, the entire staff would have to work on no other activity for over 4 months.



III. COMPETING CIVIL RIGHTS RESPONSIBILITIES OF THE EDUCATION BRANCH

Since the date of the Court's order, the 69 Elementary and Secondary Education branches' professional staff in these four regions have been engaged primarily in activities mandated by the Court's order. However, the Education branch in each region must also devote a considerable portion of its time to other Title VI-related programs as well as to Title IX compliance activities. Of the approximately 4,000 persondays of professional staff time available in the four regions during the period March 1, to June 30, 1975, I estimate that:

(1) 2,040 days (51% of the total) will have been allocated to the activities mandated by parts A, C, D, E, and F of the Court's order.

12 (2) 1,301 days (35% of the total) will have been allocated to ESAA pre-grant and post-grant clearance activity.

(3) 512 days (14% of the total) will have been allocated to all other Title VI and Title IX enforcement efforts including the elimination of language barrier discrimination and pilot reviews related to elimination of discrimination in discipline proceedings.

A. ESAA Obligations

The above figures show that while a majority of the Education branches' staff time has been allocated to complying with the Court's order, 35 percent of that time has been necessarily diverted to determining the eligibility of applicants for FY 75 grants under the Emergency School Aid Act.



Under ESAA, the Office for Civil Rights is charged with determining whether applicants are in compliance with civil rights related requirements contained in the Statute and implementing regulation. Each local education agency applying for funds must submit assurances which contain non-discrimination clauses pertaining to such matters as voluntary desegregation of students, establishment of district-wide and student advisory committees, conduct of public hearings, the illegal transfer of public school property, dismissal, demotion and assignment of faculty, the classroom assignment of students, the assignment of students to special education programs, the administration of student discipline standards, the conduct of extracurricular activities, the elimination of language barriers and the provision of comparable facilities. While the ESAA program is generally an extension of Title VI of the Civil Rights Act and is compatible with Title VI and its accompanying regulation, the non-discrimination requirements of ESAA Regulation, as reflected in the assurances, are more extensive and more specific than the Title VI Regulation, particularly in such areas as faculty and classroom assignments. The Court's order makes specific reference to the close relationship between ESAA programmatic activity and Title VI enforcement and mandates specific action to be taken to follow up on ESAA determinations. The ESAA program effort of this office is also the primary source of information regarding the violation of court orders, addressed by part E of the Court's order.



In processing ESAA applications, OCR's pre-grant work is divided into two phases. First OCR must determine whether the district has a desegregation plan that makes it eligible to be considered for funding, or in the case of nonprofit groups seeking funding, whether or not the nonprofit group is working in a district that is desegregating as defined by the terms of the Act.

Phase two requires OCR to investigate whether the district meets the civil rights related assurances. Because of the breadth and depth of these investigations during FY 73 and FY 74, virtually every employee in each regional office worked full time on ESAA throughout the funding periods of December through June.

To substantiate the signed assurances, each applicant is required to provide data, often running several hundreds of pages in length. Reviews of this data frequently showed inadequacies or problems, usually in areas of classroom assignments, special education and faculty, which led to additional and often extensive data requests.

Because of the uncertain level of funding, the processing of current applications under ESAA has been delayed this Fiscal Year and, as of this date, a permanent appropriation for this program has not been enacted by the Congress. The funding level of the program may vary from a low of \$75 million to a high of \$236 million. Despite the uncertainty, the Department has proceeded



with the solicitation of applications. The final date for submitting such applications was May 16, 1975, but has now been extended by the Office of Education until June 2, 1975. One thousand, two hundred thirty-seven (1,237) applications have been received, to date, (including 731 from local education agencies). With respect to each, OCR must make a determination on or before June 12, 1975, whether the applicant meets the Civil Rights eligibility requirements set forth in 20 U.S.C. 1601 through 1619. Determinations must be made by this date in order that the funds may be obligated and the necessary reallocations by the states be made in time for a second round of grants prior to June 30, 1975. In FY 74, over 800 applications were received from local education agencies, the vast majority of which were within the 17 southern and border states. Two hundred fifty-two (252) of these districts, including 124 within the 17 southern and border states were found to be ineligible as a result of pre-grant review.

The need to process the ESAA applications by June 12 and yet comply with the Court's Order as to the 187 outstanding complaints by the same date presents OCR with a staff resource problem of crisis proportions. Given these extraordinary conflicts and concurrent demands on OCR, I am convinced that my staff cannot fulfill both these responsibilities within the requisite deadlines. I also am certain that there is nowhere else in HEW, other than OCR, a sufficient staff with the training and experience necessary to



make these investigations and determinations. Moreover, the commitment of OCR staff resources to ESAA reviews has had a profound impact on the elimination of racial discrimination, particularly in the 17 southern and border states. For example, as a direct result of ESAA activities, over 20,000 students have been reassigned to eliminate racially identifiable classes, the assignment of over 25,000 minority children has been reevaluated to eliminate previous discriminatory assignment procedures, and over 2,500 teachers have been reassigned in order to eliminate previous discriminatory assignment patterns. Thus, it would be with the greatest reluctance that I would divert staff resources from ESAA activities or permit cursory reviews so as to defeat the major contributions possible under that program.

B. Reviews to Eliminate Language Barriers

The second area of compliance activity not mandated by the Court order to which resources have been allocated since the date of the order is a large-scale enforcement effort to ensure the compliance of 334 school districts (including 102 districts in Regions III, IV, VI, and VII) with the provisions of a memorandum to Chief State School Officers and heads of local education agencies dated May 25, 1970, in which the Department notified school systems



of their responsibilities under Title VI to provide equal educational opportunity to national origin minority group children deficient in English language skills.

In January 1974, the Supreme Court in Lau v. Nichols, 414 U.S. 563 (1974), held that the Department had correctly used its regulatory authority under Title VI of the Civil Rights Act of 1964 in issuing its May 25, 1970 memorandum and further that local education agencies receiving Federal funds have an obligation under Title VI of the Civil Rights Act of 1964 to eliminate barriers which prevent national origin minority group children from participating with equal effectiveness in educational programs so that such children are not denied the opportunity to obtain the education generally obtained by other students in the system. To eliminate discrimination based on the ability to speak English and to implement the Supreme Court's mandate in Lau, OCR expanded and refined its enforcement effort to secure compliance of local school districts.

As noted above, there are 102 school districts in Regions III, IV, VI, and VII included in the enforcement effort initiated earlier this year. According to OS/CR 101-102 survey data, over 500,000 national origin minority students currently attend schools in these districts.



The approach to securing compliance of school districts in this regard includes both analysis and review of individual school districts and the identification and evaluation of the sufficiency of proposed remedies to correct past practices determined to be in violation of Title VI requirements. As in the investigations conducted by this office prior to the Lau decision, the current series of compliance reviews, while based primarily on analysis of a survey completed by each targeted school district, will also include examinations of grouping practices, assignments to special education programs and other related issues.

Elementary and Secondary Education Branch staff in each of these regions are currently reviewing the surveys which have been completed and returned by the 102 districts. In those districts where survey data or other information indicate that Title VI compliance problems exist, school districts will be so notified and on-site investigation, compliance analysis and negotiation activities to achieve compliance will be pursued. Where voluntary compliance cannot be achieved by negotiation during a reasonable period of time, appropriate enforcement action will be taken.



C. Large City Reviews

Since the date of the order, a small amount of resources (75 persondays) have been assigned in Region III to a comprehensive Title VI - Title IX compliance review of the Philadelphia school system. A similar review of the Houston, Texas school system had to be postponed indefinitely because of the level of activity in Region VI mandated by the Court's order. The projected staff allocations have been lowered in Region III for the Philadelphia review (and, thus, the time of the review lengthened) because of activity mandated by the Court's order in Region III. Similar reviews in New York City and Chicago will continue on schedule.

The reviews will emphasize the results of treatment of students within the school system, rather than simply their placement in schools. Major issues under review include:

- (1) Whether comparability exists between districts, schools, or classrooms with respect to instructional and noninstructional programs, expenditures, facilities, and other services.
- (2) Whether children are being denied access to educational programs on the basis of their race, color, national origin, sex or handicap through bias in evaluation practices, language barriers, enrollment and curricular limitations.



- (3) Whether the effect of assigning children to types of curricula, ability groups or tracks, special education programs, or programs for gifted children is to create and maintain isolated environments within the schools so as to place children at a disadvantage because of their language or culture, race, sex, or handicap.
- (4) Whether children are treated discriminatorily on the basis of their race, color, national origin, sex or handicap in the conduct of school-sponsored extra-curricular activities, counseling, referral, or disciplinary procedures.

These reviews are essential in my judgment to ensure equal educational opportunity for children of all racial and ethnic minority groups in the urban school districts of this country-- districts in which a majority of minority children attend schools. Their expanded focus on a wide variety of issues related to in-school treatment is of vital importance to the advancement of civil rights policies and compliance efforts.

The indefinite postponement of the Houston review will greatly limit the ability of this office to ensure the delivery of equal educational services to approximately 120,000 minority students.

Strict compliance with the prospective injunction as it applies to individual complaints would require a massive diversion of education branch staff resources which would, by its very



nature, only impede if not eliminate the significant contribution to equal educational opportunity which would otherwise result from the ESAA, language discrimination and large city compliance reviews efforts, and could also greatly reduce the level and impact of Title VI school and classroom desegregation efforts.

III. DIVERSION OF STAFF FROM OTHER CIVIL RIGHTS EFFORTS

The only way in which the investigation and resolution of all 187 complaints could be accomplished by June 12, 1975 would be to divert large numbers of professional staff members from branches other than the Elementary and Secondary Education Branch. However, such diversion would severely setback other vital civil rights programs including several which offer benefits to vast numbers of students by attacking discrimination in a systemic rather than individualized basis.

A. Higher Education Staff Obligations

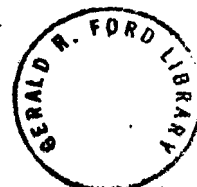
The FY 75 authorized professional positions for the Higher Education Branches in these four regions is as follows: Region III--9, Region IV--12, Region VI--11, and Region VII--7. This represents approximately 40% of all authorized FY 75 professional positions in the Higher Education Branches of the 10 regional offices.



At the present time, staff of this division is involved in a major training and enforcement activity focusing on the elimination of current employment discrimination/complaint and affirmative action plan (AAP) backlogs under Title VI, Title IX, and Executive Order 11246. In the regions affected by the court's order, the current backlog, and amount of staff we are planning to devote to its reduction (though not elimination) are:

<u>Region</u>	<u>Total No. of Unresolved Complaints</u>	<u>No. of AAPs Awaiting Final Review</u>	<u>% of Total Staff Time 3/75 - 6/75 Allocated to Reduction Complaint and AAP Backlogs</u>
III	66	19	75%
IV	64	40	54%
VI	55	53	57%
VII	58	19	100%

In addition to the complaint investigation activities listed above, higher education branch staff in three of these regions are currently responsible for evaluating the progress of eight state systems of higher education (Pennsylvania, Maryland, Virginia, North Carolina, Florida, Arkansas, Oklahoma and Georgia) desegregating formerly dual systems of higher education pursuant to desegregation plans negotiated by this office in connection with the court's order of February 16, 1973. Approximately 24% of higher educational professional staff time will be devoted to this monitoring/evaluating activity during



the fourth quarter of FY 75 in Region III; 42% in Region IV; 43% in Region VI. These combined activities, i.e., complaint and affirmative action backlog and state desegregation system monitoring, of the Higher Education Branches in Regions III, IV, and VI during the fourth quarter of FY 75 amount to 100%, 96%, and 100% respectively of all Higher Education Branch professional staff time available.

Diversion of Higher Education branch staff in any of these regions to assist in the mandated compliance investigation activities of the Elementary and Secondary division would, in my judgment, only undermine and further delay similar complaint investigation activity under way in the Higher Education Division and/or directly interfere with court-mandated monitoring and evaluating activities in connection with the desegregation of state systems of higher education.

A further complication to any reassignment of Higher Education Division staff from E.O. 11246 complaint investigation activity to Title VI elementary and secondary education responsibility is the fact that congressional appropriation for staff positions under E.O. 11246 is made separately and thus reassignment to Title VI responsibilities would be inconsistent with congressional authorization. Non-E.O. 11246 Higher Education Branch staff (the only Higher Education Branch staff that could be diverted lawfully) in these regions are being utilized almost exclusively on the monitoring/evaluation of the 8 systemwide desegregation plans - another activity mandated by the



same court. An identical prohibition would prevent the reassignment of any staff from the office's Contract Compliance Branches, all of whom occupy positions approved by the Congress for F.O. 11246 enforcement only.

B. Health and Social Service Staff Obligations

In the fourth divisional area, Health and Social Services, the FY 75 authorized professional positions in the four regions are as follows: Region III--9; Region IV--13; Region VI--10; Region VII--4. This represents approximately 53% of all authorized professional positions in the Health and Social Services Branch of the 10 regional offices for FY 75. Like the Higher Education Branches, a substantial portion of the current activity of the branches in each of these regional offices is related to the investigation of complaints -- in this instance related to race discrimination by health care and social service institutions.

In addition to the complaint investigation activity, the principal focus of staff resources will be on the completion of in-depth compliance reviews. For example, in Region VI, approximately 107 persondays will be allocated to the completion of a comprehensive review of possible racial discrimination in patient admissions and referral practices of hospitals in Orleans Parish (New Orleans), Louisiana.

Because of the small numbers of staff available in each region and the major complaint investigation focus of current staff, diversion of resources from the health and social services



divisions of these regions would not serve to improve the total investigation posture of the office with respect to race discrimination in the 17 Southern and border states.

In summary, it is my view that the reassignment of staff (where lawful) from branches other than Elementary and Secondary to assist in the activities mandated by the court order would seriously weaken high priority compliance efforts under way in these branches and thus would not be in keeping with the fundamental purposes of the court's order.

IV. DIVERSION OF STAFF NATIONALLY

A. Northern Regional Offices

I have also considered the possibility of assigning staff from other regional offices both within and without the Elementary and Secondary Branch to assist the Elementary and Secondary staff of these four regions. Of the six remaining regions, only three have sufficient numbers of professional staff in any divisional area to be possible candidates: Regions I (New York), V (Chicago), and IX (San Francisco). There are only a total of 20 authorized professional positions in the Elementary and Secondary Education branches (the largest branch in each region) in the other three regions.

During the period March 1975 - June 1975 Elementary and Secondary Division staff in each of these regions will be involved



in the same type of high priority activities (exclusive of court-mandated activities) discussed earlier; that is FSAA reviews, elimination of language barriers and large city programs.

<u>Region</u>	<u>No. of Prof. Staff</u>	<u>No. of ESAA Appl.</u>	<u>Large Urban School Reviews</u>	<u>No. of Title VI Compliance Reviews to be Completed</u>	<u>No. of Language Barrier Dist. to be Reviewed</u>
I	8	29		2	3
II	17	86	New York	3	10
V	23	70	Chicago	8	15
VIII	8	71		2	23
IX	22	137	Los Angeles	3	90
X	6	17		5	6

For the reasons discussed above, I do not believe that the diversion of staff in these regions from these activities would further the underlying purposes of the court order. My review of the allocation of staff resources in the other two divisional areas (Higher Education and Health and Social Services) during the period March - June 1975 raises the same considerations and difficult choices discussed above with respect to the activities of the four southern regions. The only significant difference in Higher Education and Health and Social Services enforcement activities between the groups of northern and southern regions is that the percent of staff time devoted by the Higher Education Branches in the Southern regions to monitoring and evaluating the 8 statewide plans has been added to the staff time devoted to eliminating the Title VI and Title IX employment discrimination complaint backlog.



B. Headquarters Staff

Finally, I have explored the feasibility of diverting headquarters' Elementary and Secondary Division staff to assist the four regional offices. Twenty-nine (29) authorized professional positions are assigned to the Elementary and Secondary Education Division (Headquarters) for FY 75. During the period March - June 1975, most of these positions will be assigned to activities directly supporting the court-mandated and high priority elementary and secondary regional branch activities discussed above. The only exception will be the allocation of small numbers of persons to general administrative and FY 76 planning tasks. The disruption of support activities by a reassignment of headquarters staff to directly assist the Elementary and Secondary Branch staffs in the four regions would only accomplish an illusory increase in staff resource allocation.

In summary, I have determined that even with a 100% Elementary and Secondary Branch staff resources allocation, it would be administratively impossible for three of the four regional offices (Regions III, IV, and VI) to comply with the responsibilities imposed by part F without serious setbacks to other equally vital civil rights efforts. I have further concluded that a reassignment of staff from other branches within those regions during this period would seriously impede important compliance efforts under way in those branches and thus would not be in furtherance of the spirit and



underlying purpose of the court's order, and that assignment of staff from other regions and from headquarters is similarly undesirable. Moreover, with respect to the unresolved Title VI complaints in Region VI, I have determined that, even with a reassignment of available staff both from other branches in that region and from other regions, it would be administratively impossible to investigate and resolve all March 14, 1975 unresolved complaints on or before June 12, 1975, especially in light of the conflicting pressures generated by the duty to process ESAA applications.

V. PROJECTED OBLIGATIONS IN FY 1976

A. Title VI Complaints

As part of the FY 76 planning activities this Spring, the Elementary and Secondary Education Division asked each Regional OCR office to estimate, based on current flow and any external factors likely to occur in FY 76, the number of Title VI complaints to be received during the next fiscal year. These estimates have been used for FY 77 budget planning and as a basis for FY 76 work-load allocations. While these figures are only "best estimates" I believe that the following represents a reliable projection of race discrimination complaints in the 17 Southern and border states.



<u>Region</u>	<u>Number of Complaints</u>	<u>Persondays Required to Resolve Complaints</u>	<u>Number of Total F/S Branch Persondays</u>	<u>% of Total Persondays</u>
III	25	500	2,580	19% 17%
IV	170	3,400	4,730	72%
VI	260	5,200	5,160	101%
VII	20	400	1,935	21%

B. Continuing Obligations Under the Supplemental Order

In order to carry out the other mandated activities of the court's order (primarily with respect to part A thereof), I estimate that the following FY 76 regional Elementary and Secondary Education branch professional staff allocations will have to be made:

<u>Region</u>	<u>Number of + 20% districts</u>	<u>Number of Persondays</u>	<u>% of Total Persondays</u>
III	18	900	30%
IV	45	1,583	34%
VI	47	1,967	38%
VII	5	250	13%

It is clear from these figures that in two regions (Atlanta and Dallas) there are not enough Elementary and Secondary Education Branch persondays to carry out the mandated activities pursuant to parts A, E and F of the court's order irrespective of any other compliance activity. The administrative impossibility of complying with part F requirements in these two regions is further underscored by the projected staff resources needed to carry out two other high priority compliance activities.



<u>Region</u>	<u>Person-days ESAA Pre-grant</u>	<u>% of Total Person-days</u>	<u>Person-days ESAA Post-grant</u>	<u>% Total Person-days</u>	<u>Persondays Language Discrimination</u>	<u>% Total Person-days</u>
IV	1,035	22%	610	13%	120	3%
VI	1,210	24%	450	9%	1,720	33%

(Because the pre-grant ESAA phases lasted for several months in both FY 73 and FY 74, Elementary and Secondary Education Division was able to lower the numbers of post-grant investigations necessary.)

<u>Region</u>	<u>% Per-sondays Part F</u>	<u>% Per-sondays Parts A and E</u>	<u>% Per-sondays ESAA Pre-grant</u>	<u>% Per-sondays ESAA Post-grant</u>	<u>% Persondays Language Discrimination</u>	<u>Total</u>
IV	72%	31%	22%	13%	3%	141%
VI	101%	30%	24%	9%	33%	197%

The delay of other high priority compliance activities would be required in Region III where approximately 33% of the Elementary and Secondary Branch professional staff persondays are planned for the comprehensive Title VI compliance review of the Philadelphia school system.

I have reviewed the feasibility of reassigning staff from other branches, regions, or headquarters for FY 76 activities and have found no material difference from the conclusions reached on the basis of my analysis of the effects of such reassignments in the fourth quarter of FY 75.



VI. CONCLUSION

Apart from the immediate crisis of allocating staff resources near the end of the fiscal year, I am concerned about having special and different procedures for handling complaints and information regarding elementary and secondary school desegregation in the 17 Southern and border states -- different, that is, from the procedures followed by OCR in handling matters outside of those states and in handling nondiscrimination enforcement under other programs and with respect to other types of institutions. I am greatly concerned that the complaint orientation mandated by part F of the Court's order will concentrate far too great a percentage of OCR elementary and secondary school compliance review resources on matters which by their nature often impact on a relatively few people. A large number of the current unresolved Title VI race complaints in the 17 Southern and border states are addressed to allegations of individual as compared to systemic discrimination. Many involve specific isolated employment decisions or disciplinary actions. Despite their narrow focus and often the limited impact of their correction, the time required to investigate and resolve these individual complaints can dominate and eventually supplant enforcement efforts designed to eliminate systemic forms of race and sex discrimination often directly affecting hundreds of thousands of students. It is in the area of systemic discrimination such as discriminatory ability grouping, tracking and counseling, language barriers to meaningful instruction,

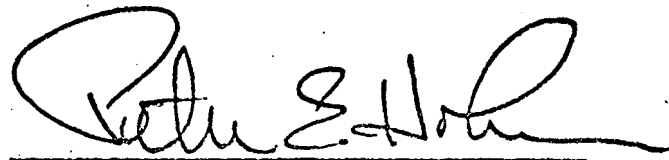


instruction, and the complex intertwined issues of the comprehensive urban school reviews that I believe this office can make its greatest and its truly unique contribution. The lessening or abandonment by OCR of efforts to eliminate systemic discrimination which could result from strict application of the requirements of part F to complaints would deal an irreparable blow to the total legal effort to ensure equal educational opportunity.

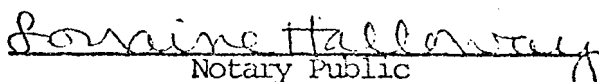
Along with other officials of HEW, I have been engaged in developing a common set of procedures that the Department can use in all of its nondiscrimination enforcement programs. Consolidated Procedural Rules are scheduled to be published in the Federal Register for public comment on June 4, 1975, at the same time that the Title IX regulations are issued in final form. Both will be transmitted to Congress pursuant to §431(d), as amended, of the General Education Provisions for 45 days. One of the revisions contained in the procedural regulation proposes that individual complaints be resolved in connection with the conduct of regularly-scheduled compliance reviews. In this way, the Department is attempting to define its role in civil rights enforcement in terms of a methodical approach geared toward identifying and eliminating systemic discrimination rather than in terms of a reactive or complaint-oriented approach. Before issuance in final form, the Consolidated Procedural Rules are subject to approval by the Attorney General and the President.



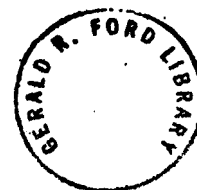
I am hopeful that the orderly and effective enforcement of our responsibilities in these programs will be enhanced if we are permitted to implement these uniform procedures for all statutory nondiscrimination programs.


Peter E. Holmes

Sworn to and subscribed before
me this 3rd day of June, 1975.


Notary Public

My Commission Expires Jan. 1, 1978



ac

Milton

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

-----X
KENNETH ADAMS, et al.,

Plaintiffs,

v.

CASPAR W. WEINBERGER, individually
and as Secretary of the Department
of Health, Education, and Welfare
et al.,

Defendants
-----X

Civil Action No. 3095-70

Washington, D. C.

Saturday, June 7, 1975

Deposition of

PETER E. HOLMES

a witness in the above-entitled matter, called for examination
by counsel for the plaintiffs, pursuant to notice, in the
offices of Peter E. Holmes, Room 3256, 330 Independence Avenue,
Southwest, Washington, D. C., beginning at 9:30 a.m., before
Raleigh E. Milton, a Notary Public in and for the District of
Columbia, when the parties were represented by the following
counsel:

Reynolds Reporting Associates, Inc.

1028 Connecticut Ave., N. W., Suite 1100
Washington, D. C. 20036

Phone: 833-3528
833-2102



vpf 9

THE WITNESS: March 15. The questionnaires were sent out in January, with a March 15 deadline for responding; but as I previously noted, activities did occur with respect to a number of these districts prior to March 15 because the questionnaires had been submitted early in some cases, by districts, in February and early March.

BY MR. LICHTMAN:

Q By March 15, did you have in hand most of the questionnaires completed?

A Yes. That is my understanding. Off the record.

(Discussion off the record.)

THE WITNESS: Back on the record. While you can say generally that most of the questionnaires were received by March 15, the deadline. There were some cases where, and specifically in the State of Texas where we were working with the Texas Education Agency, where some problems cropped up and some of the questionnaires had to be returned and resubmitted to the Office.

BY MR. LICHTMAN:

Q I take it since the receipt of the questionnaires, you have not made on-site reviews to the Lau Districts. Is that correct?



vpf 10

A The analysis that we have, the only analysis, as I understand it, that we have been able to undertake thus far with respect to the questionnaires received has been in-house and desk audits. As I mentioned, much of that activity has been suspended or held in suspension since March 14 as we have attempted to comply with the terms of the Court's order.

Q I do note that you have sent three letters of noncompliance. Is this an area in which you will be able to determine whether letters of noncompliance can be sent generally without on-site reviews?

A It is not easy to give a general response to your question, Mr. Lichtman. It is going to vary from one district to the next. In order to understand this, I would be glad to give you a copy of the questionnaire that was sent to the Lau Districts so you can review it.

But there are various categories of information that have been submitted. I understand from staff that with respect to those three cases that were found out of compliance, the response to the questionnaire indicated that there were large numbers of students who spoke absolutely no English and could communicate -- could not communicate in English at all. They were providing absolutely no special instructions to those



vpf 11

children which on the face of it represented a clear violation, did not in our estimation require an on-site review in those cases. But there will be other cases where the students will have some command of English, but varying degrees, where they are providing some, but not considerable special language instructions which will, of course, necessitate an on-site review before we can make a final compliance determination.

ac fls



ac 1

fls vpf

Q It is your contemplation that with respect to these 102 Lau Districts in the Southern regions that you will determine whether or not the districts are apparently or presumptively in noncompliance and then when you make that determination you will be sending out notices of noncompliance; is that correct?

A Yes. That is why we are engaged in this effort with respect to 334 school districts to determine their compliance with the non-discrimination provision of Title VI.

Q Am I right in concluding that with respect to these Lau Districts these districts may well fit within the language of paragraph F of the order that speaks in terms of complaints "or other information of racial discrimination?"

In other words, is this the kind of situation where we may have the other information of discrimination district?

A I think that in light of the fact that the questionnaire was submitted to the school districts and a more detailed specific questionnaire, that once we have a response to that information and are able to analyze it, it might very well in some cases regard and has in three cases, as we indicated, represented information suggesting that more than a presumptive violation of Title VI. Off the record.

(Discussion off the record.)



ac 2

THE WITNESS: I would like to make two points to pin my previous statement down. We did not regard the selection criteria that I had mentioned before or the criteria that we utilized in targeting the districts as being tantamount to information indicating a presumptive violation.

That is why we proceeded with each one of those 334 districts with a specific questionnaire to obtain more detail and specific information.

The 101 and 102's that we circulated only asked very, very general questions regarding the provision of bilingual education. The second point I would like to make, and it is a correction of previous statement that I made, that it is our understanding that sub-part F of Judge Pratt's March 14th order goes to complaints or other information with respect to race discrimination and not with respect to complaints or other information pertaining to national origin discrimination.

BY MR. LICHTMAN:

Q Let me take both of those things. First of all, I may have used the term presumptive violation. I withdraw it, if I did. My reading of the provision is that it is where you have the determination of the presumptive violation, it is in that situation that you seek corrective action. So there we



are really talking about sub-part B of paragraph F, rather than sub-part A. I may have thrown you off. But focusing on sub-part A -- putting aside the question of national origin versus race, focusing on subparagraph A -- isn't this a situation where when you get these questionnaires back you may have the kind of situation where it is "other information of discrimination?" That is the way I have always read it. I just want to see whether you read it the same way?

A Yes.

Q There is a separate point here. That is whether or not this subparagraph has any application to national origin situations and you have suggested that it applies to race discrimination, not to national origin discrimination?

A I stated that and I don't have the order. Perhaps I can read it.

MR. ANDERSON: Let me interpose a statement or objection at this point and I think this really calls for a legal conclusion, but I am going to allow Mr. Holmes to state the position of the Department.

MR. LICHTMAN: I appreciate that. I really want to know what the position of the Department is.

THE WITNESS: As we read Judge Pratt's order of March 14,



ac 4

it says "within 90 days of receipt by HEW of a complaint or other information of racial discrimination, determine for administrative purposes whether the District is in or out of compliance with Title VI." It does not refer to, as does Title VI, or racial or national origin discrimination.

BY MR. LICHTMAN:

Q Is it the position of the Department that if this paragraph is affirmed on appeal that the Department will not apply the timetables in this paragraph to national origin discrimination situations?

A Off the record.

(Discussion off the record.)

THE WITNESS: The Department has read the Adams order as applying to complaints or information pertaining to racial discrimination. Those were the exact words used in the order.

With respect to whether the Department as a matter of policy would determine not to apply the same time frames to issues of national origin discrimination is a separate matter.

BY MR. LICHTMAN:

Q Can you tell me what the Department's policy is with respect to that? Maybe you can't, but if you can tell me, I would like to know whether, assuming this paragraph is not



ac 5

stayed and assuming this paragraph is not reversed on appeal, is the Department going to apply the time frames to national origin discrimination situations?

A Off the record.

(Discussion off the record.)

THE WITNESS: Back on the record, to clarify, Mr. Lichtman, I am advised by my staff --

MR. LICHTMAN: I don't think it is appropriate to be giving legal advice to the witness. I think it is fine to discuss Department policy. It may be a difficult distinction to draw in this case.

(Discussion off the record.)

THE WITNESS: With regard to the Department policy, Mr. Lichtman, let me generally outline to you the course of action we have taken. With regard to sub-part F, we have attempted to prioritize the handling of complaints over the handling of other information.

We have, while we are reluctant to draw any distinction between racial and national origin discrimination complaints or other information, we have because of the work load prioritized the handling of race discrimination complaints and other information pertaining to race discrimination over national origin discrimination complaints and the handling



ac 6

other information pertaining to national origin. Thus, in order to comply with sub-part F, there will be a delay -- and I think that our affidavit indicates a delay in the processing of the Lau Districts as we attach priority first to complaints and then, secondly, to the handling of both complaints and other information pertaining to the race discrimination.

BY MR. LICHTMAN:

Q While you gave priority to race discrimination complaints and to other information of race discrimination situations, I take it you have nevertheless continued to process national origin complaints and some situations involving other information of national origin discrimination as is evidenced by your earlier testimony that certain letters have gone out to these three districts that have national origin problems; is that correct?

A Yes. The letters went out to 343 Districts pertaining to national origin discrimination issues in January. Also, I am advised by staff that of the 187 complaints that we referred to, they do include some national origin discrimination complaints, but as I understand from our Dallas Regional Office where the largest number of outstanding complaints exist, they were very, very few national original discrimination complaints



ac 7

and they were the vast, vast majority of them discrimination complaints.

Q Would the following be a fair statement: that if paragraph F becomes the law or remains the law, the Department would like to apply the paragraph to national origin situations just as it does to racial situations, assuming it has the capacity to do so. Would that be a fair statement?

A Off the record.

(Discussion off the record.)

THE WITNESS: Perhaps I can try to answer it this way, Mr. Lichtman: In the ideal world we would and if, as you say, sub-part F were the guiding process that had to be followed, we would like to treat all complaints and all other information, whether it represents race discrimination, nationao origin discrimination, discrimination based on sex, discrimination based on the handicapped equally.

BY MR. LICHTMAN:

Q Let me turn to another kind of situation involving paragraph F, by clearly involving race discrimination.

You have in your affidavit reflected that in the course of complying with paragraph A of the order, you have identified 115 districts which have one or more schools with a disparity



UP-071

(CIVIL RIGHTS)

WASHINGTON (UPI) -- MEXICAN-AMERICANS, WOMEN AND OTHERS IN THE SOUTHWEST WHO HAVE LODGED CIVIL RIGHTS COMPLAINTS WITH THE GOVERNMENT ARE ABOUT TO BE TOLD THEIR CASES HAVE BEEN PUT ASIDE INDEFINITELY.

THE OFFICE OF CIVIL RIGHTS SAID LETTERS WILL BE GOING OUT TO THOSE PERSONS INFORMING THEM THE GOVERNMENT'S FIRST PRIORITY IN THE CIVIL RIGHTS FIELD IS RACIAL DISCRIMINATION, BECAUSE A RECENT FEDERAL COURT ORDER TOLD THE AGENCY THAT'S THE WAY IT HAD TO BE.

A SPOKESMAN SAID THE LETTERS HAVE BEEN DRAFTED BUT HAVE NOT ACTUALLY BEEN SENT YET. THE AREA INVOLVED INCLUDES TEXAS, LOUISIANA, ARKANSAS, NEW MEXICO AND OKLAHOMA -- A REGION FROM WHICH THE CONTROLLING CIVIL RIGHTS OFFICE IN DALLAS HAS BEEN "SWAMPED" WITH COMPLAINTS, THE SPOKESMAN SAID.

THE GOVERNMENT IS REPORTED TO GROUP MOST OF THE COMPLAINTS OF DISCRIMINATION AGAINST MEXICAN-AMERICANS IN THE "NATIONAL ORIGIN" CATEGORY. DISCRIMINATION INVOLVING BLACKS IS LISTED UNDER RACIAL DISCRIMINATION.

THE COURT ORDER, HANDED DOWN BY U.S. DISTRICT JUDGE JOHN PRATT IN WASHINGTON, AROSE FROM A SUIT BROUGHT BY THE NAACP WHICH CHARGED THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE WAS NOT MOVING FAST ENOUGH TO ACT ON RACIAL DISCRIMINATION COMPLAINTS FROM THE 17 SOUTHERN AND BORDER STATES WHICH ONCE HAD FORMAL SEGREGATION.

UPI 10-01 01:30 PED

UP-072

(DRUG EXPERIMENTS)

WASHINGTON (UPI) -- THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE TOLD CONGRESS TODAY IT OPPOSES A LEGISLATIVE BAN ON MEDICAL RESEARCH INVOLVING PRISONERS.

"ALTHOUGH PRISONERS ARE IN A CUSTODIAL SITUATION WHICH IS INHERENTLY COERCIVE, WE BELIEVE THAT GIVEN APPROPRIATE SAFEGUARDS, RECRUITMENT AND PARTICIPATION OF PRISONER SUBJECTS CAN BE CONTROLLED TO MEET ETHICAL STANDARDS," SAID DR. JAMES DICKSON, NEW ACTING DEPUTY ASSISTANT SECRETARY FOR HEALTH.

A HOUSE SUBCOMMITTEE ON CIVIL LIBERTIES IS CONSIDERING LEGISLATION WHICH WOULD PROHIBIT THE USE OF FEDERAL CIVILIAN OR MILITARY PRISONERS IN DRUGS AND OTHER BIOMEDICAL RESEARCH.

DICKSON TESTIFIED THE BILL "WOULD PROHIBIT CERTAIN IMPORTANT RESEARCH ACTIVITIES WHICH SHOULD BE JUDGED ON THEIR SCIENTIFIC MERIT AND ETHICAL SAFEGUARDS."

HEW IS CONSIDERING CHANGES IN ITS REGULATIONS REGARDING RESEARCH ON PRISONERS, DICKSON SAID.

"A POSSIBLE ALTERNATIVE POSITION...IS TO PERMIT USE OF PRISONER SUBJECTS ONLY WHEN THEY MAY BENEFIT DIRECTLY, OR WHEN THE RESEARCH BENEFITS OTHER PRISONERS OR PERSONS WITH SIMILAR CONDITIONS," DICKSON TESTIFIED.

UPI 10-01 01:34 PED

N111

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CHILD CARE CENTERS

WASHINGTON (AP) -- THE SENATE FINANCE COMMITTEE APPROVED TODAY A BILL TO EXTEND FOR ONE MONTH THE EFFECTIVE DATE OF THE STAFFING STANDARDS FOR CHILD CARE CENTERS WHICH RECEIVE FEDERAL FUNDS.

THE STANDARDS WERE SCHEDULED TO GO INTO EFFECT WEDNESDAY. THE HOUSE HAS VOTED FOR A SIX-MONTH DELAY.

UNDER A LAW ENACTED LAST YEAR, STATES CANNOT CONTINUE TO RECEIVE FEDERAL GRANTS FOR THEIR CHILD CARE PROGRAMS UNLESS THE STANDARDS ARE MET.

SEN. RUSSELL B. LONG, D-LA., THE FINANCE COMMITTEE CHAIRMAN, HAS PENDING A BILL WHICH WOULD GIVE THE STATES AN ADDITIONAL \$500 MILLION TO HELP THEM MEET THE COST OF COMPLYING WITH THE NEW CHILD CARE STANDARDS.

HOWEVER, THE COMMITTEE DECIDED TO APPROVE THE DELAY IN ENFORCEMENT OF THE STANDARDS WHILE IT STUDIES LONG'S PROPOSAL.

10-01-75 16:15EDT



This is the only letter sent to date. We plan to send 14 more of these letters to open national origin complaints.



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

REGIONAL OFFICE

1114 COMMERCE STREET
DALLAS, TEXAS 75202

OFFICE OF
THE REGIONAL DIRECTOR

Mr. Jimmy Martinez
Vice-Chairman, Beeville Chapter
American GI Forum
905 N. Madison
Beeville, Texas 78102

*Went out
from us*

Dear Mr. Martinez:

This is to acknowledge receipt of your letter dated June 7, 1975 and to confirm a telephone conversation of July 15, 1975 wherein you alleged violations of Title VI of the Civil Rights Act of 1964 on the part of the Beeville Independent School District. We appreciate receiving your information on the matter.

The Office for Civil Rights is charged with reviewing matters such as you describe which involve discrimination on the basis of race, color, national origin or sex. We had anticipated conducting a review of the district in the near future. However, the Federal Court Order in the case of Adams v. Weinberger has necessitated allocation of a major portion of Region VI OCR staff resources to the task of resolving problems of race discrimination. Because of the volume of those cases on hand, it will be impossible for us to investigate your complaint at this time.

We are advising you of this delay. In the event you want to pursue the matter with your local school board or with the State Department of Education, perhaps with the aid of an attorney. We will keep your letter on file with any further information you wish to add to it, until the time that our workload and the demands of the Court will allow us to process it. At that time, this matter will be reviewed and appropriate action initiated. If immediate relief is required and you are unable to find it, we will be happy to give you suggestions on whom to contact.

Thank you for sharing your concern with us.

Sincerely yours,

John A. Bell, Chief
Elementary and Secondary
Education Branch, Region VI
Office for Civil Rights



This letter has gone to 1 school district to date. We plan to send 8 more of these letters to Texas districts and 2 to New Mexico.



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

REGIONAL OFFICE
1114 COMMERCE STREET
DALLAS, TEXAS 75202

OFFICE OF
THE REGIONAL DIRECTOR

WENT OUT
THIS WEEK

Mr. Kenneth Flory, Superintendent
Hondo Independent School District
P. O. Box 308
Hondo, Texas 78861

Dear Superintendent Flory:

The Office for Civil Rights initiated a civil rights compliance review of the Hondo School District in the 1974-75 school year. Although there has been correspondence between your district and this Office concerning the findings of the review team, we do not as yet have on file an acceptable plan from the district.

Due to priorities imposed on our Office by the Adams v. Weinberger Court Order, we must delay our next contact with you on the unresolved issues. When we are able to resume our review of your district's compliance status we will take into consideration the data and information you have provided us to date and be in touch with you.

A major aspect of the compliance review of your district concerned language services provided national origin minority students. This part of the review was initiated to meet our responsibility under Title VI of the Civil Rights Act of 1964 and the United States Supreme Court decision in the case of Lau v. Nichols.

We now have the final approved Departmental guidelines for school districts to follow in achieving compliance with Title VI and Lau. Enclosed for your convenience is a copy of these guidelines entitled "Task Force Findings Specifying Remedies Available Under Lau v. Nichols."

A careful review of these remedies will assist the district in correcting possible compliance problems prior to the completion of the review by this Office.

Also, Technical Assistance Centers have been established to provide aid to local education agencies that are developing plans for compliance with the requirements of the Lau v. Nichols decision.

*See appropriate second page for names of Lau centers.

*Intercultural Development
(Same as New Brainfels)*





DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
REGIONAL OFFICE
1114 COMMERCE STREET
DALLAS, TEXAS 75202
October 1, 1975

OFFICE OF
THE REGIONAL DIRECTOR

OCT 6 RECD
OCT 3 1975

Mr. George J. Korbelt, Associate Counsel
Mexican American Legal Defense and
Educational Fund
201 N. St. Mary's Street
San Antonio, Texas 78205

Dear Mr. Korbelt:

This will acknowledge your letter of September 26 regarding letters sent to our office by Jimmy Martinez and Albert Kauffman concerning the Beeville School District.

You expressed concern that neither letter had been acknowledged by this office. For your information I am enclosing copies of our letters of July 9, 1975 to Mr. Martinez and Mr. Kauffman.

I share your concern about the seriousness of the allegations regarding the Beeville School District's failure to follow the commitments contained in its plan. As you will note from our July 9 letter to Mr. Martinez, it was our intent to pursue the matter expeditiously. However, the alteration of our proposed work plan to meet the reporting requirements imposed on this office by the Adams vs. Weinberger court order has caused a delay in setting a date for the investigation.

I regret that you have not been informed of our responses in this matter and hope this will satisfy that concern. I will keep you informed regarding our plans when we are able to schedule action in response to the complaint.

Cordially yours,

Dorothy D. Stuck
Director

Office for Civil Rights, Region VI

cc: Mr. Jimmy Martinez
Dr. Hector Garcia
Mr. Peter Holmes



NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Presidential Libraries Withdrawal Sheet

WITHDRAWAL ID 01716

REASON FOR WITHDRAWAL Donor restriction

TYPE OF MATERIAL Statement

CREATOR'S NAME Jimmy Rincon

RECEIVER'S NAME State of Texas

TITLE student

DESCRIPTION voluntary statement

CREATION DATE 09/26/1975

COLLECTION/SERIES/FOLDER ID . 021600031

COLLECTION TITLE Fernando E.C. DeBaca Files

BOX NUMBER 2

FOLDER TITLE MALDEF - Mexican American Legal Defense
and Educational Fund (1) - (2)

NEW LOCATION Donor Restriction Closed File

DATE WITHDRAWN 08/14/1989

WITHDRAWING ARCHIVIST Nancy E. Mirshah

KNOWN DUPLICATES No

MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND

~~1730 RHODE ISLAND AVENUE, N.W., SUITE 801 / WASHINGTON, D.C. 20036 / (202) 659-5166~~

1028 CONNECTICUT AVENUE, SUITE 1007 / WASHINGTON, D.C. 20036 / (202) 659-5166

October 10, 1975

Mr. Donald Rumsfeld
Assistant to the President
The White House
1600 Pennsylvania Avenue
Washington, D. C.

Dear Mr. Rumsfeld:

I represent various Mexican-American organizations. Enclosed are some documents that reflect a new policy in Region VI of the Office for Civil Rights/HEW.


Essentially, OCR/HEW plans to postpone the investigation and processing of complaints filed by Mexican-Americans. This is an extraordinary policy which has caused great concern in the Mexican American community.

• We have met with Mr. Peter Holmes of OCR but to no avail; we have tried meeting with the Secretary (HEW) without success.

My clients need a response from you concerning this important issue. We would also like to meet and discuss with you the Administration's position on this matter as soon as possible.

Thanking you for your assistance and cooperation, I remain

Sincerely,



Al I. Perez
Associate Counsel

AIP:rm

Enclosure

cc: Fernando de Baca

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