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Department of Justice,
Office of the United States Attorney,
Northern District of California,

San Francisco, Nov. 2, 1906.

The Attorney General

Washington, D. C.

Sir:

Supplementing my letter to you of this day referring to the question of separate schools for Japanese children, I beg to call your attention to the following California cases bearing upon the subject, so that you may have before you the law of California as declared by the Courts.

In *Ward vs. Flood*, 48 Cal., 37, it was held that under the statute then existing the education of children of African descent and Indian children might be provided for in separate schools, and that such establishment was not in conflict with the Constitution of the State, nor with the 13th and 14th amendments to the Constitution of the United States. The Court held, however, that the Legislature could not exclude children from the benefits of a system of education provided for the youth of the State merely because such child was of African descent. The Court held further that the exclusion of colored children could not be upheld, except upon the condition that separate schools were maintained for the education of colored children.

In *Tape vs. Hurley*, 66 Cal., 473, it was held that children between six and twenty-one years of age, of Chinese parentage, born in San Francisco, were entitled to admission into the public schools of the District in which they resided, and that teachers were not justified in excluding them, notwithstanding a resolution of the Board of Education which purported to command them to do so. At that time, you will notice there was

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*To Mr. Attorney:
In the Secretary's
connection with the
delict's memo, which
was handed to the Secretary
on the 27th ult.*

Secretary of State
DEC 13 1906

Dec. 14, 1906

File

Treatment of Japanese in California

Encl. 53-54. Nov. 7, 1906.

Dept. of Justice.

States he encloses copies two letters received from U.S. Atty. for Northern Dist. of California, in re question raised by exclusion Japanese children from the public school. One asks instructions. Nature of question is such it would seem appropriate policy of the Govt. should be formulated by Dept. of State. Answer to letter will be delayed until expression of such views is received.
RM. (Recd. Nov. 12, 1906)

no legislation upon the subject.

In the case of *Wysinger vs. Crookshank*, 82 Cal., 588, it was held that subsequent to the Act of April 7, 1880, by which certain sections of the Political Code were repealed, and under the laws existing touching the education of children in the public schools, it was not within the power of the Board of Education or School Trustees to establish public schools exclusively for children of African descent, and the Board had no power to exclude them from public schools established for white children.

As it will be noticed, at that time the provision of the statute providing for the education of colored children had been repealed, and the Board of Education had no such power.

Very respectfully,

Robert T. Devlin

United States Attorney.