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Dr. George I. Sanchez
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Re: Odem School Case

Dear Dr. Sanchez:

I enclose for your information a copy of the pre-trial brief that I filed with Judge Seals at the hearing last Friday. All of the evidence referred to in the brief is the evidence obtained from the Defendant and its employees as we have presented no evidence whatsoever as yet. At this juncture, it is apparent to me that the school board will be enjoined and that the court will not per se approve the testing plan which the school has submitted. My concern is that he will permit the school to "try it out to see if it works."

In reviewing the plan, if the board is acting in good faith, it plans to institute a testing system to be applied impartially to all. That which we hoped to accomplish when suit was filed last fall, has now been done for all practical purposes though no order has been entered as yet. But with the opinion of Judge Wright in the Hansen case (District of Columbia District Court) it is entirely possible that we could eliminate our segregation docket. As I mentioned to you the D. C. case holds that the "tracking system" to be unconstitutional as practiced in the Washington school district. The "ability plan" of the Odem School is the same thing, except applied to the first grade rather than high school.

Insofar as it is pertinent to our situation, the Wright opinion reasons as follows:

That the measure stick or norm used to determine

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ability groupings may be unfair to a particular ethnic or economic group. This follows because the median is reached by testing groups who are basically different from the group to which the norm is being applied. Furthermore, the accuracy of the tests and the validity of the results have not been established to the satisfaction of the court, nor can they be. In this situation, when a particular method is used to group students, though the method may be a recognized and approved means of grouping, and, though the groupings may be made in good faith and impartially - if, those groupings result in segregation, then the court will scrutinize the entire operation with great care to be certain that segregation is not one of the desired results of the system. In making this determination, the court will examine the results of the system used to see if it has accomplished its goal and corrected whatever ill it was supposed to remedy. Furthermore, the court will also ascertain if there is not some other means of accomplishing the same or better educational results without side effects, to-wit segregation.

The opinion covers a multitude of sins but in this regard, it fits our case.

As I see it, the school board is now in a position to pass the first two requirements of the Hansen case and all other cases up to this time, that is, setting up a pedagogically acceptable achievement testing program and impartially administering and applying the tests. Since segregation of Latin children will result to a substantial degree, the program is subject to attack because it will fail (as it has failed) and because there are better ways of handling "the language handicap."

After you have reviewed the material, I would like to get together with you to determine the best means of setting the Judge's mind at ease on a number of things over which he has already expressed concern. The law notwithstanding, he is personally worried about: (1) the problem a school district faces

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when a substantial majority of its entering students do not speak English, or at least do not have a basic knowledge of English necessary to proceed in the normal manner. This is a major barrier in his thinking that we are going to have to lay to rest; (2) the adverse effect, or so he thinks, caused the Anglo students as well as the Latin students who have a basic understanding of English, by integrating them with large numbers of students who will be moving at a slow pace because they do not understand English. i.e., the non-English speaking students "holding back" the English-speaking students.

As soon as I have xeroxed a copy of the opinion in Hansen, I will mail it to you under separate cover and then I would like the pleasure of a long conference with you so you can teach me some law. I am not only imposing, but I must do so quickly as some basic decisions have to be made within the next ten days. This case is set for trial on August 7 and I would like to have a judgment entered prior to that time, provided that I can get relief from our language - handicap handicap. I know it is a big order but if you can get the court to go with us I am convinced that our victory will be decisive.

Sincerely yours,

JAMES DE ANDA

JDA/st

cc: Dr. Hector P. Garcia