1964 STAFF REPORT

PUBLIC EDUCATION

Submitted to the
UNITED STATES COMMISSION ON CIVIL RIGHTS

1964 STAFF REPORT

PUBLIC EDUCATION

Submitted to the

UNITED STATES COMMISSION ON CIVIL RIGHTS

OCTOBER 1964

Members of the Commission

John A. Hannah, Chairman
Eugene Patterson, Vice-Chairman Designate
Mrs. Frankie Muse Freeman
Erwin N. Griswold
Rev. Theodore M. Hesburgh, C.S.C.
Robert S. Rankin

Acting Staff Director, Howard W. Rogerson

Staff principally responsible for the preparation of the report to the Commission include:

Staff Attorneys

Mrs. Ruby G. Martin
Edward B. Beis
Willard H. Douglas

Consultant

Mrs. Elizabeth R. Cole

Contents

Introduction

In December 1963, the Commission staff issued a report on public school desegregation for the period June 1961 through July 31, 1963. This report reviews the major public school desegregation developments in the 17 Southern and Border States between August 1, 1963 and August 1, 1964. However, brief addenda to State reports cover important developments reported after August 1, 1964, through the opening of the 1964-65 school year.

At the end of the 1963-64 school year, ten years after the Supreme Court's decision in the School Segregation Cases, 1/ a little over nine percent of the Negro public school pupils in the Southern and Border States were attending public elementary and high schools with white pupils. 2/ In the 11 former Confederate States 34,109 Negro pupils were enrolled in classes with white students, which represented 1.2 percent of the total Negro public school population, 3/ as compared to 281,731 Negro students in biracial classes in Border States, or 54.8 percent of the total Negro public school population for this region. 4/ A preliminary estimate of the change in the number of Negro pupils attending school with white pupils at the opening of school in the fall of 1964 is shown, State by State, in the appendix to this report, table 3B.

In the year 1963-64, there were 181 school districts in the 17 States which admitted Negro pupils to white schools for the first time, the largest number added in any year since 1956-57, the third school year after the Supreme Court's decision. 5/ On a regional basis, 19.7 percent of the school districts in the 11 Southern States had started the desegregation process, 6/ whereas

---

1/ Brown v. Board of Education, 347 U.S.483 (1954).

2/ Appendix, table 2.

3/ Appendix, table 2A.

4/ Appendix, table 2B.

5/ Appendix, table 1; So. School News, May 1964, p.1B.

6/ Appendix, table 1A.

92.4 percent of the school districts in the Border States were desegregated in some degree. 7/ Two States, South Carolina and Alabama, experienced their first desegregation below the college level when schools opened in September 1963. Mississippi was the only State maintaining completely segregated elementary and secondary schools in 1963-64. The appendix to this report, table 3 contains a preliminary compilation of total school districts desegregated at the opening of school in the fall of 1964, State by State.

7/ Appendix, table 1B.

Alabama

General

Despite resistance by Governor George C. Wallace and other State officials, Federal court decrees and the federalization of the National Guard by the late President John F. Kennedy brought about Alabama's first public school desegregation in September 1963. Although this report closes with developments in the courts in the summer of 1964 concerning compliance by Alabama school districts with the Supreme Court's decision in the School Segregation Cases, the addendum covers reported events through the opening of the 1964-65 school year.

On September 9, 1963, the President issued a statement in which he accused the Governor of trying to provoke Federal Government intervention. The President charged that the Governor's actions were motivated by personal and political reasons. He said the Governor knew that the United States Government must carry out court orders, and that most citizens of the four cities involved were willing to face the difficult transition with the same courage and respect for law shown by communities in neighboring States. President Kennedy said that the Government would do whatever was necessary to see that Federal orders to desegregate public schools were carried out in Alabama, but added his hope that the Governor would allow local officials and communities to meet their responsibilities in this regard. 1/

However, the Governor and certain other Alabama officials chose the course of interference and force. The Governor closed one school 2/ and later having received an advisory opinion from the Alabama Supreme Court as to his unrestricted peace-keeping power, 3/ ordered "that no pupil shall be permitted to integrate

---

1/ So. School News, Sept.1963, p.1.

2/ Exec. Order No.9, Sept. 2, 1963, 8 Race Rel.L.Rep. 912 (1963). Montgomery (Ala.) Advertiser, Sept. 3, 1963, p.1.

3/ In re Opinion of the Justices, 156 So.2d 639 (Ala.1963).

the public schools" at Birmingham, Mobile, and Tuskegee, 4/ and ordered the Alabama National Guard activated to "maintain the existing status as respects attendance at such schools, to preserve the peace and assure tranquility in and around the public schools" of those and any other cities if required. 5/ A Federal court issued a temporary restraining order to prevent the Governor and other officials from interfering with desegregation proceedings 6/ and the President federalized the National Guard. 7/

On January 30, 1964, the State Board of Education ordered Tuskegee High School closed, 8/ and issued a resolution which required approval of the State board as well as local boards before any nonresident pupil could be duly enrolled in a public school. 9/ Then on February 4, the State board directed the Macon board to make State tuition grants available to white students attending private segregated schools. 10/ On February 18th the State board amended the January 30 resolution to require only the approval of local boards to enroll nonresidents, 11/ nullified the

---

4/ Exec. Orders Nos.10,11,12, Sept.9,1963, 8 Race Rel.L.Rep. 913 (1963).

5/ Exec. Order No.13, Sept.9,1963, 8 Race Rel.L.Rep. 913 (1963).

6/ U.S. v. Wallace, Civ. No.1976N, M.D.Ala. A preliminary injunction was issued Sept.24,1963 to the same effect after a hearing before five judges. 8 Race Rel.L.Rep. 916 and 920 (1963).

7/ Exec. Order No.11118, Sept.10,1963, 28 F.R.9863.

8/ Alabama State Board of Education-Order Closing Tuskegee High School, Jan.30,1964, 9 Race Rel.L.Rep. 149 (1964).

9/ Id. at 150.

10/ So.School News, Mar.1964, p.6.

11/ Ibid.

February 4 directive on tuition grants 12/ and repealed its order closing Tuskegee High School. 13/ This action resulted from the second advisory opinion of the Alabama Supreme Court which declared that the State board had no power to place, assign, or transfer pupils or teachers from one public school to another, to close public schools within a municipality, to direct local boards of education to provide transportation, or to require local boards to make grants-in-aid to school children. 14/ The retreat from the position that the State school board had power over local school boards was made to preclude the possibilities of a single State-wide desegregation order which might undercut the State Pupil Placement Law. 15/ In a suit against a county school board, the plaintiffs requested an order for desegregation of all public schools in the State but the court denied the request "at this particular time." The court said, however, that if the Governor, the State Superintendent of Education, and the State Board of Education did not comply in good faith with the court's order not to interfere with local and county boards, "it would be appropriate for the Court to reappraise that aspect of the case." 16/

Birmingham

On May 28, 1963, a Federal district court, in a class action to enjoin the school board from operating a dual school system on a racial basis, held that the administrative remedies provided by the Alabama Pupil Placement Law 17/ must be exhausted before

---

12/ Ibid.

13/ Montgomery (Ala.) Advertiser, Feb. 19, 1964, p.1.

14/ In re Opinion of the Justices, 160 So.2d 648 (Ala.1964).

15/ So. School News, Mar.1964, p.6.

16/ Lee v. Macon County Board of Education, 231 F.Supp. 743 (M.D. Ala. 1964).

17/ Ala. Acts 1955, Vol. 1, no.201, p.492.

the court could grant injunctive relief. 18/ The court was unwilling to grant the relief until the good faith of the school board was tested in the application of the placement law. On July 12, 1963, the Court of Appeals for the Fifth Circuit reversed the decision and held that it was not necessary to exhaust administrative remedies before seeking relief in the Federal courts as the district court had held, citing as its authority a series of cases from the Fourth Judicial Circuit. The appellate court pointed out that the decisions cited by the district court were contrary to its own prior decisions which had been supported by the Supreme Court in McNeese v. Board of Education. 19/ The court of appeals said further that the burden of initiating desegregation was on the school board and not on parents or children. The district court was directed to order the school board to submit a plan for desegregation not later than August 19, 1963. The plan, it said, must provide for an immediate start: 20/

> /c/arrying into effect not later than the beginning of the school year commencing September 1963 and thereafter of the Alabama Pupil Placement Law as to all school grades without racial discrimination, including "the admission of new pupils entering the first grade, or coming into the County for the first time, on a non-racial basis. . . ."

18/ Armstrong v. Board of Education (Birmingham), and Nelson v. Board of Education (Birmingham), 220 F.Supp. 217 (N.D. Ala. 1963). The Nelson case, filed on June 13, 1962, was consolidated with the Armstrong case before trial on Oct. 3, 1962. However, in the decision the court dismissed the Nelson case because the plaintiffs lacked standing, having moved from Birmingham. The court granted the plaintiffs in the Nelson case the right to intervene or to file a supplemental complaint in the Armstrong case in the event of their return to the city.

19/ 373 U.S. 668 (1963).

20/ Armstrong v. Board of Education (Birmingham), 323 F.2d 333, 339 (5th Cir.1963).

On July 19, 1963, the district court carried out the mandate of the court of appeals. 21/ On July 22, 1963, a petition for a rehearing on the order of the court of appeals was denied. 22/

The Birmingham school board presented a desegregation plan on August 19, 1963, which provided for: 23/ (1) consideration of applications for transfer of 12th grade Negro students filed by August 26; (2) processing applications filed by Negroes prior to August 19, in accordance with the placement law and other procedures; and (3) reassignment of all other pupils to the school to which they previously attended.

The district court approved the plan 24/ and the board announced on August 29, that five Negro pupils would be admitted to three white schools on September 5, 1963. 25/ The Negro plaintiffs in the case immediately filed objections to the plan saying that it gave school officials unbounded discretion to deny transfers and therefore the ability to avoid the duty to desegregate. 26/

On September 3, the evening before the schools were scheduled to open, the Governor ordered State troopers to move into Birmingham. This was done despite the pleas of local officials that they could handle the situation. 27/ However, on September 4 the State

---

21/ Armstrong v. Board of Education, Civ. No.9678, N.D. Ala., July 19, 1963, 8 Race Rel. L. Rep. 888 (1963).

22/ Armstrong v. Board of Education, supra note 20, at 352.

23/ Armstrong v. Board of Education, Civ. No.9676, N.D. Ala. Aug. 19, 1963, 8 Race Rel. L. Rep. 896 (1963).

24/ Id. at 898.

25/ So. School News, Sept. 1963, p.3.

26/ Birmingham (Ala.) News, Aug. 20, 1963, p.1.

27/ N.Y. Times, Sept. 4, 1963, p.1.

troopers did not appear at the schools to be desegregated. Two of the five Negro students that the Birmingham board had agreed to enroll were registered. 28/ Violence broke out that night. An explosion damaged the home of a Negro attorney and a 20-year-old Negro was killed. 29/

On September 5 the Birmingham Board of Education agreed to postpone the beginning of classes at the three schools to which Negroes had been assigned. Pressure by the Governor and the outbreak of violence were given as reasons for this action. 30/ When violence again erupted as the delayed opening of the schools neared, some Birmingham citizens filed a petition in the court of appeals to intervene and stay the effective date of the desegregation order. On September 6 the court denied the petition, holding the issues involved were settled by decisions of the Supreme Court. Citing Cooper v. Aaron, 31/ the court said: "/l/aw and order cannot be preserved by yielding to violence and disorder, nor by depriving individuals of constitutional rights . . . ." 32/ On the same day the district court ordered the Governor to show cause why he should not be enjoined from interfering with the August 19 desegregation order. 33/ On September 9 State troopers acting under an executive order issued by the Governor that morning 34/ turned away Negro students from the schools. 35/ The Governor then issued an executive order activating the State National Guard "to maintain the existing status as respects

---

28/ Id. Sept. 5, 1963, p.1.

29/ Id. Sept. 6, 1963, p. 1.

30/ Ibid.

31/ 358 U.S. 20 (1958).

32/ Armstrong v. Board of Education (Birmingham), supra note 20 at 361.

33/ Armstrong v. Board of Education (Birmingham), Civ. No.9678, N.D. Ala., Sept. 6, 1963, 8 Race Rel. L. Rep. 900 (1963).

34/ Supra note 4, Exec. Order No. 10.

35/ Birmingham (Ala.) News, Sept. 9, 1963, p.1.

attendance" in the schools scheduled for desegregation. 36/ Later that day, a Federal district judge issued a general temporary restraining order against interference in desegregation proceedings by the Governor or other State officials 37/and the President federalized the National Guard. 38/ On September 10 the Governor, faced with the court order and the federalization of the National Guard, did not interfere with the attendance of Negro students at classes. 39/

From September 10 to September 14 Birmingham experienced street demonstrations and rioting by white students and adults, and a white boycott of the desegregated schools. 40/ On September 15 a bomb exploded in a Negro church, killing four young Negro girls and injuring 23 others. 41/ Birmingham and the Nation were shocked. A few hours later two white boys shot and killed a 13-year-old Negro boy, and a white policeman fatally shot a 16-year-old Negro boy who reportedly had been throwing rocks at cars. 42/ Two major fires broke out that evening amid confusion and violence. State troopers were rushed in and the National Guard was alerted. Three white men were arrested in connection with the bombings. 43/

36/ Supra note 5.

37/ Armstrong v. Board of Education (Birmingham), Civ.No.9678, N.D. Ala.,Sept. 6, 1963, 8 Race Rel. L. Rep. 900 (1963).

38/ Supra note 7.

39/ Birmingham (Ala.) News, Sept. 11, 1963, p.1.

40/ N.Y. Times, Sept. 13, 1963, p.14; Sept. 14, p.12.

41/ So. School News, Oct. 1963, p.1.

42/ Ibid.

43/ Ibid.

The Federal district court took under advisement a plea by Negro parents that the Birmingham school desegregation plan violated the court order. 44/ They argued that the plan ignored the original order to provide "for admission of new pupils entering the first grade or coming into the county for the first time on a non-racial basis." 45/ They requested that the plan be amended to make immediate arrangements for the admission of Negro pupils in the first six grades and all pupils new to the school system on a non-racial basis effective in the 1964-65 school term. 46/

On January 27, 1964, the district court refused to rule pending the outcome of the plaintiffs' appeal in the Armstrong case from its July 1963 decision ordering the school board to submit a desegregation plan. The board maintained that it was ordered to desegregate without so much as a hearing on the merits of the suit filed against it by Negro plaintiffs. 47/

On June 18, 1964, the court of appeals rendered its decision on the Negro plaintiffs' appeal. It vacated the lower court's order denying injunctive relief and continuing the order to file a plan. 48/ The court said that "the burden rests squarely upon the school board to adopt and propose an appropriate plan, and to present evidence which will support and justify the plan proposed." 49/

44/ So. School News, Jan. 1964, p.12. The plaintiffs in the Nelson case, supra note 18 were parties to this action, apparently having regained standing to sue.

45/ Ibid.

46/ Ibid.

47/ Id. Feb. 1964, p.13. Birmingham (Ala.) News, Jan. 28, 1964, p.4.

48/ Armstrong v. Board of Education (Birmingham), 333 F.2d 47 (5th Cir. 1964).

49/ Id. at 51, 52.

In remanding the case the court of appeals instructed the district court to require the board to submit a plan which would meet the following "minimum standards:" 50/

> Commencing with the opening of school in September of 1964, this plan of (1963) must be expanded to include the 10th and 11th grades in addition to the 12th grade. Commencing with the opening of school in September of 1965, the plan must be applied to the 9th grade and continue thereafter with one grade a year until the plan applies to the 8th and 7th grades, thus making it applicable to all high school grades. The plan will be applied to one grade per year in the elementary schools, commencing with the 1st grade in September, 1964, and shall continue thereafter at the rate of one additional grade per year in the elementary school grades. The dual or bi-racial school attendance system, that is, any separate attendance areas, districts or zones, shall be abolished as to each grade to which the plan is applied at the time of the application thereof to such grades, and thereafter to additional grades as the plan progresses . . . . The plan shall apply to the admission of new pupils coming into the school system for the first time . . . .
>
> We reiterate the importance of the constitutional administration of the Alabama Pupil Placement Law by the admission of students who are qualified on the basis of individual merit, without regard to race or color . . . .
>
> The proposed plan must be further implemented by giving timely notice of it by the Superintendent and Board of Education to the students, parents, teachers, and other appropriate school personnel . . . .
>
> Applicants will not be required to submit to undue delay in the consideration of their applications, or to burdensome or discriminatory administrative procedures.

50/ Ibid.

The district court was required to determine the type of notice to be given and to fix the period of time for applications to be made and acted upon. It declared that administrative remedies need not be exhausted before relief could be sought in the Federal district courts, 51/ and that the court should not tolerate undue delay, or burdensome or discriminatory administrative procedures.

As to the evidence relating to "alleged differences and disparities between the two ethnic groups" as a proper basis for the maintenance of segregated schools, the court of appeals said that it was the function of the Supreme Court to make such a decision. 52/

On Saturday, May 4, 1963 (a nonschool day), a young Negro student participating in a peaceful demonstration against racial segregation was arrested and charged with parading without a license in violation of a city ordinance. 53/ On May 20, 1963, she was suspended from a public school in Birmingham and asked not to return for the remainder of the school year. 54/ This action was taken by the superintendent pursuant to a board policy which required that students arrested for any offense be suspended until proper hearings could be held. Since there was not enough time to conduct hearings the board decided: (1) to suspend those students under 16 years of age and expel those over that age for the rest of the term, (2) to record the action on their permanent records, and (3) to permit the students to apply for summer school to make up the time missed. 55/

On May 21 suit was filed contending that the student was expelled without a hearing or an opportunity to defend herself against "the right not to be arbitrarily expelled from the public school" and that such an expulsion was a deprivation of due process and equal protection of the law. 56/ The plaintiff asked

---

51/ Id. at 52.

52/ Id. at 50.

53/ Code of the City of Birmingham, sec. 1159.

54/ See Woods v Wright, 334 F.2d 369 (5th Cir. 1964).

55/ Id. at 372-73.

56/ Id. at 371.

that the superintendent be temporarily restrained, as to plaintiff and other pupils in a like situation, from enforcing the expulsion order, refusing to reinstate them, refusing to expunge any notation of the dismissal or suspension from the permanent record, and penalizing or taking other disciplinary action against the members of the class in connection with the order. 57/ The district court denied a temporary restraining order and the plaintiff filed a notice of appeal at once. 58/ After the notice of appeal, the district court further ordered a hearing on the motion for a preliminary injunction at the earliest possible time. The chief judge of the court of appeals enjoined the superintendent from enforcing the expulsion order pending the appeal. 59/ (The result of this action permitted the student to complete the school year.)

On July 20, 1964, the Court of Appeals for the Fifth Circuit held that: 60/(1) a temporary restraining order should have been granted by the district court because there was "a clear and imminent threat of an irreparable injury amounting to manifest oppression," (2) the stay order was moot as to the superintendent's expulsion order but not as to the board's order to the superintendent that any student arrested be suspended until proper hearings could be conducted, and (3) the board's motion to modify to permit discipline of students need not be acted on because the stay order did not interfere with discipline for truancy. The court declared that "discipline for truancy or any other wrongdoing cannot be made an instrument of racial discrimination or imposed for asserting a constitutional right or privilege." The court of appeals directed the district court to grant a temporary restraining order and indicated that if the facts alleged in the affidavit filed in support of the temporary order were established, the plaintiffs would be entitled to a preliminary injunction until final disposition of the cause.

On July 1, 1964, the board of education was ordered to submit a revised school desegregation plan by July 17 for the 1964-65 school year 61/which met the requirements set out by the court of

---

57/ Ibid.

58/ Id. at 372.

59/ Id. at 375.

60/ Id. at 374-75.

61/ Montgomery (Ala.) Advertiser, July 1, 1964, p.1.

appeals in its opinion of June 18. 62/ An attorney for the school board said that a "compulsory reshuffling of grades" will not be required for the 1964-65 shool year. The board will accept applications from individual students for assignments and transfers. 63/ The Alabama Pupil Placement Law, the district court declared, would continue to be the criterion for admission and reassignment. 64/

Macon County (Tuskegee)

On August 13, 1963, a Federal district court issued a preliminary injunction ordering the Macon County Board of Education to begin nondiscriminatory application of the Alabama Pupil Placement Law in September 1963. The board was also ordered to submit, by December 12, 1963, a plan for general desegregation which would abolish the dual system beginning in January 1964. This order was formalized on August 22, 1963. 65/

On August 29, the board unanimously approved the transfer of 13 Negro students to the previously all white Tuskegee High School, the only all white school in the city (grades 1-12). The board anticipated no trouble in the desegregation process. 66/ In September one Negro student was suspended or expelled for insubordination. 67/

On September 2, 1963, the Governor ordered the school board to close Tuskegee High School for one week "for the sole and express purpose of allowing the Governor of the State of Alabama

---

62/ Armstrong v. Board of Education, supra note 48.

63/ Birmingham (Ala.) News, June 19, 1964, p.1.

64/ Montgomery (Ala.) Advertiser, July 1, 1964, p.1.

65/ Lee v. Macon County Board, 221 F.Supp. 297 (M.D.Ala. 1963).

66/ So. School News, Sept. 1963, p.3.

67/ Id. Oct. 1963, p.11.

to preserve the peace, maintain domestic tranquility and to protect the lives and property of all citizens of this State." 68/ On September 9, in accordance with the order of the Governor, State troopers turned away the Negro students. 69/ The United States Attorney General, after joining in the case as a plaintiff at the request of the court, filed a motion for a temporary restraining order against the Governor which was granted. 70/ The restraining order was subsequently enlarged into a preliminary injunction. 71/ On September 10, faced with a court order and federalization of the National Guard, the Governor permitted Negroes to attend the school. However, all of the white students walked out of the school leaving the 12 Negro students to themselves. Of the original 250 students registered to attend the school approximately 100 transferred to Shorter High School in Shorter, Alabama, and 40 to 50 transferred to Macon County High School in Notasulga, Alabama. The remainder went to a newly-established private school, Macon Academy. The Governor announced that the State legislature would provide grants-in-aid to students attending private schools and assured the organizers of the private school that the Macon County Board of Education would cooperate in making grants-in-aid available in lieu of operating a particular public school. 72/

In October the district court ordered the school board to cease providing bus transportation for white students to outlying segregated schools in the county. 73/ On January 9 the board declined to resume the service after the Christmas holidays on advice of the State Attorney General. 74/

68/ Exec. Order No. 9, 8 Race Rel. L. Rep. 912 (1963), Montgomery (Ala.) Advertiser, Sept. 3, 1963, p.1.

69/ Exec. Order No. 11, 8 Race Rel. L. Rep. 913 (1963).

70/ Lee v. Macon County Board, Civ. No. 604E, M.D. Ala. Sept. 9, 1963, 8 Race Rel. L. Rep. 916 (1963).

71/ U.S. v. Wallace, 222 F. Supp. 485 (M.D. Ala. 1963).

72/ See Lee v. Macon County Board, 231 F.Supp.743 (M.D.Ala. 1964).

73/ Id. at 748.

74/ Montgomery (Ala.) Advertiser, Jan. 10, 1964, p.1.

State patrol cars were used to transport the pupils 75/until the Governor was able to borrow buses from a State trade school. 76/

In December, the Federal district court extended the deadline for the Macon County desegregation plan from December 12 to March 2, 1964. 77/ The high school division of Tuskegee High School was dropped automatically from the accredited list of Southern Association of Colleges and Schools for failure to re-apply for accreditation. Only 12 Negro students were in attendance with 14 teachers. 78/

On January 10, a request to accelerate desegregation in Macon County was withdrawn in a Federal court. The attorney for the Negro plaintiffs asked the district court to vacate his order which advanced from December 12 to March 2 the deadline for the board to submit a plan. The attorney declined to give reasons for the withdrawal of the speed-up request. 79/

The school superintendent of Macon County said at a deposition hearing in January 1964 that a comprehensive desegregation plan would end the public school system in the county as far as white people were concerned. He said the initial desegregation in September 1963 would have been carried out without any trouble whatsoever had State officials not intervened and temporarily blocked the admission of 13 Negroes ordered admitted to Tuskegee High. He reported that the bitter feelings in the white community were overwhelming. 80/

On January 30, 1964, the State Board of Education ordered Tuskegee High closed. 81/ On February 3, the 12 Negroes were turned

---

75/ Birmingham (Ala.) News, Jan. 10,1964, p.14.

76/ Id. Jan.11, 1964, p.1.

77/ Id. Jan.8, 1964, p.1.

78/ Montgomery (Ala.) Advertiser, Dec. 5,1963, p.1.

79/ Id. Jan.11,1964, p.1.

80/ Birmingham (Ala.) News, Jan. 14, 1964, p.1.

81/ Id. Feb. 1, 1964, p.1.

away from the school on the advice of the Attorney General of Alabama. 82/ A Federal judge immediately directed that the 12 Negroes be admitted to the two remaining high schools in the county. 83/ Six were admitted to the high school in Shorter without incident. The other six were turned away from the high school in Notasulga by the mayor, who cited a newly adopted fire and safety ordinances. 84/ He said the school could not safely accommodate more students. 85/

All schools at Notasulga were ordered closed on February 6 after a fire on February 5 damaged the city's water filter system and created a water shortage. The fire was accidental in origin according to the mayor. The U.S. Attorney General challenged the use of a fire prevention ordinance to keep Negroes out of schools and asked the court for an order preventing the mayor from interfering with desegregation. A hearing on this request was set for February 13. 86/

On February 4, the State Board of Education authorized financial aid to students who had attended public schools then closed. Only students at Tuskegee High School qualified at that time. 87/

On February 14, a three-judge Federal district court ordered Notasulga city officials not to interfere with desegregation of the high school and called the mayor's contention that a safety hazard existed "devious means of interfering with the court's order." 88/ A white boycott followed at both Shorter and Notasulga

---

82/ Id. Feb. 3, 1964, p.1.

83/ Lee v. Macon County Board, Civ. No. 604E, M.D. Ala., Feb. 3, 1964, 9 Race Rel. L. Rep. 151 (1964).

84/ Notasulga, Ala., Ordinances of Feb. 3, 1964, 9 Race Rel. L. Rep. 154 (1964).

85/ So. School News, Feb. 1964, p.1.

86/ N.Y. Times, Feb. 7, 1964, p.28.

87/ Montgomery (Ala.) Advertiser, Feb. 5, 1964, p.1.

88/ U.S. v. Rea, 231 F.Supp.772 (M.D.Ala., 1964).

with the result that only the six Negro students attended each school. The enrollment at Macon Academy increased,89/ and by the end of the first semester 140 pupils were enrolled. After the white boycott at Shorter and Notasulga over 200 applications were received. 90/

On February 18, the Alabama Supreme Court issued a second advisory opinion to the Governor. The court advised the Governor that under Alabama law, the local, not State, board of education had authority to transfer pupils and teachers from one school to another, to close public schools within a municipality, to provide transportation, and to make grants-in-aid to school childred. 91/

On the same day the State board met in an emergency session and rescinded its January 30 order which directed the Macon County board to close Tuskegee High and nullified its February 4 directive to the Macon board ordering the board to make State tuition grants available to white students attending private segregated schools. 92/

On February 28, 1964, the Macon County school board submitted a desegregation plan as ordered in the fall of 1963. It provided for the desegregation of the 12th grade commencing September 1964. Applications for transfer or assignment were to be considered and processed under the Alabama Pupil Placement Law. The plan also provided that in September 1965 applications for "one or more grades" in addition to the 12th grade would be so processed and considered. No provisions were made for the desegregation of faculties or other school personnel. 93/

Meanwhile, in February 1964, Negro plaintiffs filed an amended and supplemental complaint, together with motions for a temporary restraining order and a preliminary injunction. This complaint joined as defendants the State Board of Education, the

89/ So. School News, Mar.1964, p.6.

90/ Id. at 7.

91/ In re Opinion of the Justices, supra note 14.

92/ So. School News, Mar. 1964, p.6.

93/ Lee v. Macon County Board, Civ. No. 604E, M.D. Ala., Feb. 28, 1964, 9 Race Rel. L. Rep. 162 (1964).

State superintendent and the Governor as president of the State board. The amended and supplemental complaint alleged: 94/

> /t/hat the Alabama State Board of Education had asserted general control and supervision over all the public schools of the State and that their design, action and purpose in asserting this control was to continue operation of a racially segregated school system throughout the State of Alabama and particularly in Macon County, Alabama.

The plaintiffs asked the court to enjoin State officials from continuing to "operate a compulsory biracial school system in all the counties in the State" and in the alternative asked the court to "require a plan for the complete reorganization of the public school system in the State . . . on a nonracial basis." 95/ In addition, the plaintiffs sought to enjoin further enforcement of the State statute 96/which permits the use of public funds for the maintenance of "private", segregated schools where the effect and purpose is to circumvent the orders of Federal courts. 97/ The plaintiffs also sought to "enjoin the enforcement of public funds or tuition grants for pupils to attend private schools and to enjoin the defendants from closing the public schools in Macon County, . . . or elsewhere in the State." 98/

A temporary restraining order preventing the Governor and the State Board from interfering with desegregation in Macon County was kept in effect by a 3-judge court until a determination could be made. The matter was heard, and at the conclusion of the hearing, the court requested that briefs be filed by all parties on six questions: 99/

94/ See Lee v. Macon County Board, supra note 72, at 745.

95/ Id. at 745-46.

96/ Code of Ala., Title 52, sec. 61 (13-19), 61 (20-21).

97/ Lee v. Macon County Board, supra note 72, at 746.

98/ Ibid.

99/ Ibid.

(1) /s/hould the present temporary restraining order be enlarged into a preliminary injunction? In what way, if any, should the preliminary injunction differ from the present restraining order?

(2) /s/hould this Court declare unconstitutional the Alabama statutes relating to grants-in-aid, or, in the alternative, should this Court declare the use of grants-in-aid unconstitutional in the application where such use is designed to perpetuate and has the effect of perpetuating the segregation of the races in the public school systems in the State of Alabama, and, if so, should such use be enjoined?

(3) /w/hether the Governor, the State Superintendent of Education and the State Board of Education, and its members, should be enjoined from interfering with the County and City Boards of Education in the desegregation of the schools throughout the State.

(4) /w/hether under the evidence an order should issue desegregating all of the public schools of the State at the elementary and secondary level based upon the assumption or usurpation of authority by the Governor, the State Superintendent of Education, and the State Board of Education and its members.

(5) /w/hether or not under the evidence in this case the use of public funds, public interference and public services has been to such an extent that the Macon Academy should be made a party and given the opportunity to be heard on the question of whether it has become a public institution and a part of the Alabama public school system.

(6) /w/hether or not under the evidence in this case this Court should declare the Alabama Placement Law unconstitutional in its application.

On March 13, the brief of the United States as plaintiff and amicus curiae asked the court to enjoin the Alabama State Board of Education from: 100/

100/ Brief of U.S. in Support of Plaintiff motion for a Preliminary Injunction, Appendix pp. 1-3. Lee v. Macon County Board, Civ. No. 604E, M.D. Ala.

(1) /p/reventing or attempting to prevent, obstructing or interfering with the Macon County Board of Education, its individual members, and the Superintendent of Schools of Macon County in enrolling, admitting, educating or transferring any child in or to a school attended by children of another race;

(2) /p/reventing or interfering with any student, teacher, or other person authorized by the Macon County Board of Education, from entering, leaving, attending or working in any public school in Macon County attended by children of both the white and Negro races;

(3) /h/arassing or punishing, in any manner or by any means, any student, teacher or other person on account of his attending or working in any public school in Macon County attended by students of both the white and Negro races, or harassing or punishing any official, agent or employee of Macon County on account of his complying with the orders of this Court requiring the elimination of racial discrimination in the public schools of the County;

(4) /i/nterfering with, preventing or obstructing by any means, the elimination of racial discrimination by local school officials in any school district in the State of Alabama;

(5) /a/pproving, authorizing or paying any tuition grant or grant-in-aid under the provisions of Chapter 4B (Sections 61 (13) through 61 (21) of Title 52 of the Alabama Code for the attendance of any person in a school in which enrollment or attendance is limited or restricted upon the basis of race or color;

(6) /f/ailing, in the exercise of its control and supervision over the public schools of the state, to use such control and supervision in such manner as to promote and encourage the elimination of racial discrimination in the public schools, rather than to prevent and discourage the elimination of such discrimination.

The United States also asked that the Macon County Board of Education be enjoined from: 101/ (1) failing to provide public school education for the 12 Negro students, who had been admitted to Tuskegee High School in September under court order, in a school other than the Negro high school and in a school in which there was

---

101/ Id. at 3-4.

both space and teaching capacity for the white students who had withdrawn from the public high schools since September 1963; (2) failing to take additional steps in the elimination of racial discrimination in the schools for the 1964-65 school year as may be required by the court; (3) applying any different test, procedures, or requirements to applications for transfer by Negroes than are applied to whites; and (4) paying or approving payment of tuition grants for attendance at the Macon Academy, or any other school in which admission is limited by race.

The State Attorney General filed a brief on behalf of the Macon County School Board arguing that:102/ the State board had no control over the assignment of pupils and therefore an injunction should not be granted; plaintiffs had no standing to ask for desegregation of schools outside their own county; no grants-in-aid had ever been paid and the State board had renounced its authority to order them; no ruling is required on the Alabama Pupil Placement Law, "even though it was violated in transfering white students in Macon" because the violation was due to the "unusual pressure-packed situation then existing;" and the court should wait to see how it was applied in a "moral normal climate."

In March a second private school (a branch of Macon Academy) for white students opened at Shorter. It began with an enrollment of 30 pupils in grades 1-6. Only the high schools were desegregated but the elementary pupils joined the boycott "because the building has no separate lunchroom or toilet facilities for high school and grammar school students." 103/

The Macon County school board plan, submitted to the district court on February 28, called for desegregation of the 12th grade in the fall of 1964 and one grade a year annually thereafter. Attorneys for the Negro plaintiffs attacked the plan on the grounds that it "fails to abolish the dual scheme of school attendance area lines. . . and will impose different standards on Negro applicants than on whites already admitted or transferred." Counsel for the plaintiffs argued further that the plan "provides for continued initial assignment of pupils by race; places the burden of desegregating schools on Negro pupils; and fails to provide notice to Negro parents of their right to request assignment or transfer of their children." 104/

102/ So. School News, Apr.1964, p.10.

103/ Montgomery (Ala.) Advertiser, Mar.3, 1964, p.1.

104/ So. School News, May 1964, p.3A.

On April 18, there was a fire at Notasulga High School. State and local investigators said the cause was arson. The school was attended only by six Negro students owing to the continuing boycott by white students. A request to the board that Tuskegee High be reopened was rejected as "not physically sound" for such a small number of students. 105/ The students were sent to Tuskegee Institute High School (an all-Negro school) to avoid interruption of classroom work. On April 28, the 3-judge Federal court ordered the six Negro students readmitted to the Notasulga school complex which also has an elementary school and an auditorium. The court said, quoting from an opinion of the court of appeals, that an order of a Federal court would not be "whittled away, watered down or shamefully withdrawn in the face of violent and unlawful acts by individual citizens in opposition thereto." 106/ The court said there was room in the remaining two structures to accommodate the six students.

On April 20, the board's desegregation plan was rejected but no order was handed down. 107/

On July 13, 1964, the 3-judge Federal district court handed down an opinion on the amended and supplemental complaint filed in February 1964. 108/ The court held that under the evidence in the case it was clear that "the State of Alabama has an official policy favoring racial segregation in public education." 109/ The court said "/S/trictly in accord with this policy, the State of Alabama has operated and presently operates a dual school system based upon race." 110/ The court said further that "/T/he control by the State Board of Education over local school systems is effected and rigidly maintained through control of the finances. 111/

The court refused to sanction the use of conditions created by State officials as an excuse for returning the Negro plaintiffs

---

105/ Ibid.

106/ Lee v. Macon County Board, Civ. No. 604E, M.D. Ala., April 28, 1964, 9 Race Rel. L. Rep. 162 (1964).

107/ So. School News, May 1964, p.3A.

108/ Lee v. Macon County Board, supra note 72.

109/ Id. at 750.

110/ Ibid.

111/ Id. at 751.

to the school which the county school officials had "heretofore operated and are now operated as a racially segregated school for children of the Negro race." 112/ The court suggested that it might be appropriate for the school board to reopen Tuskegee High School for the 1964-65 school year, provided that it is operated in strict accordance with orders of the court. 113/

As to the desegregation plan offered by the school board, the court found it premature to direct the specific steps which should be taken in September 1964 because there had been no hearing on the plan itself. However, the court said that the proposed plan was unacceptable. The court specifically said: 114/

> not only is the plan as presently proposed by the Macon County Board of Education unacceptable, but the plan that must ultimately be adopted and put into effect for the 1964-65 school year must provide some additional affirmative steps for the elimination of racial discrimination in the school system--including at least one grade in the elementary school. Anything short of this would not meet the test of "all deliberate speed"
> . . . .

The plan's provision to process applications for transfer of only 12th grade students during the 1964-65 school year would be a step backward, not forward and completely unacceptable, the court said, since the students transferred in September 1963 were in grades 9 through 12. 115/

The court refused to declare Alabama's grant-in-aid statutes unconstitutional on their face because the State might conceivably "choose to employ 'private' schools as its instrument of discharging its obligation to provide education in lieu of its public

---

112/ Id. at 752.

113/ Ibid.

114/ Id. at 753.

115/ Id. at 752.

schools." 116/ However, the court added "/n/eedless to say, if that occurs the private schools that are made available must be available to citizens of the State of Alabama without discrimination on account of their race or color." 117/ The court nevertheless, declared the use of grants-in-aid in Macon County unconstitutional because the private school grants were for white students only, 118/were allowed only when public education was "unavailable" and other public school systems in the State were operating. 119/ Both State and local officials were enjoined from making tuition grants to attend Macon Academy or any other school in which attendance is limited by race or color. 120/

The court stated that it had power to enter a State-wide order to desegregate schools and found that the actions of State officials might justify it, but refused to do so "at this particular time." 121/ Jurisdiction of this issue was expressly retained by the court, in the event of further interference by State officials, directly or indirectly. 122/

The court refused to decide whether Macon Academy had become a public institution because of "public interference and public support and service" because the Academy had not been joined as a party. The court stated that the academy should be made a party and heard on the issue. 123/

116/ Id. at 754.

117/ Ibid.

118/ Ibid.

119/ Ibid.

120/ Ibid.

121/ Id. at 756 (emphasis by the court).

122/ Ibid.

123/ Id. at 757.

County school officials were enjoined from applying different tests, procedures or requirements in processing applications for transfer of Negroes than are applied in similar applications by whites. However, the court refused to declare the State Pupil Placement Law unconstitutional because of its discriminatory administration because "if it is applied in a constitutional manner, /it may/ serve a good purpose. . .". 124/ The court noted that the use of the pupil placement law only when a school board is faced with demands for desegregation is clearly unconstitutional. 125/

The prospects for the 1964-65 school year are not good--there may not be any white pupils attending public schools in Macon County. The county superintendent, the Tuskegee High School principal, the members and chairman of the school board, and 35 teachers have resigned. 126/ A new superintendent has been appointed, but the number of applications for enrollment at the Macon Academy continues to increase. 127/

Mobile County (Mobile)

On March 27, 1963, Negro school-age children filed a class action in a Federal district court seeking an order to have the Mobile school board submit a desegregation plan, or an injunction against operating segregated schools. The plaintiffs requested a temporary restraining order which was denied. 128/ Plaintiffs appealed, and the Court of Appeals for the Fifth Circuit held that the lower court had not abused its discretion. However, the court noted that

---

124/ Id. at 757-58.

125/ Id. at 758.

126/ Montgomery (Ala.) Advertiser, June 8,1964, p.5.

127/ Birmingham (Ala.) News, June 11,1964, p.2.

128/ Davis v. Board of School Commissioners (Mobile), 219 F.Supp. 542 (S.D. Ala. 1963).

the granting or denial of a motion for a preliminary injunction should be promptly determined and returned the case to the district court. 129/

On remand, the district court, on June 24, 1963, denied plaintiff's motion for a preliminary injunction and ordered the school board to submit a desegregation plan to begin in the 1964-65 school year. The case was set for trial in November 1963. 130/ Plaintiffs again appealed, seeking an order to require desegregation to start in September 1963.

On July 9, 1963, the court of appeals held that the district court abused its discretion in refusing to enter a preliminary injunction. On July 10 the court amended its order and directed the lower court to order the Mobile school board to submit a plan by August 19, 1963 (instead of August 1 as previously ordered) under which the "defendants propose to make an immediate start in the desegregation of the school/s/ of Mobile County" not later than September 1963. 131/ The Alabama Pupil Placement Law was ordered to be applied without racial discrimination. The district court was authorized to defer desegregation in rural areas until September 1964. 132/

The district court entered the order on July 26, 1963. 133/ On July 30, a judge who had not been a member of the court of appeals panel which issued the July 18, 1963 decision requested an en banc rehearing which was denied on August 16. 134/ Thereafter the

---

129/ Davis v. Board of School Commissioners (Mobile), 318 F.2d 63 (5th Cir.1963).

130/ Davis v. Board of School Commissioners (Mobile), Civ.No.3003-63, S.D.Ala. July 24, 1963, 8 Race Rel.L.Rep.482 (1963).

131/ Davis v. Board of School Commissioners (Mobile), 322 F.2d 356, 360 (5th Cir.1963), cert.denied,375 U.S.894 (1963), rehearing denied, 376 U.S.928 (1964).

132/ Ibid.

133/ Davis v. Board of School Commissioners (Mobile), Civ.No. 3003-63, S.D.Ala., July 26, 1963, 8 Race Rel.L.Rep.901 (1963).

134/ Davis v. Board of School Commissioners (Mobile), 322 F.2d 356 (5th Cir. 1963).

defendants requested Justice Black of the United States Supreme Court to stay the enforcement of the court of appeals judgment pending final disposition of the defendant's petition to the Supreme Court for a writ of certiorari. The request was denied. 135/

The Mobile School Board submitted its desegregation plan on August 19. 136/ The plan limited the application of the State Pupil Placement Law in 1963-64 to the 12th grade, proposing that at the next school year the same action would be taken also on applications for 11th grade transfers and one grade lower each year thereafter. The district court approved the desegregation plan as presented, but extended the deadline for transfer applications from July 31 to August 28. 137/ Plaintiffs appealed the acceptance of the plan. The Mobile County board meanwhile approved the transfer applications of two Negroes to attend a white high school. 138/ The plaintiffs protested the use of the criteria of the placement law 139/ on the ground that they were vague 140/ and stated further that the plan did not conform to the mandate of the court of appeals. 141/

On September 4, two Negro students were registered at the county school board office and were scheduled to begin classes in the white school on September 5. 142/ On September 6, the two students registered to attend Murphy High did not attend classes.

135/ Davis v. Board of School Commissioners (Mobile), 11 L.ed.2d 26 (1963).

136/ Davis v. Board of School Commissioners (Mobile), Civ.No. 3003-63, S.D.Ala., Aug.19,1963, 8 Race Rel.L.Rep. 904 (1963).

137/ Davis v. Board of School Commissioners (Mobile), Civ.No.3003-63, S.D.Ala., Aug.23,1963, 8 Race Rel.L.Rep.907 (1963).

138/ Birmingham (Ala.) News, Sept.4,1963, p.10.

139/ Ala. Acts 1955, Vol.1, No.201, p.492.

140/ So.School News, Sept.1963, p.3.

141/ Birmingham (Ala.) News, Aug.25,1963, p.14A.

142/ Id. Sept.4,1963, p.10.

Their admission was delayed after Governor Wallace was reported to have pressed for a postponement. He sent 150 State troopers into Mobile without announcing their purpose. The board, however, said the postponement of the Negro students' entrance had been voluntary. The attorney for the two students said "they had agreed to /the/ delay after the board had promised they would be allowed to attend early the following week and their absence would be excused by school authorities." 143/ On September 9, State troopers, acting under the Governor's orders 144/ issued that morning, turned away the Negro students. 145/ On the same day a Federal court ordered the Governor and other State officials not to interfere in desegregation proceedings. 146/ On September 10, the Governor, faced with court orders 147/ and federalization of the National Guard, 148/ permitted the two Negro students to attend classes. 149/

On October 28, the United States Supreme Court refused to review a court of appeal's order of July 18, 1963, requiring Mobile to begin desegregation in September 1963. 150/

On June 18, 1964, the court of appeals remanded the case 151/ to the district court with instructions to require the school board to "present to the district court forthwith for its consideration a

---

143/ N.Y. Times, Sept.7,1963, p.9.

144/ Exec.Order No.12, 8 Race Rel.L.Rep.913 (1963).

145/ Birmingham (Ala.) News, Sept. 9, 1963, p.1.

146/ Davis v. Board of School Commissioners (Mobile), Civ.No. 3003-63, S.D.Ala., Sept.9,1963, 8 Race Rel.L.Rep.916 (1963).

147/ Ibid.

148/ Exec.Order No.11118, Sept.10,1963, 8 Race Rel.L.Rep. 919 (1963).

149/ N.Y. Times, Sept.11,1963, p.31.

150/ Davis v. Board of School Commissioners (Mobile), 375 U.S.894 (1963).

151/ Davis v. Board of School Commissioners (Mobile), 333 F.2d 53 (5th Cir. 1964).

plan of desegregation which will meet the minimum standards set forth and outlined in the Birmingham case." 152/

On June 29, 1964, a Federal district judge ordered the board to file a new plan by July 17, 153/ in accordance with the mandate of the court of appeals. The school board indicated that it would "resist" through every possible legal means. 154/ On July 9, 1964 the school board asked the court of appeals for a rehearing on the June 18 order to speed up desegregation. The district court had set July 29 as the date for a hearing on any objections. 155/

On July 21, the Mobile County school board submitted an accelerated desegregation plan which provided for desegregation of the 1st, 10th and 11th grades in the fall of 1964 in addition to the 12th grade, which was desegregated in 1963-64. The plan also provided for total desegregation of the city-county system by 1969. Desegregation in the fall of 1964, except in Mobile, was to be limited to the 11th and 12th grades. A board member said that problems outside of Mobile were considerably different and it was not administratively possible to extend desegregation outside the city. Applications for transfers of 11th and 12th grade students had already been accepted and the plan made no provision for additional applications. 156/

Madison County (Huntsville)

On August 13, 1963, the Huntsville Board of Education was enjoined from discriminating against four Negro school children on the basis of race or color in assignment, transfer, or admission to the public schools and from segregation of any school "from and after such time as may be necessary to make arrangements for admission of children

---

152/ Armstrong v. Board of Education (Birmingham), 333 F.2d 47 (5th Cir., 1964).

153/ So.School News, July 1964, p.1.

154/ Montgomery (Ala.) Advertiser, July 2, 1964, p.1.

155/ Id. July 9,1964, p.26.

156/ Id. July 22,1964, p.2.

on a racially nondiscriminatory basis with all deliberate speed." 157/ The board was ordered to submit a plan by January 1, 1964, which would apply the Alabama Pupil Placement Law to all grades without racial discrimination, including the assignment of new pupils (first grade pupils or those entering the system in higher grades for the first time). The board was ordered to put the plan into effect for the school term starting on January 17, 1964. 158/ This was the first time a Federal court had ordered racially nondiscriminatory admission of pupils to an Alabama public elementary school system. 159/

On September 2, 1963, the Huntsville city school board, under pressure from the Governor, agreed to postpone the opening of their schools until September 6. On September 5, the board rejected the Governor's request for another postponement. 160/ On September 6, State troopers closed four schools to prevent desegregation. However, at one school a group of white mothers defied the State troopers and marched their children into school. The State troopers then locked the doors to prevent more entries. The closing of the schools caused a storm of anger and the Governor hastened to assure the people that he would not interfere with the school opening on September 9. 161/ On that day Alabama's first public school desegregation below the college level took place. No reasons were given for Huntsville's omission from the Governor's executive order which turned away Negro students in Birmingham, Tuskegee, and Mobile on the same day. 162/

157/ Hereford v. Huntsville Board of Education, No.63-109, N.D. Ala., Aug. 13, 1963, 8 Race Rel. L. Rep. 908 (1963).

158/ Ibid.

159/ N.Y. Times, Aug. 14, 1963, p.21.

160/ Washington (D.C.) Post, Sept. 7, 1963, p.1A.

161/ Ibid.

162/ Id. Sept. 10, 1963, p.1.

On January 2, 1964, the Huntsville Board of Education submitted its desegregation plan which provided for desegregation of some 12th grade classrooms in January and the 11th and 12th grades in September 1964. 163/ On January 27, 10 more Negro students were admitted to the Huntsville public schools, bringing the total to 14. 164/

A Federal district court dismissed a suit brought by the United States Attorney General aimed at desegregating the Huntsville-Madison County schools which serve a substantial number of federally-connected children. 165/ The United States contended that the local school boards in accepting Federal funds 166/ had impliedly agreed not to segregate dependents of military and civilian employees of the United States in school, and further that such segregation in the schools was a violation of the 14th amendment and a burden on the exercise of the war power of the United States. The court held that both contentions were unfounded and dismissed the case. The Court of Appeals for the Fifth Circuit affirmed the district court's decision saying: 167/

> No one would be so rash as to claim that a local school board in either of the "hard core" States of Alabama or Mississippi would intentionally enter into a contract which it understood to provide for even partial desegregation of the races in the public schools under its jurisdiction.

163/ So.School News, Jan.1964, p.12.

164/ Montgomery (Ala.) Advertiser, Jan.28,1964, p.3.

165/ U.S. v. Madison County Board, 219 F.Supp.60 (N.D.Ala.1963).

166/ School Construction in Areas Affected by Federal Activities, sec.6, 72 Stat.551 (1958), 20 U.S.C. sec.636(B)(1)(f), (1958); Financial Assistance for Areas Affected by Federal Activities, sec.1, 64 Stat.1100 (1950), 20 U.S.C. sec.237 (Supp.1959-63).

167/ U.S. v. Madison County Board, 326 F.2d 237,239 (5th Cir. 1964). The court of appeal's decision was a consolidation of three similar appeals, the other two of which arose in Mississippi.

A Federal district court directed the Huntsville (June 23) and Madison County (June 24) school boards "to present revised plans in July incorporating the minimum formula" of the plan ordered for Birmingham. 168/ Huntsville is located in Madison County but has a separate school system. Madison County was segregated in the 1963-64 school year. 169/

On July 27, 1964, a Federal district court overruled Negro plaintiffs' objections to school desegregation plans submitted by Madison County and Huntsville. Under the plans filed, each school system will desegregate grades 1, 10, and 11 (in addition to grade 12) in the fall of 1964 and all grades by 1969. The court told the boards to process transfer applications by Negro students before school open. 170/

Gadsden

Suit was filed in a Federal district court to enjoin the Gadsden Board of Education from operating a compulsory racially segregated system, and for a plan reorganizing the school system on a nonracial basis. 171/ Plaintiffs contended that Gadsden maintained a superior public school system for white children. Plaintiffs had been refused transfer to white schools on August 28, 1963. The petition alleged that resort to the pupil placement law would be useless. 172/ On December 18, 1963, a Federal district court ordered the Gadsden school board to present a plan of desegregation by April 1, 1964 for an immediate start in all grades by the beginning of the

---

168/ Armstrong v. Board of Education (Birmingham), supra note 152.

169/ So.School News, July 1964, p.14.

170/ Washington (D.C.) Post, July 28,1964, p.A9.

171/ Miller v. Board of Education (Gadsden), Civ.No.63-574, N.D. Ala., Dec.18 and 27,1963, 8 Race Rel.L.Rep.1403 (1963).

172/ So.School News, Dec.1963, p.3.

1964-65 school year. The board was ordered to apply the pupil placement law without discrimination. The court said that the law itself was not a desegregation plan. Although the court found that schools were operated on a segregated basis as a matter of custom, policy, and usage and that no steps had been taken to organize the system on a nonracial basis, plaintiffs' request for desegregation in January 1964 was rejected because customarily transfers were not granted at mid-term and it would not be in the best interest of the schools to do so. 173/

On April 1, the Gadsden Board of Education offered a grade-a-year plan for desegregation of the city's schools. Six Alabama school systems--Birmingham, Huntsville, Macon County, Madison County, Mobile, and Gadsden--had filed similar plans for the fall of 1964. 174/

On June 25, 1964, a Federal court directed the Gadsden school board to submit by July 9, 1964, 175/ a plan meeting the minimum requirements of the desegregation plan ordered for Birmingham by the Court of Appeals for the Fifth Circuit. 176/

On July 27, the district court overruled plaintiffs' objections to the plan submitted pursuant to the court's order. Under the plan, grades 1, 10, 11, and 12 will be desegregated in the fall of 1964 and all grades by 1969. The court instructed the board to process transfer applications by Negro students before schools open. 177/

173/ Miller v. Board of Education (Gadsden), supra note 171 at 1405-06.

174/ So.School News, May 1964, p.3A.

175/ Montgomery (Ala.) Advertiser, June 26,1964, p.2.

176/ Armstrong v. Board of Education (Birmingham), supra note 152.

177/ Washington (D.C.) Post, July 28, 1964, p. 9A.

Montgomery County (Montgomery)

On May 11, 1964, suit was filed in a Federal district court to enjoin the school board from "operating a dual school system for whites and Negroes." 178/ Plaintiffs requested that discrimination against Negroes be prohibited in "assignment of students, teachers, and other school officials, in construction of new school buildings, in preparation of school budgets and in extra-curricular activities." In the alternative, the plaintiffs asked for a complete desegregation plan for the reorganization of the entire school system on a nonracial basis over a period of time to be determined by the court. 179/

On July 8, 1964, the board of education in its answer to the suit denied that the schools were segregated "under color of Alabama law." The board contended that the schools were operated in accordance with the wishes of the majority of both races and that since no Negro student has ever applied for transfer under the Alabama Pupil Placement Law, the board was under no burden or duty to integrate the school system. 180/

However, on June 18, 1964, the school board stated that it would obey the laws of the State and of the "courts of this land." The board resolved to exhaust all legal defenses but to abide by court orders to avoid any disruption of the orderly opening of the public schools in September 1964. Argument of the case was set for July 29. 181/ On July 31 the district court issued an injunction enjoining the Montgomery County school officials from

---

178/ Carr v. Montgomery County Board, Civ.No.2072-N,M.D. Ala.

179/ So. School News, June 1964, p.4.

180/ Montgomery (Ala.) Advertiser July 9,1964, p.2.

181/ So. School News, July 1964, p.14.

continuing the operation of a segregated school system. In its findings of fact and conclusions of law the court stated that the school board was operating a compulsory dual school system based on race, in every respect. 182/ The court pointed out that the assignment and placement of pupils, teachers, principals and other school personnel were based on race; transportation was provided on the basis of race; and, that school attendance areas were set-up on a racial basis. 183/ The court found further that the only action taken by the school board in compliance with the School Segregation Cases was that "mechanics were set-up in 1956 to use the Alabama Placement Law in the assignment of students." 184/ The court said that the policy had not resulted in any school integration.

The school board was ordered to take steps to meet the minimum requirements of deliberate speed as set forth by the Court of Appeals for the Fifth Circuit in the Birmingham case. 185/ The court interpreted this as requiring the Montgomery County school officials to begin desegregation in the 1st, 10th, 11th and 12th grades in September 1964. The school board was ordered further to file, by January 15, 1965, a detailed plan for school desegregation beginning in September 1965. 186/

Bullock County (Union Springs)

Suit was filed in May 1964 to enjoin the county school board from operating a "dual system" based on race. The plaintiffs asked the court to prohibit discrimination against Negroes in "assignment of

---

182/ Carr v. Montgomery County Board, Civ.No.2072-N, M.D.Ala., July 31,1964.

183/ Ibid.

184/ Ibid.

185/ Armstrong v. Board of Education (Birmingham), supra note 152.

186/ Carr v. Montgomery County Board, supra note 182.

students, teachers and other school officials, in construction of new school buildings, in preparation of school budgets and in extra-curricular activities." As an alternative, they asked that a complete plan for reorganization of the school system on a non-racial basis be ordered, the time to be determined by the court. 187/ July 29 was set as the date for argument. 188/

187/ Harris v. Bullock County School Board, Civ.No.2073N, M.D. Ala., filed May 11, 1964. Montgomery (Ala.) Advertiser, May 13,1964, p.1.

188/ So. School News, July 1964, p.1. (August 3 was also reported as the date.) Montgomery (Ala.) Advertiser, July 2,1964, p.1.

ADDENDUM

General

On August 6, 1964, a new tuition grant bill was introduced in the Alabama legislature. The bill would authorize State and local boards of education to make grants, for private school tuition from public school funds of an amount per pupil equal to the average, annual State-aid per pupil. Unlike the present law, the bill would require that public schools remain open. (Montgomery (Ala.) Advertiser, Aug. 7, 1964, p.2.)

On August 31, 1964, the Roman Catholic schools of the State completed enrollment for their first term of State-wide desegregation. (Montgomery (Ala.) Advertiser, Sept. 2, 1964, p.16.)

Birmingham

On September 3, 1964, seven Negro students enrolled at four of the city's nine white high schools and two Negro pupils began their second year at a formerly white elementary school. About 100 jeering whites and a small motorcade of other segregationists marred the city's otherwise peaceful start toward its second year of school desegregation. (N.Y. Times, Sept. 4, 1964, p.11C.)

Bullock County

On August 5, 1964, a Federal district court ordered the Bullock County superintendent and board of education to: (1) make an immediate start toward desegregation in September 1964 by application of the Alabama Pupil Placement Law without discrimination on the basis of race or color; (2) provide public school education for Negro plaintiffs and other members of their class in schools not operated on a compulsory racially segregated basis; and (3) take the additional steps ahead needed to eliminate segregation beginning with the 1965-66 school year as may be required by any desegregation plan approved by the court. It was further ordered that a desegregation plan be submitted to the court by January 15, 1965. (Harris v. Bullock County Board of Education, Civ.No.2073-N, M.D. Ala., Aug. 5,1964.)

On September 9, 1964, three Negro students desegregated Union Springs High School, in Bullock County, without incident. (N.Y. Times, Sept. 10, 1964, p.25C.)

Gadsden

On September 8, 1964, 20 Negro pupils began attending three white schools without incident. (N.Y. Times, Sept. 9, 1964, p.41M.)

Huntsville

On September 2, 1964, 31 Negro children began attending white or predominantly white schools without incident. This was the largest group of Negro pupils admitted to one system in the State. (Birmingham News, Sept. 2, 1964, p.2.)

Macon County (Tuskegee)

On September 8, 1964, 14 Negro students began classes with some white students at Tuskegee High School. (So. School News, Sept. 1964, p.10.) Their entrance went almost unnoticed. The principal expected an even larger number of white students gradually to return to class. (Evening (D.C.) Star, Sept. 8, 1964, p.2A.) The combined high school-grammar school at nearby Shorter did not open for classes for the 1964-65 school year because of decreased enrollment. (Montgomery (Ala.) Advertiser, Aug. 8, 1964, p.1.)

Madison County

On August 25, 1964, four Negro students entered a high school in Madison County to mark the first desegregation of the county schools. (Evening (D.C.) Star, Aug. 26, 1964, p.11B.)

Mobile County

On July 31, 1964, a Federal district court ordered the Mobile County School Board (which administers the combined city-county system) to desegregate grades 10, 11, and 12 of county schools outside the city of Mobile. The school board had contended that the white-county schools outside of the city of Mobile were not equipped to receive additional students. (Birmingham (Ala.) News, Aug. 1, 1964, p.12.) On September 3, 1964, Supreme Court Justice Hugo L. Black refused the board's request to stay the district court order. (N.Y. Times, Sept. 4, 1964, p.11C.)

Mobile

On September 10, 1964, seven Negro students quietly entered three public schools in the city of Mobile as the second year of classroom desegregation began. (N.Y. Times, Sept. 11, 1964, p.55M.)

Montgomery County

On August 3, 1964, a Federal district court ordered the Montgomery County School Board to desegregate grades 1, 10, 11, and 12 in September 1964, and to submit, by January 15, 1965, a plan for desegregation of the entire school system to begin in the 1965-66 school year. (N.Y. Times, Aug. 4, 1964, p.3C.)

On September 8, 1964, eight Negro students enrolled peacefully in three formerly white schools in the city of Montgomery. (N.Y. Times, Sept. 9, 1964, p.41M.)

Arkansas

General

At the end of the 1963-64 school year there were 13 desegregated school districts in Arkansas out of a total of 228 with both white and Negro school-age pupils. Less than one percent of the State's total Negro school population was enrolled in biracial schools. 1/ Developments after the cutoff date for this report, August 1, 1964, through the opening of schools for the 1964-65 school year are covered in the addendum.

Pine Bluff

In September 1963, Pine Bluff became Arkansas' 13th school district to desegregate when four Negro pupils (first- and second-graders) were voluntarily enrolled in formerly all-white elementary schools under a two-grades-a-year desegregation plan. 2/ This action took place eight years after the first announcement by the Pine Bluff school board that schools would be desegregated. The original desegregation plan was announced in September 1956 to be effective the following school year. However, it was postponed indefinitely when violence broke out at Little Rock's Central High School in 1957. 3/

Hot Springs

Hot Springs (which previously had desegregated only some vocational high school classes) 4/voluntarily enrolled eight Negro first and second grade pupils in four formerly all-white schools in September 1963. The school board announced that the action was not a two-grades-a-year desegregation plan, but that additional Negro pupils would be assigned to desegregated schools from time to time. 5/

1/ Appendix table 2.

2/ Arkansas Gazette, Sept. 4,1963, p.1B. Although six Negro pupils were assigned, only four actually enrolled. So. School News, Sept. 1963, p.21.

3/ So. School News, Aug. 1963, p.15.

4/ Report of the U. S. Commission on Civil Rights 1959 at 195.

5/ So. School News, Sept. 1963, p.21.

School desegregation in both Pine Bluff and Hot Springs took place without incident. 6/ However, the Hot Springs Branch of the NAACP expressed dissatisfaction with the school board's action because it gave parents only a little more than 24 hours to state in writing their preference of schools for their children. 7/ The local NAACP president called the board's plan "vague, invisible, uncertain, unscheduled, unexplained and indefinite," and indicated that a lawsuit would be filed if the school board did not formulate a better plan. 8/

Desegregation continued in the previously desegregated districts in the State, but protests were registered by Negro parents in Little Rock and Fort Smith against the slow pace of desegregation.

Little Rock

On August 29, 1963, 25 Negro citizens of Little Rock attended a meeting of the school board and complained that school desegregation was "painfully slow," so slow that at the same rate it would take 450 years to be completed. 9/ The citizens asked for prompt and full desegregation and presented six recommendations which asked that: 10/

(1) the Pupil Assignment Plan be discontinued, and students assigned on the basis of non-overlapping school attendance areas;

(2) Negro pupils be admitted to and allowed to participate in all activities of the schools;

6/ Ibid.

7/ Ibid.

8/ Ibid.

9/ Ibid.

10/ Ibid.

(3) the Little Rock Vocational School, for whites, be desegregated;

(4) Negroes be employed in policy-making positions in the school system and as supervisors or associates;

(5) salaries of both the professional and nonprofessional staff members be raised; and,

(6) a biracial advisory committee to the school board be appointed.

The school board heard the recommendations without comment, and in October, denied or rejected them all. 11/

However, on March 24, 1964, the Little Rock school board voted to accelerate its desegregation plan to include all 12 grades instead of only 10 in September 1964. Under the new decision school desegregation will reach all grade levels one year earlier than had been planned. The school board's announcement was made almost simultaneously with an announcement by Negro leaders of a proposed school boycott, which was postponed. 12/

Since 1959 by school board policy lateral transfers have been forbidden. Laterals are transfers between schools at any grade level except the first grade of the three school divisions--elementary, junior, and senior high. The effect of the prohibition was that a Negro student could apply to enter a white school only in the 1st, 7th, and 10th grades. 13/ The board departed from the policy for the first time in September 1963, by desegregating both the 1st and 4th grades. 14/ This allowed Negro pupils who had completed grade

---

11/ Arkansas Gazette, Nov. 23,1963, p.10A.

12/ So. School News, Apr. 1964, p.1. Four of the 12 grades were still segregated for the 1963-64 term.

13/ Id. at 8.

14/ 1963 Staff Report of the U. S. Commission on Civil Rights, Public Education 11.

three in a segregated school to apply for transfer to grade four of another school. The board's new resolution will allow Negro pupils entering grades three, four, and six in September 1964, to apply for transfer to white schools. The board, however, stipulated that the prohibition against lateral transfers will be restored for the 1965-66 school year; thereafter the choice of a desegregated or Negro school must again be made at the 1st, 7th, or 10th grade levels. 15/

On May 6, 1964, the school board made its assignments for the 1964-65 school year, and it is reported that 198 Negro pupils will be assigned in predominantly white schools. 16/

Fort Smith

A suit was filed in a Federal district court on behalf of two Negro high school pupils on September 12, 1963, against the Fort Smith school board. The plaintiffs sought the admission of their daughters to an all-white school. 17/ In addition the plaintiffs challenged the attendance areas set up by the school board and sought to have Negro teachers assigned to predominantly white schools. The plaintiffs also asked the court to stop the school construction program because it was designed to perpetuate segregation. 18/ At a pretrial conference held on June 18, 1964, the court ordered the

---

15/ So. School News, Apr. 1964, p.8.

16/ Id. June 1964, p.7. There were 121 Negro students in 15 schools at the end of the 1963-64 term. The total Negro enrollment in Little Rock was 7,046 in 1963-64. Southern Education Reporting Service, Statistical Summary 7.

17/ Rogers v. Paul, Civ.No.1741, W.D.Ark.

18/ Arkansas Gazette, June 19,1964, p.1B.

school board to submit a revised plan of integration, that would, among other things, eliminate the minority transfer rule, 19/which it did on July 17. Plaintiffs filed objections thereto on July 28. 20/

Fort Smith is in the seventh year of a grade-a-year desegregation plan which started in the first grade. 21/ The school board alleged that desegregation had not reached the grade level sought to be entered by plaintiffs, and that any alternative to the plan would downgrade the education of all of the city's high schools. 22/ The case has yet to be heard on its merits.

Desegregation Scheduled for September 1964

The school board of Texarkana, Arkansas has scheduled September 1964 as the date to begin school desegregation. At the end of November 1963 the board had received applications from nine Negro pupils for transfer to white classes in September 1964. All were denied. 23/

On April 20, 1964, the North Little Rock school board announced that it would admit Negro students to the first and second grades of previously white schools in September 1964. However, nothing was said about desegregation at the junior and senior high levels, although Negro junior and senior high school students applied for admission to white schools in August 1963. 24/ The board's announcement was strongly criticized by Negro citizens on the grounds that: 25/

(1) the Negro students who applied to enter white schools were ignored;

19/ Held unconstitutional in Goss v. Board of Education, 373 U.S. 683 (1963).

20/ Arkansas Gazette, June 19,1964, p.1B.

21/ Arkansas Gazette, Oct. 26,1963, p.2A.

22/ So. School News, Nov. 1963, p.3.

23/ Arkansas Gazette, Nov. 27,1963, p.3A.

24/ So. School News, May 1964, p.5A.

25/ Ibid.

(2) Not enough time was allowed for parents to decide on a desegregated or segregated school (requests for assignment to white schools had to be made between April 21 and April 24);

(3) nothing was said about future desegregation.

After its May 6, 1964 meeting, the North Little Rock school board announced that nine Negro first-and second-graders would be assigned to three of the city's all-white schools in September 1964. The assignments were made under the State Pupil Placement Law. 26/ The North Little Rock school board originally announced a plan of desegregation, to begin on the high school level, in September 1957. However, the plan was cancelled after Governor Orval E. Faubus used National Guard troops to block the admission of Negro pupils to Little Rock's Central High School. 27/ (Little Rock is across the Arkansas River from North Little Rock.)

In April 1964, the Russellville school board in northwest Arkansas announced that beginning in September 1964 its white high school would be desegregated. 28/ The town had no Negro high school and transported Negro high school students to Morrilton, a distance of 26 miles, to attend an all-Negro school. The town's total Negro high school population is 35 students. There is an all-Negro elementary school in the town, but it was not mentioned in the school board's announcement. 29/

Four other towns in northwest Arkansas, which also transported their Negro high school students to Morrilton, have announced similar plans for September 1964. Danville will no longer transport its 4 Negro high school pupils 108 miles round trip to Morrilton and will close its all-Negro elementary schools and Dardanelle will not transport its 10 Negro pupils 70 miles daily round trip but will continue to operate its all-Negro elementary school. 30/ The Havana school board will enroll some 13 Negro pupils, on all grade levels, in previous all-white schools. Havana previously transported its

---

26/ Id. June 1964, p.7.

27/ Report of the U. S. Commission on Civil Rights 1959 at 196.

28/ So. School News, May 1964, p.5A.

29/ Ibid.

30/ Id. June 1964, p.7.

Negro high school students 120 miles round-trip daily to Morrilton, and its elementary school pupils to a Negro school at nearby Danville. 31/ The Atkins school board announced plans to enroll in its high school the 25 Negro students whom it had previously transported 28 miles daily; it will continue to operate its Negro elementary schools. 32/ One other town in the area, Ola, which has utilized the school in Morrilton for its Negro pupils, has made no such announcement. Although the action of all of these small school districts was voluntary, it probably was prompted by the complaints of Negro parents who had expressed dissatisfaction with long trips required of their children and also by the announced plans of Morrilton (which provided the Negro high school) to increase the tuition for the transported pupils from $190 a year per student to $240. 33/

In September 1963 the Arkansas Advisory Committee to the United States Commission on Civil Rights issued a report which concluded that Arkansas schools were still separate and unequal and that in the last ten years, "no significant progress" has been made to eliminate the gap between white and Negro educational opportunities. 34/ Immediately after the report was issued Governor Faubus requested the State Education Department to prepare a rebuttal to the report. 35/ The final report of the State education agency has not been released, but preliminary information issued by the State Commissioner of Education reports that "while there is a gap between white and Negro schooling in the State, the gap has been narrowed substantially in the last decade."36/

31/ Arkansas Gazette, June 9,1964, p.2A.

32/ So. School News, June 1964, p.7; Arkansas Gazette, June 11,1964, p.6B.

33/ Arkansas Gazette, May 23,1964, p.1.

34/ Arkansas Advisory Committee to the U. S. Commission on Civil Rights, Report on Arkansas 26 (Sept. 1963).

35/ So. School News, Nov. 1963, p.14.

36/ Arkansas Gazette, Jan. 8,1964, p.2A.

ADDENDUM

General

On August 19, 1964, a field secretary for the NAACP said that school desegregation suits would be filed this year for Little Rock, North Little Rock, El Dorado, West Memphis, Texarkana, Lincoln County, and St. Francis County. (Arkansas Gazette, Aug. 20, 1964, p.7A.)

Eight more districts were to be desegregated for the first time in September 1964, bringing the total for the State to 21 districts with Negro students attending formerly white schools. (Arkansas Gazette, Aug. 20, 1964, p.7A.)

Fort Smith

On August 19, 1964, the Federal district court approved the school board's revised plan filed on July 17, 1964, and retained jurisdiction for any question that might arise as to the assignment of teachers and principals, but not as to any other personnel. The revised plan continued the original grade-a-year desegregation plan, initiated voluntarily in 1957, in the elementary schools, grade eight of the junior high schools being scheduled for the 1964-65 school year. The minority transfer rule which had been in effect since 1957 was eliminated as ordered by the court on June 18. The court found that in the 1963-64 school year 323 white pupils and 214 Negro pupils had transferred from the school of their zone of residence to other schools by availing themselves of the minority transfer rule. The court states further that if the transfer rule had not been in effect approximately 170 Negro pupils would have been required to attend predominantly white schools and about 100 white students would have been required to attend predominantly Negro schools. In fact 39 Negroes were enrolled in predominantly white schools and no white pupils were enrolled in Negro schools.

The plaintiffs had objected that the original and revised plans "do not represent a good faith and prompt effort to desegregate. . . with all deliberate speed" in accordance with the Brown decision, relying on Watson v. City of Memphis (373 U.S.526 (1963)). Plaintiffs argued that the unnecessary delay would deny the minor plaintiff who is in the 11th grade her rights to an integrated education. Plaintiffs objected also to the lack of provision for the desegregation of teaching and administrative personnel, and claimed that one attendance area was still based solely on race.

As to assignment of teachers, the court refused to strike the allegations from the complaint "for the reason that it might become material" and retained jurisdiction of the case "in order that the question may be raised if any proper party desires to intervene."

The court made no specific finding as to plaintiffs' charge that one of the attendance areas for school assignment in the desegregated grades was, under the revised plan, based upon race.

In denying plaintiffs' major claim for complete desegregation in September 1964, the court found that the defendant school district, since 1956, had been diligent in its efforts "to integrate the schools as required by the decision of the courts," that the plan had been eminently successful and satisfactory and that, the minority transfer provision having been eliminated, the plan fully implements constitutional principles and provided for full and complete integration with deliberate speed. (Rogers v. Paul, Civ.No. 1741,W.D.Ark.,Aug.19,1964.)

Little Rock

On August 27, 1964, a Negro teacher was appointed supervisor of elementary education by the Little Rock school board. She is the first Negro to hold an administrative staff position with the district. (Arkansas Gazette, Aug.28,1964,p.1B.)

Delaware

General

Seven more school districts admitted Negro pupils to formerly white schools during the 1963-64 school year, according to figures compiled by the State Department of Public Instruction. There are now 85 school districts in Delaware, of which 39 have both white and Negro pupils, 14 have only white pupils, and 32 have only Negro pupils. 1/ The total school enrollment for the year was 96,796, of whom 18,066 were Negroes; 10,209 Negro pupils (56.5 percent of the State's total) attended biracial schools. 2/ Desegregation has steadily increased since the 1956-57 school year, according to the following statistics compiled by the State Department of Public Instruction. 3/

Year	White	Negro	Negroes with Whites	Percent
1956-57	54,505	11,410	3,175	28
1957-58	59,913	12,429	4,497	36
1958-59	60,141	13,410	5,726	43
1959-60	63,484	14,277	6,288	44
1960-61	67,145	15,061	6,734	45
1961-62	70,812	16,096	8,456	53
1962-63	74,417	17,073	9,460	55.9
1963-64	78,730	18,066	10,209	56.5

Four school districts have desegregated their faculties. In Dover, New Castle, Newark, and Wilmington, some Negroes are teaching at formerly all-white schools. 4/

1/ Letter from Paul H. Johnston, Supervisor of Research and Publications, Department of Public Instruction, State of Delaware, to U.S. Commission on Civil Rights, July 28,1964.

2/ Appendix, table 2.

3/ So. School News, Sept.1963, p.19, May 1964, p.1A.

4/ Id. Oct. 1963, p.9.

For many years under the laws of the State of Delaware, the State has paid the total cost of building and operating schools for the 32 State Board Unit Districts which have only Negro pupils. The other 53 State Board Units and 16 Special Districts have been required to pay 40 percent of school construction costs from local taxes. The great majority of these districts also supplement State funds for current operating expense by local tax revenue. 5/ An unsuccessful attempt was made to change the formula for financing school construction in the fall of 1963.

The State Board of Education and the House Education Committee proposed changes in the percentage of State aid in approving a $61,351,145 school construction bill on July 30, 1963. Under the new formula the State would have paid 60 percent of school construction costs in each school district plus additional funds based upon the number of Negro pupils in the district. 6/ The bill passed the general assembly in this form by a one-vote margin on September 11, but, by amendment in the senate, subsequently accepted by the general assembly, the traditional 60 percent State aid for all districts except Negro State Board Units was restored. 7/ Assembly members from Wilmington, where the public school population is predominantly Negro, lost their attempt to put the new formula back in the bill when the assembly voted on the bill as adopted by the Senate. It is reported that Wilmington would have received 80 rather than 60 percent from the State for school construction if the original bill had been adopted. 8/

During the 1963-64 school year the State Board of Education concerned itself with problems related to desegregation and the elimination of small one and two-room schools. The present law allows consolidation only after the student enrollment has fallen

---

5/ Letter, supra note 1.

6/ So. School News, Aug.1963, p.9.

7/ Id. Oct.1963, p.9, Nov.1963, p.3.

8/ Ibid.

below 15 for three consecutive years. In September the board voted to seek discretionary power to close schools with less than 100 students, the majority of which in fact have predominantly Negro or all-Negro enrollments. 9/ However, the proposed amendment did not reach the floor of the legislature. 10/

In February 1964 the first Negro State board member (appointed in July 1963) 11/ launched a drive to eliminate the all-Negro schools of the State. He said that the State has no moral or legal right to maintain segregated schools and that plans which allow any student to transfer is not taken advantage of because of the pressure of breaking with tradition which it puts on Negro students and parents, 12/ especially in the southern part of the State where sentiment for segregation is higher than in the North.

On February 24, 1964, a proposal was made at the board meeting that schools with an all-Negro enrollment be eliminated by September 1964. It was claimed that the operation of such schools was financially unsound and legally unconstitutional. One member said he was not in favor of closing or burning buildings per se but that in many instances Negro and white school districts overlap so that such drastic action would not be required. 13/ An assistant State superintendent said that one difficulty is that schools which have a separate board of trustees and teachers on tenure want the schools to continue to operate until the teachers can find other positions. Finding other positions is particularly difficult for Negro teachers

---

9/ Id. Oct. 1963, p.9.

10/ Wilmington (Del.) Morning News, June 8,1964, p.1A.

11/ So. School News, Aug.1963, p.9.

12/ N.Y. Times, Feb.17,1964, p.45.

13/ A State official informed the Commission that ". . . colored districts are superimposed upon white districts and have no district boundary lines. . . .all colored pupils actually reside within the geographic boundaries of white districts. . ." Supra note 1.

when the position sought is at a school with a predominantly white student enrollment, he said. One member voiced the opinion that the teacher employment problem was not a valid reason to continue schools with all-Negro enrollments. The board unanimously agreed to conduct a "comprehensive study of the status of segregated schools." 14/

In March 1964 the board withheld approval of additions to two small schools with predominantly Negro enrollments. It was argued that the additions would only extend segregation. However, the board did approve the building of one school and the renovation of another. It is anticipated that both of these facilities will have all-Negro enrollments in the future. 15/

In April 1964 the additions to the two small schools which were delayed in March were approved after the State superintendent assured the board that the schools "would fit into the future educational needs of the districts." The State board reduced the building program at Phillip C. Showell School, at Shelbyville, which had a predominantly Negro enrollment and gave the 7th and 8th grade students a choice of transfer to a school at Shelbyville which had an all-white enrollment, or to the William C. Janson School at Georgetown, which has an all-Negro enrollment. 16/ A one-room school for Moors at Cheswold near Dover, will continue to exist but will lose one teacher in the 1964-65 school year. 17/ Only one teacher will instruct 25 students, 13 less than were enrolled in the 1963-64 school year. 18/

14/ So. School News, Mar.1964, p.12.

15/ Id. Apr.1964, p.4.

16/ Id. May 1964, p.8A, Wilmington (Del.) Morning News, May 22,1964, p.2.

17/ Del. Laws, 1936, ch. 211, 222 provides for separate schools for "children of people called Moors or Indians." See also Staff Report 1963 of the U.S. Commission on Civil Rights, Public Education 13-14.

18/ So. School News, May 1964, p.8A.

In April 1964 the State board also set up a special registration from May 11 to May 15 for Negro students who wish to transfer to a predominantly white school and for Negro first-graders who wish to start in such a school. For those with "justifiable reasons" for failing to apply between May 11 and May 15, applications were to be considered until June 29. This registration was in compliance with a Federal district court order. 19/ In April the State superintendent of schools announced that notices were being prepared to inform Negro parents of their free choice in registration. 20/ As a result of the registration two more districts will admit Negroes to previously white schools in September 1964. Six Negro students registered to attend Shelbyville School and five registered to attend Lord Baltimore School. 21/

In May 1964 the State board rejected an addition to Frankford 206 School which had an all-Negro enrollment. The board gave the 7th and 8th grade pupils in the school a choice of transferring to a predominantly white or a predominantly-Negro school. A member of the board who opposed the move argued that it was too late because the teachers of the 7th and 8th grades would have no jobs in September. He pointed out that the teachers would not necessarily follow the students because each school board has the power to hire its own teachers up to August 15, when the State Board of Public Instruction is authorized to step in. 22/

The board also decided to change the predominantly-white Gumboro School to a grade 1-to-6 school no later than September 1965. The 7th and 8th grade pupils in this school will attend the Millsboro School. 23/

19/ Ibid, Evans v. Buchanan, 195 F. Supp. 321 (D.Del. 1961).

20/ Wilmington (Del.) Morning News, Apr. 14,1964, p.4.

21/ So. School News, June 1964, p.6.

22/ Ibid.

23/ Wilmington (Del.) Morning News, May 22,1964, p.2.

On May 21, 1964, a report on desegregation was presented to the State board. It showed that 27 school buildings with one and two rooms serving 1,002 students were "unsatisfactory." Twenty-three of the buildings served all-Negro student bodies totaling 878. Four buildings served only white pupils totaling 124. It was argued that all the schools should be closed because of their inferior physical condition and thereby at the same time promote integration. The board decided to delay action until the June meeting when data and recommendations could be presented by the staff. 24/ However, from the sources available it appears that no action was taken on this issue at the June meeting. 25/

In February 1964, the president of Delaware State College (predominantly Negro) expressed appreciation to the State board for helping to find places where four of the college's student teachers could fulfill the State practice teaching requirements. 26/ The college officials had asked the board in December 1963 for help, since segregation in down-State schools was making it difficult to train the increasing numbers of student teachers. 27/ The board set up a meeting in January 1964 between representatives of the State Department of Public Instruction and the State Association of Boards of Education. 28/ As a result four Negro student teachers were placed at Seaford, Claymont, Dickinson, and P. S. du Pont. Du Pont had accepted student teachers in the past. Marshallton also made an offer which will be accepted in fall semester 1964. 29/

Kent and Sussex Counties have delayed another year in adding Negroes to the property tax list. The President of the State Board of Education sent the Levy Court of each county a telegram urging them not to accept tax lists which were not in full compliance with the Delaware Code. 30/

24/ So. School News, June 1964, p.6.

25/ Id. July 1964, p.7.

26/ Wilmington (Del.) Morning News, Feb. 27,1964, p.13.

27/ Id. Dec. 21,1963, p.1.

28/ Id. Jan. 20, 1964, p.3, Feb. 27,1964, p.13.

29/ So. School News, Mar.1964, p.12.

30/ Id. June 1964, p.6.

The statutory provision referred to requires: 31/

> The School Board of the District in which an additional tax is to be levied shall use the assessment list of the county in which that district is located as a basis for any school District tax. There may also be added a poll tax on all persons 21 years of age and upward residing in the District of such amount as shall be determined by the board.

The names of Negroes have been excluded from the tax lists in these counties in the past to encourage resident Negroes to attend Negro schools supported wholly by the State. The president of the State board was unconcerned over the delay but the vice-president took the opposite view. He said the laws were being evaded to "delay the integration of schools." He added that the Millsboro district in Sussex County, for example, puts Negroes on the tax list only if their children attend the white school. 32/

Wilmington

As of September 30, 1963, Negro students made up 54.5 percent of the total public school enrollment (5,579 out of 13,894) in Wilmington. The percentage of Negro students in elementary schools has risen steadily from 20 percent in 1953-54 to 64 percent in 1963-64. The problems of the school system center around de facto segregation. Seven schools had over 90 percent Negro student bodies and three schools had over 90 percent white student bodies in 1963-64. The remaining eleven schools had a racial composition between these two extremes. 33/ A civil rights leader argued that the racial imbalance in the schools should be alleviated immediately because: (1) Negroes enrolled in Negro schools are attending inherently inferior schools and thus are getting unequal education,

---

31/ Del. Laws 1957, ch.19, sec.1912.

32/ So. School News, June 1964, p.6.

33/ Wilmington (Del.) Morning News, Jan.27,1964, p.1.

(2) Negroes are caught in a vicious circle of discrimination, in housing, employment and education which must be broken somewhere. 34/

The superintendent of Wilmington's schools and the assistant superintendent in charge of elementary schools contended that if immediate action is forced, the city schools will end up with all-Negro student bodies because the whites who can will flee the city, and further, that any precipitous action "would force abandonment of the neighborhood school concept which has many values, particularly on the elementary level." 35/ They argued that a gradual approach encouraged acceptance of interracial living by whites and that the neighborhood school brought the family, neighborhood and school together in educating the child.

On January 20, 1964, the local NAACP said that unless the school board acts it would take measures - direct action if need be, to eliminate de facto segregation. On January 19, local Negro leaders had urged that a school boycott suggested by the president of the Committee For Freedom Now (an out-of-State group) be ignored. Later the president of the outside group announced that he was not going to come in and run a boycott by himself. 36/

On January 27, 1964, the principal of a predominantly Negro junior high school told the Wilmington Board of Education that the permissive transfer policy had adversely affected the quality of education at his school because a number of whites and the most able Negro students had transferred to another school. 37/

On January 29, 1964, leaders of five local civil rights groups agreed "to analyze and investigate solutions to de facto segregation." The groups were the NAACP, the Committee For Fair Practices, the Delaware Leadership Council, and the Concerned Citizens. 38/

34/ Id. Jan. 28,1964, p.1.

35/ Ibid.

36/ So. School News, Feb.1964, p.3.

37/ Ibid.

38/ Ibid.

On February 23, 1964, a Philadelphia NAACP leader said that Negro school teachers in Wilmington allow de facto segregation to continue while they "fatten their pocketbooks and bellies." 39/

39/ Wilmington (Del.) Morning News, Feb. 24,1964, p.13. This report has no addendum because no new developments have been reported.

Florida

General

By the end of the 1963-64 school year, 16 of Florida's 67 school districts were at least partly desegregated. Three thousand six hundred and fifty Negro pupils were attending biracial schools in these districts, 1/ or 1.5 percent of the total Negro public school enrollment in the State. The changes at the opening of school in the fall of 1964 are summarized in the addendum.

In September 1963, six school districts peacefully initiated desegregation in Florida, 2/ the largest number in any school year since the 1954 Supreme Court decisions. 3/ Ten districts 4/ had previously desegregated. 5/ Two counties announced that they were completely desegregated. 6/ The Associated Press quoted statehouse observers as citing three reasons for Florida's peaceful school desegregation. They were: (1) "a responsible press--newspapers that, if they did not support desegregation, at least did not fan the fires of hatred to the demonstration point;" (2) "responsible political leadership that did not resort to race-baiting to win campaigns;" (3) the general tone set by former Governor LeRoy Collins who declared that Florida schools would not be closed. 7/

1/ Appendix, tables 1 and 2.

2/ Charlotte, Duval, Leon, Okaloosa, Santa Rosa, and St. Johns Counties. (Florida school districts are county-wide. The name of the largest city in each county is given in parenthesis hereinafter.)

3/ So. School News, Sept.1963, p.4.

4/ Broward, Dade, Escambia, Hillsborough, Monroe, Orange, Palm Beach, Pinellas, Sarasota, and Volusia.

5/ Staff Report 1963, U.S. Commission on Civil Rights 16.

6/ Dade and Monroe.

7/ So. School News, Oct.1963, p.14.

On April 25, 1964, the Florida Education Association (FEA), a professional organization of teachers and school administrators, voted to delete the word "white" from the charter and open membership to all qualified personnel regardless of race. The action was supported by the Dade (Miami) Classroom Teachers Association which was ready to withdraw from the association if the proposal failed. The campaign was supported by Pinellas County teachers who had taken steps to remove racial barriers in their area. 8/

Bay County (Panama City)

The United States Attorney General filed suit 9/ in a Federal court at Marianna on October 15, 1963, to require school desegregation in Bay County, one of the largest in the Florida Panhandle between Tallahassee and Pensacola. The suit charged that children of Negro service families were forced to attend segregated schools and were otherwise discriminated against. It alleged violation of written assurances given to Federal authorities that there would be no discrimination against children of service-connected families attending schools receiving Federal aid under the "impacted areas program." 10/

A suit by private citizens was also filed against the Bay County Board of Education in November 1963 alleging discrimination against Negro children. 11/ On May 28,1964, the court entered a summary judgment against the school board "on a plain showing that there have been no assignments to the subject schools without regard

---

8/ Id. May 1964, p.1A.

9/ U.S. v. Bay County Board, Civ. No.M569, N.D.Fla., filed Oct. 15,1963.

10/ Financial Assistance for Areas Affected by Federal Activities, Sec. 1, 64, Stat.1100(1950), 20 U.S.C. Sec.237(Supp.1959-63).

11/ Youngblood v. Bay County Board, Civ. No.572, N.D. Fla., filed Nov. 15, 1963.

to factors of race or color." 12/ The school board contended that plaintiffs did not show that pupils were assigned to schools solely on the basis of race, but rather that its procedures used race as one indicia in making assignments. The school board offered statistics and analyses tending to establish inherent racial differences between white and Negro children in intellectual attainment at different ages to justify its use of race as one criteria in assigning pupils to schools. The court, however, concluded that this data was totally irrelevant to the issues raised on the motion for summary judgment, although it acknowledged that "there is no Constitutional prohibition against assignment of individual pupils to particular schools on the basis of intelligence, rate of achievement, or aptitude ...so long as race itself is removed as a factor...."

The school board was ordered to submit a plan giving Negro pupils "a reasonable and conscious opportunity to apply for admission to any schools for which they are eligible without regard to race... "by June 30, and a hearing on the plan was set for July 8.

On July 20, the court entered an order on the plan to be put into effect in September 1964. 13/ Under the plan as approved by the court, pupils enrolled in the county schools in 1963-64 will be assigned to the same school for 1964-65 unless promoted to a higher ranking school, in which case they will be assigned as in 1963-64(i.e. to a segregated school). Pupils so assigned were given a right to apply for transfer from July 27 through July 31. The school board was required to publish specific notice of transfer rights and procedures. For the 1964-65 school year registration and applications for transfer were to be made in April 1965, after prior notice to all parents by letter. At that time first and second grade pupils were given the right to register for attendance at the school nearest his or her home, at his or her option. Each year thereafter pupils in the next higher grade were given the same right. Dual school zones were to be eliminated as the plan progressed.

12/ Id.

13/ Id.

The court specifically instructed the board to consider applications for transfer without regard to race or color; otherwise admissions, assignments, reassignments and transfers could be made pursuant to the Florida Pupil Assignment Law. Additionally, the court told the board, it could consider the achievement score of an applicant for transfer and the average achievements scores of the class in the school to which transfer was sought if such criteria were applied uniformly to all pupils seeking transfers. Likewise the board could consider capacity and pupil load in the school to which transfer was sought, giving preference first to children already enrolled and thereafter to children residing nearest to the school. In considering applications the board "shall not be required to supplement its available school transportation service."

The court further instructed the board to submit a plan for the desegregation of its junior colleges by October 1,1964. The court reserved ruling on all issues concerning teachers and administrative personnel.

Brevard County(Cape Canaveral)

Negro residents of Brevard County filed a suit in October 1961 for the desegregation of public schools, but the case was not pressed by the plaintiffs. 14/ Over three years later, on June 25,1964, a hearing was held as a result of which the court found that the county operated 40 schools (exclusive of special schools for the handicapped) - 29 attended exclusively by white pupils, 7 exclusively for Negroes, and 4 attended by pupils of both races. Of the 36 schools attended exclusively by whites or Negroes, the court found 16 to 21 were "attended exclusively by members of one race because the inhabitants of the area served by said schools are exclusively of that race." The other 10 to 15 schools serving only one race had dual school zones established to effect segregation. The court, therefore, found the school board to be maintaining a racially segregated school system and ordered it to submit a plan, to be put into effect in September 1964, by July 23,1964. 15/

14/ So. School News, July 1964, p.9.

15/ Weaver v. Board of Public Instruction (Brevard County), Civ. No.1172-Orl., S.D.Fla.,July 2,1964.

On July 22,1964, the board filed a plan to be effective for grades one and two in 1964-65, one through six in 1965-66, one through nine in 1966-67, and one through 12 in 1967-68. Under the plan pupils entering the grades to be desegregated and pupils entering the school system for the first time have the right to enroll:(1) in the school nearest his residence wherein members of his race are numerically predominant, or (2) in the school nearest his residence. 16/ For the 1964-65 school year the plan gave parents until August 15 to indicate their option; if a parent fails to exercise his option, the board has the right to assign his child so as to utilize school space to the best advantage. 17/

A hearing on the plan was held on July 30,1964. At the date of writing no decision had been handed down.

Dade County(Miami)

Dade County school officials released a report prepared at the request of Metropolitan Dade County Community Relations Board's education committee. The major points in the report were that: (1) 3,900 of the county's estimated 40,000 Negro students attend formerly all-white schools (this includes schools now all or predominantly Negro); (2) 42 of the 100 county schools were desegregated as of June 11,1963 (figures for the 1963-64 year were not given); (3) 19 elementary and six secondary schools which previously had all-Negro faculties now also included white teachers; and (4) more Negro students will attend integrated schools in the fall of 1964 because bus transportation to all-Negro schools will be canceled.18/

Duval County (Jacksonville)

On May 4,1964, the United States Supreme Court refused to review a district court order requiring the Duval County school board to submit a plan providing for an end to the assignment of teachers

---

16/ The choice given is similar to that held unconstitutional in Goss v. Board of Education (Knoxville) 373 U.S. 683 (1963).

17/ Weaver v. Board of Public Instruction, supra note 15, July 22, 1964.

18/ Miami (Fla.) Herald, June 3,1964, p.1B.

on the basis of race. 19/ The Court of Appeals for the Fifth Circuit had affirmed the district court on the ground that the School Segregation Cases permitted the trial court to concern itself with the question of racial assignment of teachers, if it considered it would "be necessary to put an end to the assignment of teachers and other personnel by race" in order fully to implement the Supreme Court's decision. Other Federal district courts have issued similar orders for teacher desegregation in Oklahoma 20/ and Kentucky. 21/

In February 1964 a group of Negro residents of Jacksonville filed a motion for further relief in the Duval County school desegregation case. 22/ They alleged that the first grade was ordered desegregated in September 1963, but that only 13 of some 25,000 Negro pupils in the county were attending classes with white pupils; that only 6 of the 113 schools were affected; and that no white pupil has been assigned to a Negro school. The relief requested was an order requiring:(1) acceleration of the grade-a-year plan initiated in September 1963 to include grades one through six in the school year 1964-65, (2) acceptance of applications for transfer of pupils in grades six through 12 to the school nearest the child's home upon a showing that attendance at the school to which the child is assigned requires traveling an inconvenient distance, and (3) immediate assignment of teachers, principals and other school personnel on a nonracial basis. 23/ Arguments were

---

19/ Braxton v. Board of Public Instruction (Duval County), Civ. No. 4598-J, M.D.Fla.,May 8,1963. 8 Race Rel. L. Rep.491(1963), aff'd., 326 F.2d 616(5th Cir.1964), cert. denied, 12 L. ed. 2d 616(1964).

20/ Dowell v. Oklahoma City School Board, 219 F.Supp.427(W.D.Okla. 1963).

21/ Rimbert v. Knott County School Board, Civ.No.824, E.D.Ky., Sept. 24,1963, 8 Race Rel. L. Rep.1419(1963).

22/ Braxton v. Board of Public Instruction of Duval County, Civ.No. 4598-J, M.D.Fla., Feb.18, 1964.

23/ Ibid.

heard on March 27, 1964. 24/ No decision had been handed down at the date of this report.

On February 16, 1964 the home of a Negro family, whose son had been attending a previously all-white school in Jacksonville, was blasted by dynamite. The boy had been assigned to Lackawanna Elementary School under a court order 25/ requiring desegregation of the first grade. 26/ One man was arrested, pleaded guilty and was sentenced to seven years in prison for the offense. 27/ Five others were arrested and are under an indictment which charges that they violated the right of the boy "to attend a desegregated school, as well as the rights of others similarly situated." 28/ The United States entered the case and attempted to show a conspiracy in the bombing beginning the first day of school in September 1963. 29/

There were two counts to the indictment: (1) "conspiracy to violate the boy's constitutional rights," and (2) "conspiracy to violate his rights under the court order." An all-white Federal court jury acquitted one defendant on both counts, acquitted a second defendant on one count and a mistrial was declared on the second count and mistrials were declared on both counts for the other three defendants. The United States attorney said a retrial would not be scheduled soon because of a full court calendar. A decision on local prosecution has not been made. 30/

24/ So. School News, Apr. 1964, p.3.

25/ Braxton v. Board of Public Instruction of Duval County, supra, note 19.

26/ So. School News, Mar. 1964, p.4.

27/ U.S. v. Rosecrans, Crim. No.6480C-R-J, M.D.Fla., Apr. 17, 1964.

28/ So. School News, May 1964, p.3A.

29/ U.S. v. Griffin, Crim. No6480C-R-R, M.D.Fla.; Florida Times Union (Jacksonville), April 11, 1964, p.28.

30/ Florida Times Union (Jacksonville), July 6, 1964, p.7.

Riots involving high school students occurred in Jacksonville on March 23 and 24, 1964. A school was set on fire and more than 200 Negroes were arrested, of whom 75 were high school students under 17 years of age. 31/

Applications for assignment and transfer for the 1964-65 school year were made on June 5, 8, 9, and 10. No requests for special assignments were accepted after the 10th. Under a grade-a-year plan started in the 1963-64 school year, first and second grade children are eligible for registration or reassignment for the 1964-65 school year to the nearest school without regard to race. 32/

Hillsborough County (Tampa)

A petition to speed up the pace of a court-ordered plan was taken under advisement by a Federal district court on April 20, 1964. 33/ At the hearing the judge told the Hillsborough school board attorney to "proceed with the May registration of next year's first graders under the present plan." 34/ No decision had been handed down at the date of this report.

Monroe County (Key West)

In May 1964, a group of Negro parents filed suit against the school board of Monroe County, which had voluntarily desegregated in 1962, alleging that "almost total segregation" was practiced in the schools and complained of "social segregation" of Negro pupils in desegregated schools. 35/ They contended that in practice Negro

---

31/ So. School News, Apr. 1964, p.3.

32/ Id. June 1964, p.2.

33/ Mannings v. Board of Public Instruction (Hillsborough County), Civ.No.3554, M.D.Fla.

34/ So. School News, May 1964, p.3A.

35/ Major v. Board of Public Instruction (Monroe County), Civ.No. 64-331-CF, S.D. Fla., filed May 26, 1964.

pupils are assigned to the school for Negro pupils nearest their homes and that if a school for white pupils is nearer, the Negro pupil must go through a complicated process of application for transfer and a hearing in order to attend the white school. They alleged that white children are never assigned to schools for Negroes but are automatically assigned to the nearest school for white children. It was further alleged that the Monroe school board plans to have dual, segregated campuses when a junior college is opened in the near future. 36/ The petition requested a permanent injunction against the operation of a segregated school system and an order directing the school board to submit a plan for complete reorganization of the school system without regard to race. In response to the filing of the suit, the county superintendent denied the allegations and said that Negro children attended every school in the county except May Sands Elementary which will be desegregated in the 1964-65 school year. 37/

Pinellas County (St. Petersburg)

On March 25, 1964, the county school board "single-zoned" a large area of St. Petersburg's Negro community for the first time. Spot "double-zoning" had been used to funnel the section's Negro children to schools with an all-Negro enrollment and white children to schools with a predominantly white enrollment. Plans to convert an old high school into an elementary school to relieve overcrowding in Negro schools were dropped to avoid creating temporarily another school with an all-Negro enrollment. 38/ According to school records there were some underutilized schools for white pupils near the Negro section. 39/

In May 1964, a suit was filed 40/ alleging that the county "acting under color of authority vested in them by the laws of the

---

36/ So. School News, June 1964, p.2.

37/ Ibid.

38/ St. Petersburg (Fla.) Times, Mar. 26,1964, p.1B.

39/ Id. Feb. 24,1964, p.1B.

40/ Bradley v. Christian, Civ. No.64-98-T, M.D.Fla., filed May 7,1964.

State of Florida. . .are presently pursuing a policy, custom, practice and usage of operating the public school system of Pinellas County, Florida, on a racially segregated basis." 41/ The complaint said that school officials claimed to have changed the compulsory nature of the dual organization of schools, but that 98 percent of all Negro students in the county continued to be assigned to schools they would have attended under the dual-zone system. It was alleged that Negro children are assigned to schools attended only by Negro children; that they must make special application for transfer to attend a school for white children; and that transfer is approved only if a white school is closer to a pupil's residence than a school for Negroes. It was alleged further that a white child living near a Negro school is not required to attend that school but is allowed to attend the more distant white school. The factor of proximity, the complaint alleges, is utilized only to refuse Negro students attendance at predominantly white schools. As a result, it is claimed that less than two percent of the Negro pupils, only 200, attend schools with about 57,800 white students.42/

The suit asked for an injunction to prevent school officials from: (1) assigning pupils on the basis of race, (2) refusing transfer to Negro pupils to schools which white pupils in similar circumstances would be permitted to attend, (3) assigning teachers, principals and other professional school personnel on the basis of race or color of the pupils in the school, and (4) continuing construction plans, making available funds, approving policies, curricula or programs which are designed to perpetuate or maintain racially segregated schools. In the alternative it was requested that the school board be directed to present a complete plan of the school system on a unitary non-racial system. 43/

The superintendent reported that all transfers were based on need, that contrary to allegations, more than two percent of the Negro pupils attend biracial schools, that there were six white teachers in schools for Negroes, that the schools were built where there was the greatest need and not to perpetuate segregation, that funds were not granted on the basis of race, and that the single system of school zones had already been drawn for grades 1-6 for the 1964-65 school year. 44/

41/ Ibid.

42/ Ibid.

43/ Ibid.

44/ St. Petersburg (Fla.) Times, May 28, 1964, p.1B.

St. Johns County (St. Augustine)

In September 1963 the first desegregation in the county took place 45/ during the progess of a desegregation suit. 46/ Seven pupils were assigned by the St. Johns County school board under the Florida Pupil Assignment Law. 47/ One did not begin classes. 48/

After the six Negro children enrolled in schools formerly for white children, a number of incidents occurred involving them and their families. An automobile belonging to a Negro family whose three children were assigned to one formerly white school was destroyed by fire. A Negro man who enrolled in evening classes for adult training at a formerly white high school was assaulted on his way home. The home of a Negro family who had a child attending a formerly white elementary school was set on fire. 49/

On April 1, 75 Negro high school students walked out of their classes without permission and were arrested on the way downtown to demonstrate. Action by the school officials has not been reported, they, however, announced their belief that integration leaders encouraged the disobedience. 50/

St. Augustine has been the scene of racial unrest since the summer of 1963, primarily because of the lack of access to public accommodations. Children were arrested and those who refused to accept the probation terms were sent to segregated State training schools. As a result of this incident, suit 51/ was filed to

---

45/ So. School News, Sept. 1963, p.4.

46/ Scott v. Board of Public Instruction (St. Johns County), Civ. No.4894, M.D.Fla., filed Mar.1962.

47/ Fla. Laws, 2d Ex. Sess. 1956, ch. 31380, p.30.

48/ Florida Times-Union (Jacksonville), Aug.29,1963, p.27.

49/ So. School News, Apr.1964, p.3.

50/ Florida Times-Union (Jacksonville) Apr. 2,1964, p.24.

51/ Singleton v. Board of Commissioners of State Institutions, Civ. No.63-243, M.D.Fla.,filed Oct.12,1963; transferred to Tallahassee, N.D.Fla., as Civ. No.963.

desegregate all Florida State training schools and detention facilities for children. 52/ The suit alleged that the State schools were segregated by law. 53/

In April it was reported that some white college students and teachers planned to live with St. Augustine Negro families and tutor Negro students during the summer of 1964. 54/

For the 1964-65 school year the St. Johns County school board has approved 13 more applications for transfer of Negro students to previously all-white schools, bringing the total to 19. 55/

Volusia County (Daytona Beach)

Initial desegregation in the county took place in 1961 when the county voluntarily enrolled Negroes in formerly white schools. However, a desegregation suit was pending and in September 1963 the county desegregated the first grade as the first step of a court-ordered, grade-a-year plan. 56/ Subsequently, Negro parents filed a motion for further relief asking for acceleration of the plan on the ground that the pace of compliance was extremely slow and that only one Negro first-grader attended school with white pupils. 57/

Desegregation Expected September 1964

In addition to Bay and Brevard Counties, discussed above, Alachua (Gainesville), Lee and Putnam Counties have announced plans for nonsegregated classes at some level in September 1964. 58/ In Lee and Putnam Counties, the county junior college for Negroes is to be

---

52/ So. School News, Dec.1963, p.7.

53/ Fla. Stat. sec.955.12 (1927).

54/ Chattanooga (Tenn.) Times, Apr.4,1964, p.5.

55/ Florida Times-Union (Jacksonville) May 28,1964, p.22.

56/ Tillman v. Board of Public Instruction (Volusia County), Civ. No.4501-J, S.D.Fla.,Aug.21,1962, 7 Race Rel.L.Rep.687 (1962).

57/ So. School News, May 1964, p.3A.

58/ So. School News, Aug. 1964, p.7. Suit was filed against the Alachua school board on July 2, 1964. Wright v. Board of Public Instruction (Alachua County)Civ.No.367,N.D.Fla.

closed and Negro students transferred to the college formerly reserved for white students. 59/

59/ Ibid.

ADDENDUM

Alachua County

On September 1, 1964, 11 Negro pupils broke the color barrier in this county's schools by enrolling in formerly white schools at all levels. No incidents took place. (Miami (Fla.) Herald, Sept. 2, 1964, p.10D.)

Bay County

Four Negro students, dependents of military personnel stationed in the county, transferred to two white high schools in September. Their applications were accepted under a desegregation plan ordered by a Federal court. (Birmingham (Ala.) News, Sept. 1, 1964, p.22.)

Brevard County

On August 10, 1964, the Federal district court approved the desegregation plan submitted by the school board on July 2 after amendment and modification. The court extended the time provided for parents to indicate whether they wanted their child or children to enroll in the school nearest their residence where their race was numerically predominant or the nearest school. It also ordered the board to make reasonable efforts through newspaper, radio and other media to notify the parents of their rights under the plan. The school board was ordered not to use the criteria of race or color in the assignment of pupils, teachers, principals and other supervising or supporting school personnel. Desegregation of the teaching staff was ordered to commence with the opening of the 1965-66 school year and to be implemented continuously thereafter. Jurisdiction was retained by the court to assure the full implementation of the program and to make further orders or changes as might be necessary. (Weaver v. Board of Public Instruction (Brevard County), Civ.No. 1172-Orl., M.D.Fla., Aug. 10, 1964.)

Duval County (Jacksonville)

On August 13, 1964, a Federal district court denied a motion to accelerate the previously approved grade-a-year desegregation plan but gave notice "to all concerned that acceleration will be given strong consideration during the spring of 1965, with a view to putting it into effect in September 1965." The court said that the initial transition in September 1963 was, on the whole, orderly and that the success was not fairly evaluated by a consideration of numbers alone. Further, the court said, it was to be expected that

there would be considerably larger numbers of Negro pupils in the first and second grades in September 1964. The two year experience under the garde-a-year plan would provide a satisfactory basis upon which to consider future acceleration in the view of the court.

The court also deferred the immediate implementation of its earlier injunction against the assignment of teachers, principals and other school personnel on a racial basis, but said that serious consideration would be given to this question also in the spring of 1965. (Braxton v. Board of Public Instruction (Duval County), Civ. No.4598-J, M.D.Fla., Aug. 13, 1964.)

On September 1, 1964, 62 Negro pupils entered the first and second grades under the court-approved grade-a-year plan put into effect in September 1963. This was in contrast with 13 Negro pupils in the first grade in 1963-64. (Miami (Fla.) Herald, Sept. 2, 1964, p.10D.)

Hillsborough County

On August 14, 1964, plaintiffs motion for further relief was denied by the district court in the Mannings case. The court said that desegregation of the county schools was proceeding at an encouraging pace. The court found that under the board's grade-a-year plan 84 Negro pupils attended first grade in six formerly white elementary schools and by transfer under the Florida Pupil Assignment Law 44 Negro pupils attended grades 2 through 6 in four formerly white schools, 18 Negro pupils attended three formerly white junior high schools and six Negro students attended two formerly white senior high schools. The court further found that one elementary school was completely desegregated in grades 1 through 6, having 104 white and 133 Negro pupils and that vocational schools had extensive Negro enrollments. The court said that full publicity had been given to the extension of the desegregation plan to include the second grade of all elementary schools at the opening in September 1964. The court said further that it was aware of the decisions of the United States Court of Appeals for the Fifth Circuit involving Savannah, Mobile and Birmingham schools but that it preferred that the school board have the benefit of the additional year's experience before considering acceleration. The court concluded however, that upon motion by the court, plaintiffs or defendants, the issue of acceleration would be considered in the spring of 1965. (Manning v. Board of Public Instruction (Hillsborough County), Civ.No.3554-Civ-T, M.D. Fla., Aug. 14, 1964.)

Sixteen county schools had both white and Negro students in attendance at the opening of schools in September 1964. Two of these schools had Negro students for the first time. No incidents took place. (St. Petersburg (Fla.) Times, Sept. 2, 1964, p.6B.)

Lee County

On August 19, 1964, the county school board announced the desegregation of an elementary school and a junior college in the fall of 1964. This decision was in response to a suit filed by the NAACP. (Miami (Fla.) Herald, Aug. 20, 1964, p.1C.)

Marion County (Ocala)

Two Negro pupils became the first members of their race to register at formerly white Marion County public schools on August 28. (St. Petersburg (Fla.) Times, Aug. 28, 1964, p.2B.)

St. Johns County

On August 22, 1964, the county school board informed the district court that the public school system was completely racially integrated. This was in response to an order issued by the court for a complete report on the progress of integration in the schools. The court said as a result of the report a decree would be issued early in the Scott case. (Florida Times-Union (Jacksonville) Aug. 21, 1964, p.26.)

Fourteen of the 21 Negro students registered for four formerly white public schools in St. Johns County were present on opening day. (Miami (Fla.) Herald, Sept. 2, 1964, p.10D.)

On August 7, 1964, the Federal district court granted the defendants' motion to dismiss in the Singleton case on the ground that the case was moot since none of the named plaintiffs were being held in custody, "real or constructive," by any of the named defendants. (Singleton v. Board of Commissioners, Civ.No.963, N.D. Fla., Aug. 7, 1964.)

Catholic parochial schools began accepting Negroes in their formerly white schools for the first time in the 1964-65 school year in St. Johns County. (Florida Times-Union (Jacksonville) Aug. 25, 1964, p. 18.)

Volusia County

On August 14, 1964, the Federal district court denied a motion for acceleration of the grade-a-year desegregation plan put into effect in September 1963. The court said that the transition from a segregated to a desegregated school system was proceeding smoothly. In the 1963-64 school year there were 27 Negro pupils attending formerly white schools and 5 white pupils attending a formerly all-Negro school. Further, 42 additional Negro pupils had been assigned to white schools in September 1964 and a junior college and community college had been "totally integrated." The court concluded that consideration of acceleration should be deferred "at least until the early spring of 1965 when plans are being made for the opening of the schools in September 1965." The implementation of the earlier injunction against racial assignment of teachers, principals and other school personnel also was deferred. (Tillman v. Board of Public Instruction (Volusia County), Civ.No.4501-J, M.D.Fla., Aug. 14, 1964.)

Georgia

General

Prior to September 1963, Atlanta was the only desegregated school district out of the 181 districts in Georgia having both white and Negro pupils. 1/ The number was increased to four in the 1963-64 school year. School desegregation began in Chatham County (Savannah) in September 1963, 2/ and in Clarke County (Athens) by the voluntary action of the school boards. 3/ On August 13, 1963, the Glynn County (Brunswick) school board announced a voluntary plan of limited desegregation of the county's only white high school. 4/ However, desegregation in Glynn County was delayed for about three weeks because on August 27, the day before the schools were to open, a Federal district court judge, at the request of white pupils and their parents, issued a temporary injunction restraining the board from proceeding with desegregation of schools. 5/

In October 1963, four Negro pupils were enrolled in two formerly white technical schools in DeKalb County 6/ which, although a part of the Atlanta metropolitan area, is a separate school district. 7/

Additional desegregation at the opening of school in the fall of 1964 is reported in the addendum.

1/ So. School News, Sept.1963, p.8; Jan.1964, p.9. In September 1963 Atlanta had 153 Negroes attending grades 9-12 in 10 predominantly white schools. In Atlanta, 52 percent of the total enrollment is Negro. In Chatham, Clarke and Glynn Counties, the enrollment is 39, 35, and 30 percent Negro, respectively.

2/ See text infra note 16.

3/ See text infra note 36.

4/ See text infra note 25.

5/ So. School News, Sept.1963, p.8.

6/ Id. Nov.1963, p.9.

7/ Appendix table 1, lists only four school districts in Georgia as desegregated. DeKalb County is not included in the four. Southern Education Reporting Service classifies the technical school as a special category school.

Atlanta

Atlanta began its third year of school desegregation in September 1963, and 153 Negro pupils, in grades 9 through 12, were enrolled in formerly all-white schools. 8/ However, Negro parents, dissatisfied with the pace of school desegregation, filed an appeal to the United States Supreme Court from a decision of the Court of Appeals for the Fifth Circuit, which had upheld Atlanta's grade-a-year desegregation plan on the ground that it was achieving sufficient progress and under its operation racial discrimination would be completely eliminated with deliberate speed. 9/

The United States Attorney General appeared in the case at the Supreme Court level, as a friend of the court, and supported the plaintiffs' argument that initial assignment by race is unconstitutional, and said "even the most generous transfer provision cannot save a plan under which students are initially assigned by race." 10/

In the argument before the Supreme Court the parties disagreed sharply as to the facts. The disagreements were attributable to the fact that the school board had revised the plan since the lower courts' decisions. Several of the criteria for determining the right to transfer to which plaintiffs had objected were to be eliminated from the plan in considering applications for transfer in September 1964. On April 8, 1964, after the argument before the Supreme Court and before the filing of supplemental memoranda requested by the Court, the school board adopted another resolution which again changed the desegregation plan. This resolution stated that for transfer in September 1964, the pupil's choice, proximity to school, and school capacity would be the only factors considered in making assignments for the desegregated grades 8 to 12. 11/

The Supreme Court sent the case back to the Federal district court for hearing, in light of the developments at and since the

---

8/ So. School News, Sept. 1963, p.8.

9/ Calhoun v. Latimer, 321 F.2d 302 (5th Cir.1963).

10/ Brief for the U.S. as amicus curiae p.34, Calhoun v. Latimer, infra note 11.

11/ Calhoun v. Latimer, 377 U.S.263 (1964).

argument saying: "/w/e deem it appropriate that the nature and effect of the Board's resolution of April 8, 1964, be appraised by the District Court in a proper evidentiary hearing." 12/ The Court commended Atlanta on its "efforts to effect desegregation." However, it instructed the district court to test the Atlanta plan in the light of three recent Supreme Court decisions 13/ which suggested that the acceptable rate of desegregation immediately after the 1954 decision may no longer be sufficient 10 years later. 14/

On July 30, 1964, the Federal district court refused to order the Atlanta school board to speed up the pace of school desegregation. The court said that the school board had shown a spirit of fine cooperation in carrying out the grade-a-year plan. 15/

Chatham County (Savannah) and Glynn County (Brunswick) 16/

The public schools of Savannah were desegregated in September 1963 while litigation was pending. 17/ When the Savannah schools opened on September 3, 1963, 14 Negro 12th-graders entered two previously all-white schools. 18/ It is reported that the number had increased to 21 by November. 19/ No incidents have been reported

---

12/ Id. at 289.

13/ Watson v. City of Memphis, 373 U.S. 526 (1963); Goss v. Board of Education (Knoxville), 373 U.S. 683 (1963); Griffin v. County School Board (Prince Edward County), 377 U.S.218 (1964).

14/ Calhoun v. Latimer, supra note 11.

15/ Calhoun v. Latimer, Civ.No. 6298, N.D.Ga.

16/ The city listed in parenthesis is the largest in the county.

17/ 1963 Staff Report of the U.S. Commission on Civil Rights, Public Education 19-20.

18/ So. School News, Sept. 1963, p.8.

19/ Id. Jan. 1964, p.9.

in connection with the school desegregation. 20/ Some Negro students are reported to be participating in school clubs, the band, and the R.O.T.C. 21/ The desegregation plan submitted by the school board and accepted by the district court called for school desegregation at the rate of one grade per year, beginning with the 12th grade. 22/ Negro parents, objecting to the 12 years required for complete desegregation, appealed to the Court of Appeals for the Fifth Circuit. The appeals court ruled that desegregation of Savannah schools must proceed at a faster pace. 23/ The court stated that the import of recent decisions by the Supreme Court was that "desegregation on the basis of one grade per year over a twelve-year-course is no longer satisfactory." 24/ The court noted that it had directed the Birmingham and Mobile (Ala.) systems to desegregate the first, 10th and 11th grades in the fall of 1964 (grade 12 was desegregated in September 1963). The court said nothing less was acceptable for the Georgia school systems. 25/

The Glynn County school board adopted a voluntary plan of desegregation in August 1963 and announced that six Negro students

---

20/ Ibid.

21/ Ibid. Mayor Malcolm McLean announced that anyone interfering with the desegregation would be prosecuted under a municipal law prohibiting interference with school business or children attending school. Id. Sept. 1963, p.8.

22/ Supra note 17, at 20.

23/ Stell v. Savannah-Chatham County Board 333 F.2d 55 (5th Cir. 1964).

24/ Ibid.

25/ See Armstrong v. Board of Education (Birmingham), 333 F.2d 47 (5th Cir.1964); Davis v. Board of School Commissioners (Mobile Co.), 333 F.2d 53 (5th Cir.1964).

would be enrolled at the white high school. 26/ However, one day before the schools were scheduled to open, parents of several white students obtained a Federal court injunction barring the enrollment of the Negroes. 27/ Thereafter, the six Negroes were permitted to intervene in the case and sought an order requiring the desegregation of the entire school system. 28/ On September 6, 1963, the Federal district judge who had barred their admission entered an order directing the board to prepare and submit a plan for reorganization of the county schools on a nonracial basis. 29/ However, he refused to reverse his order barring admission pending the outcome of the litigation. 30/ The Negro children, as intervenors, appealed the "barring" order to the Court of Appeals for the Fifth Circuit. The appeals court on September 12, 1963, vacated the order of the district court and directed the lower court to enjoin the school board from refusing to admit, enroll or educate the six Negro plaintiffs in the white high school during the 1963-64 school year. This order was to remain in effect until the court of appeals heard the case on the merits. 31/ On September 16, 1963, the six Negro children, originally assigned to the high school by the board, enrolled in the formerly white high school without incident. 32/

The Glynn County and Savannah-Chatham cases were consolidated at the appeals level, and the court reduced the time allowable for transition from a segregated to a desegregated school system from 12 years to six by ordering a grade-a-year progression of

---

26/ So. School News, Sept. 1963, p.8.

27/ Gibson v. Glynn County Board, Civ.No.717, S.D. Ga., Aug. 27, 1963, 8 Race Rel. L. Rep.943 (1963).

28/ Harris v. Gibson and the Glynn County Board, Civ.No.717, S.D. Ga., Sept. 6, 1963, 8 Race Rel. L. Rep. 943 (1963).

29/ Id. at 944.

30/ Ibid.

31/ Harris v. Gibson and the Glynn County Board, 322 F.2d 780 (5th Cir. 1963).

32/ So. School News, Oct.1963, p.7.

desegregation from grade one up as from grade 12 down. 33/ In July 1964 the school superintendent announced that grades 9 and 10 would be desegregated in September in compliance with orders of the court of appeals. 34/ However, the superintendent said that the report that the court had ordered the first grade desegregated was erroneous. He stated that Chatham County was ordered to desegregate the first grade in addition to the high school grades, but that first grade desegregation was not specified for Brunswick. 35/

Clarke County (Athens)

The Clarke County Board of Education approved the applications of five Negro pupils to transfer to formerly all-white schools. The pupils were in one elementary, one junior, and one senior high school. 36/ In taking this action voluntarily the school board reportedly said that it preferred separate schools and believed that a majority of both races did, but recognized that such separation could not be legally compelled or required. 37/ (Athens is the site of the University of Georgia, which was desegregated amid disorder and demonstrations in January 1961.) 38/

Desegregation Scheduled Fall of 1964

Several lawsuits seeking desegregation of Georgia school districts are pending, and the prospects are that additional school districts in the State may be desegregated in September 1964.

Dougherty County--In a suit brought by 19 Negro children and their parents against the Dougherty County Board of Education (Albany), a Federal district court ordered desegregation at the rate of one grade a year, beginning with grade one, to be effective in September

---

33/ Stell v. Savannah-Chatham County, supra note 23.

34/ So. School News, Aug. 1964, p.6.

35/ Ibid.

36/ So. School News, Jan. 1964, p.9.

37/ Id. Sept. 1963, p.9.

38/ 1961 Report of the U.S. Commission on Civil Rights, 2 Public Education 168-69.

1964. On March 20, 1964, the Court of Appeals for the Fifth Circuit modified the plan, making it applicable to the first two grades and to the county vocational schools for the 1964-65 school year rather than only to the first grade as originally contemplated. 39/ The court postponed decision on the request for desegregation of teaching staff and administrative personnel, an issue reserved by the district court. The court of appeals also withheld final judgment on the adequacy of the grade-a-year progression of desegregation pending a decision of the Supreme Court in the Atlanta case. 40/

Two months after the Supreme Court's decision in the Atlanta case, the court of appeals ruled again in the Dougherty County case: 41/

> We have carefully considered the record in this case, and conclude that a minimum requirement of the Board of Education of Dougherty County is that it desegregate the first two grades of school as heretofore required by the preliminary order entered by this Court, and that it also commence desegregation with the twelfth grade, in order that every Negro child in the Dougherty School System have at least an opportunity to enjoy a desegregated education during his school career.

The court of appeals directed the district court to order the board to carry out all assignments already made of Negro pupils to all-white schools. In addition the school board was to be directed to give all first and second graders their choice of attending either the nearest white or Negro school. In event the schools were overcrowded a preference was to be given to those pupils residing nearest to the school. 42/ The court directed that the same choice be made available to 12th grade students. The court

---

39/ Gaines v. Dougherty County Board of Education, 222 F.Supp.166 (M.D.Ga.1963), modified, 329 F.2d 823 (5th Cir.1964).

40/ Ibid.

41/ Gaines v. Dougherty County Board of Education, Civ.No.20984, 5th Cir., July 30, 1964.

42/ Ibid.

of appeals also required that "each person attending the vocational schools operated by the defendants shall have the choice of attending the school of his choice, whether the formerly Negro or the formerly white vocational school." 43/

Under the order of the court of appeals the district court was directed to require that three additional grades a year be desegregated each year thereafter, one from the top,down and two from the bottom up. (The cases cited by the court of appeals in support of this order required the desegregation of two grades a year after the initial desegregation of three grades in September 1964. In the cases cited the progression after the first year was to be at the rate of one grade a year from the top,down, and one grade a year from the bottom, up.) The court said that the school board could abolish the choice-of-schools rule as to future desegregation if it assigned all pupils to the schools nearest to their residence without regard to race or color. 44/

Bibb County--A Federal district court ordered Bibb County (Macon) to submit by February 24, 1964, a plan for a "prompt and reasonable start" toward public school desegregation. The board filed a reverse grade-a-year plan which was approved by the court. 45/ Negro parents, on behalf of 44 children, appealed the case.

Rome--A suit was filed on behalf of two Negro students to enjoin the school board from operating a vocational-technical school on the basis of race. Subsequent to the filing of the action, the school board announced a policy of admission without regard to race and nine Negro students were admitted to the school for courses in electricity and nursing. The named plaintiffs were not among those students admitted. 46/ On April 7, 1964, a Federal district court denied plaintiffs relief on the ground that progress had been made

---

43/ Ibid.

44/ Ibid.

45/ Bivens v. Board of Public Education (Bibb County), Civ.No.1926, M.D.Ga., Apr. 27, 1964. So. School News, Feb. 1964, p.7. It was reported that 26 Negro pupils would attend previously white schools in Bibb County in September 1964. Macon (Ga.) Telegraph, June 6, 1964, p.1.

46/ Johnson v. Georgia State Board, Civ.No.1523, N.D.Ga., Apr. 7, 1964.

in desegregating the school. However, the court declared that since the school was publicly owned and operated, legally it could not consider applications for admission on the basis of race or color. The court concluded that one plaintiff who had fulfilled all requirements was entitled to admission and the other plaintiff should be admitted if she completed her application and fulfilled all requirements. 47/

Muscogee--Suit was filed on behalf of five Negro children on January 13, 1964, to desegregate the schools in Muscogee County (Columbus). 48/ In the school board's answer to the complaint it stated that four Negro pupils had been accepted for assignment to white schools in September 1964. The school board also announced a grade-a-year desegregation plan to begin in grade 12 in September 1964. The plan was objected to by the Negro plaintiffs but upheld by the Federal district court as "reasonable and legally adequate to accomplish the desired results." 49/ The court said that the plan had been adopted voluntarily by the school board before suit was filed. The court expressed its complete confidence in the school board's integrity and good faith. 50/ On May 28, 1964, the plaintiffs filed a notice of appeal.

Richmond--On June 17, 1964, suit was filed to desegregate the schools of Richmond County (Augusta). 51/ In July the county school board voted unanimously to desegregate grades one through three in September 1964. 52/ At the date of writing it was unknown whether the board's action was satisfactory to the plaintiffs in the litigation. The case has not been heard on the merits.

47/ Ibid.

48/ Lockett v. Board of Education (Muscogee County), Civ.No.991, M.D.Ga., Apr. 22, 1964.

49/ Ibid.

50/ Ibid.

51/ Acree v. Richmond County Board of Education, Civ.No.1179, S.D.Ga.

52/ So. School News, Aug. 1964, p.2.

ADDENDUM

General

A Georgia State education official warned on August 11, 1964, that school systems in the State could conceivably lose $55 million in Federal aid for the 1964-65 school year under terms of the Civil Rights Act of 1964. The official reportedly stated that "/t/his places the initiative in the hands of the local boards of education," and that Federal officials would ask local school boards whether they intended to desegregate their schools. If there were no plans all Federal funds could be cut off, he said. (Atlanta (Ga.) Constitution, Aug. 12, 1964, p.16.)

In an unannounced move, the Americus school board enrolled four Negro students at the city's formerly white high school. Two Negro students also entered a formerly white high school at Marietta under a voluntary plan. (Macon (Ga.) Telegraph, Sept. 1, 1964, p.8A.) One of the Negro students at the biracial school at Americus reported that he was attacked by some white classmates. (Macon (Ga.) Telegraph, Sept. 2, 1964, p.3.)

Ten Negro pupils were voluntarily admitted to four elementary schools in Augusta (Richmond County) under a voluntary plan of desegregation. A desegregation suit was pending against the county school board. (So. School News, Sept. 1964, p.15.)

Negro pupils seeking to enter white schools in Monroe and Covington were reported to have been turned away by school officials. (Atlanta (Ga.) Daily World, Aug. 29, 1964, p.1.)

Atlanta

School desegregation reached the eighth grade level under the city's reverse grade-a-year plan, and the superintendant reported that between 800 and 900 Negro pupils were enrolled in formerly white schools for the 1964-65 school year. (Atlanta (Ga.) Constitution, Sept. 1, 1964, p.1.) At one formerly white school, where the number of Negro and white pupils was about equal, a fight broke out, and thereafter several white pupils sought transfers to other schools. Some white pupils boycotted classes. (N.Y. Times, Sept. 10, 1964, p.25C.)

One school was picketed by Negro parents and one person was arrested at the site of the school before the 1964-65 session opened in Atlanta. The parents were protesting the assignment of Negro pupils to a vocational school which had been renovated and converted into a junior high school for Negro seventh and eighth graders. The parents claimed that the school building had been declared a firetrap, that it was too close to downtown business and commercial establishments, that it was all-Negro in enrollment, and that there was space available for the pupils in nearby predominantly white schools. A petition signed by 75 Negro parents was forwarded to the local U.S. Attorney charging that the school board's action resulted in resegregation in violation of the Civil Rights Act of 1964. (Atlanta (Ga.) Constitution, Aug. 27, 1964, p.18 and Aug. 31, 1964, p.6; Atlanta (Ga.) Daily World, Aug. 19, 1964, p.1 and Aug. 28, 1964, p.1.)

Bibb County

Three previously all-white high schools were desegregated in the county without incident on September 1, 1964, as 16 Negro students enrolled in previously all-white high schools pursuant to a Federal court order. (Macon (Ga.) Telegraph, Sept. 2, 1964, p.1.)

Dougherty County

On September 3, 1964, Supreme Court Justice Hugo L. Black refused to stay a lower Federal court order to speed up school desegregation in Dougherty County. (N.Y. Times, Sept. 4, 1964, p.11C.)

Glynn County

The Glynn County school board transferred 17 Negro pupils to formerly white schools for the 1964-65 school year, making a total of 19 Negro pupils enrolled in biracial classes. This action was taken in compliance with the directive of the United States Court of Appeals for the Fifth Circuit. (Atlanta (Ga.) Constitution, Aug. 26, 1964, p.13.)

Houston County

In August 1964 the Houston County school board announced a voluntary plan of desegregation to begin the second semester of the 1964-65 school year. Warner Robins, one of the principal cities in the county, is the site of Warner Robins Air Force Base. More than $1 million in Federal funds goes into the county annually, primarily as a result of the military installation located there. (Atlanta (Ga.) Daily World, Aug. 14, 1964, p.7; So. School News, Sept. 1964, p.15.)

In late August 1964 several Negro pupils sought to enter all-white schools in Warner Robins; however, they were turned away by school officials who stated that desegregation was not scheduled to begin until the second semester of the 1964-65 school year. (Macon (Ga.) Telegraph, Aug. 29, 1964, p.1 and Sept. 1, 1964, p. 4B.)

Kentucky

General

Twenty more Kentucky school districts initiated desegregation in the fall of 1963. 1/ Two of the 20 districts desegregating for the first time acted under Federal court order. 2/ Likewise, Federal courts forced several districts to extend desegregation to the elementary level, the high schools having desegregated earlier. 3/ Kentucky had 204 school districts in 1963-64 of which 165 had pupils of both races; 153 operate at least some nonsegregated schools. Of the 12 biracial districts still operating only segregated schools, 11 have "open enrollment plans" based on choice.4/Graves County alone 5/--as compared with five a year earlier 6/--had not adopted a desegregation plan. Developments after August 1 are covered in the addendum.

1/ So. School News, Oct. 1963, p.4.

2/ Mason v. Jessamine County Board, Civ.No.1496, E.D.Ky., Jan. 20 and July 16, 1963, 8 Race Rel.L.Rep.75 and 948 (1963); Lawrence v. Board of Education (Bowling Green), Civ.No.819, W.D.Ky., Apr. 11, 1963. 8 Race Rel.L.Rep.74 (1963).

3/ Mack v. Frankfort Board of Education, Civ.No.216, E.D.Ky., June 17, 24 and July 2, 1963, 8 Race Rel.L.Rep.945 (1963); Senters v. Board of Education (Mayfield), Civ.No.1284, W.D.Ky., Oct. 31, Nov. 8, and Dec. 14, 1962, 8 Race Rel.L.Rep.1420 (1963); Walker v. Richmond Board of Education, Civ.No.241, E.D.Ky., June 14, July 10 and 23, 1963, 8 Race Rel.L.Rep.950 (1963).

4/ So. School News, Jan. 1964, p.4. The 11 districts with plans but no biracial classes are Cloverport, Earlington, East Bernstadt, Ferguson, Gerrard County, Glasgow, Greenup County, Jenkins, Montgomery County, Mount Sterling, and Shelby County. Ibid.

5/ Ibid.

6/ 1963 Staff Report of the U.S. Commission on Civil Rights, Public Education 22.

Although "open enrollment" or "free choice" plans were widely adopted voluntarily by Kentucky school boards in the 1950's, 7/ they have been rejected by Federal district courts in recent decisions as tending to perpetuate segregation. Geographic zoning has been required for each school in these cases. 8/ Four of the 11 "open enrollment" districts also permit Negro high school students, upon the request of their parents, to attend schools in other districts or to attend Lincoln Institute, a Negro public school, as boarding students. 9/ These practices were in effect prior to the Supreme Court 1954 decision.

During the 1963-64 school term the State Department of Education completed a survey of all-Negro schools. The study revealed that of the 348 such schools in existence in 1955, 129 were still operating on that basis. 10/ The all-Negro schools included 102 elementary schools, with a total enrollment of 24,560 pupils, and 27 secondary schools. 11/ Twenty-two Negro elementary schools had only one teacher, and 10 secondary schools enrolled fewer than 100 pupils. 12/

Two all-Negro schools have been closed since the issuance of the report. On March 7, 1964, the Floyd County superintendent of schools announced that Palmer Dunbar, an all-Negro high school,

---

7/ Staff Reports submitted to the U.S. Commission on Civil Rights, Civil Rights U.S.A./Public Schools Southern States: 1962 at 45-46.

8/ Mason v. Jessamine County Board, supra note 2; Mack v. Frankford Board of Education, supra note 3; Walker v. Richmond Board of Education, supra note 3. In the latter case, the court retained jurisdiction "for further consideration in the event that experience with the operation of the /geographic/ plan fails to bring about reasonable integration of the school system." 8 Race Rel.L.Rep.953 (1963).

9/ Supra note 7 at 40-41.

10/ So. School News, Feb. 1964, p. 3.

11/ Ibid.

12/ Ibid.

would be discontinued at the end of the school term. 13/ The Somerset Board of Education acted to end segregation by abandoning its Negro elementary school. 14/

The following table shows the number of Negroes enrolled in schools also serving white pupils from 1955 to the present: 15/

Total Pupils Enrolled

School Year	Total Pupils In Desegregated Districts	Total Pupils In Desegregated Schools	
		White	Negro
1955-56	97,903	16,688	313
1956-57	325,478	120,307	8,017
1957-58	362,269	133,182	10,897
1958-59	402,000	149,392	11,492
1959-60	477,089	165,645	16,329
1961-62*	466,996	200,581	22,021
1962-63	482,382	221,402	24,346
1963-64	547,575	288,360	29,855

*Report not issued for 1960-61.

The State Department of Education report pointed out that although assignment of Negro teachers to desegregated schools had been slow, 507 Negro teachers (34 percent of the State's total) taught biracial classes during the 1963-64 school year. The following table accounts for the number of Negro teachers teaching biracial classes in each of the last eight years. 16/

13/ Louisville (Ky.) Courier-Journal, Mar. 8, 1964, p.15.

14/ Baltimore (Md.) Afro-American, Feb. 29, 1964, p.18.

15/ So. School News, Jan. 1964, p.4.

16/ Ibid. There was a total of 1,502 Negro teachers for the 1963-64 school year.

Teachers in Biracial Schools

School Year	Total Teachers In Desegregated Districts	Total Teachers in Desegregated Schools	
		White Teachers	Negro Teachers
1955-56	3,496	639	2
1956-57	11,889	4,708	113
1957-58	13,384	5,475	172
1958-59	13,400	5,915	138
1959-60 *	14,406	6,808	287
1961-62	16,283	7,917	382
1962-63	18,950	9,154	133
1963-64	22,999	12,045	507

*Report not issued for 1960-61.

Where the question has been raised, Federal district courts in Kentucky have continued the policy, begun in 1963, of requiring the nonracial assignment of teachers and other school personnel, as well as pupils. 17/

The State Board of Education is studying a proposal designed to deny State funds and accreditation to local districts which, after one year of probation, continue to refuse to abolish racial segregation in public schools. 18/ The proposed regulation would consider a school to be racially segregated where either the faculty or enrollment is all-Negro. 19/ Under this definition, many

---

17/ See supra note 6, at 55. In addition, Mason v. Jessamine County Board, supra note 2; Lawrence v. Board of Education (Bowling Green), supra note 2; Mack v. Frankfort Board of Education, supra note 3; Rimbert v. Knott County School Board, Civ.No.824,E.D.Ky., Sept. 24, 1963, 8 Race Rel. L. Rep. 1419 (1963).

18/ So. School News, July 1964, p.9. The proposal was put before the board by Harry McAlpin, its only Negro member.

19/ Ibid.

districts now classified as desegregated would be considered to be racially segregated because they continue to operate one or more all-Negro schools.

ADDENDUM

Mount Sterling

On August 26, 1964, 90 Negro children registered for the first time at white schools of the city. (Louisville (Ky.) Courier-Journal, Aug. 27, 1964, p.1, sec. 2.)

On August 27, 1964, the school board rescinded its policy of complete integration and adopted a new plan which called for desegregation of grades 6 and 9 in September 1964, grades 7, 10, 11, and 12 in the fall of 1965, and grade 8 in 1966. (Louisville (Ky.) Courier-Journal, Aug. 29, 1964, p.1, sec. 2.)

On August 28, 1964, the Negro pupils were told that only those in grades six and nine would be accepted. The superintendent charged that the Negroes had broken an agreement by registering three times the number of children agreed upon. He said that it was understood that the white elementary and high school would accept from 40 to 50 Negro children but that 125 registered. The attorney for the Negro parents said there was no such agreement. The Negro parents said they would keep their children home from school until the matter was settled to their satisfaction. (Louisville (Ky.) Courier-Journal, Aug. 29, 1964, p.1, sec. 2.)

On August 29, 1964, the school officials said they would not alter the desegregation plan despite the threat of Negro parents to file a suit and keep their children out of school.(Louisville (Ky.) Courier-Journal, Aug. 30, 1964, p.21, sec. 1.)

On the evening before the proposed boycott, August 30, 1964, a Negro school was destroyed by fire. The school was burned while firemen were answering what was reported to be a decoy call at a white school at the other end of the city. Two policemen who discovered the blaze said they could smell kerosene and reported seeing a large can of kerosene burning under the steps. The school board met and decided to suspend the operation of the school system until September 8. State police were alerted for possible guard duty around the three white schools of the city. (Evening (D.C.) Star, Aug. 31, 1964, p.4B.

On August 31, 1964, State police withdrew from the city of Mount Sterling keeping 30 troopers on alert at nearby cities. (Louisville (Ky.) Courier-Journal, Sept. 1, 1964, p.1, sec. 2.)

On September 1, 1964, the attorney for the Negro parents said that if the Mount Sterling school board did not adopt a satisfactory desegregation plan by September 2, he would file suit in a Federal district court.

The parents were seeking complete desegregation of schools, teachers and pupils, in addition to all school employees. (Louisville (Ky.) Courier-Journal, Sept. 2, 1964, p.1. sec. 2.)

On September 4, 1964, the Mount Sterling school board announced that all of the students in the school system "would attend the same school and use the same facilities." The board said that "in view of this material change in circumstances, /destruction of the Negro school/ it is impractical to continue the present gradual plan of desegregation." The 12 Negro teachers were to be assigned to formerly white schools. (Louisville (Ky.) Courier-Journal, Sept. 4, 1964, p.1 sec.1.)

Louisiana

General

In the 1963-64 school year, there were 460,589 white and 301,433 Negro children enrolled in public schools in Louisiana; 1,814 Negro students (0.6 percent of the State's total Negro enrollment) attended biracial schools. 1/ Reports on the changes at the opening of school in the fall of 1964 are summarized in the addendum.

On March 11, 1964, the Governor-elect, John J. McKeithen, reasserted resistance to school desegregation, saying: 2/

> I am prepared to make the sacrifice of standing in a school house doorway to resist integration attempts. . . should it be considered beneficial to the State by our finest constitutional lawyers.

On June 29, 1964, suit 3/ was filed attacking Louisiana's tuition-grant program. The petition charged that "diversion of such a large volume of public funds into these private schools makes such funds unavailable for use in the public schools." 4/ It was also alleged that the statute 5/ was unconstitutional because it presents a choice of "either refusing tuition grants or accepting them for use within a segregated system," which constituted a denial of due process and equal protection. 6/ During

---

1/ Appendix, table 2.

2/ New Orleans (La.) Times-Picayune, Mar. 11, 1964, sec.1, p.1.

3/ Poindexter v. Louisiana Financial Assistance Commission, Civ. No.14683, E.D.La.

4/ So. School News, July 1964, p.8.

5/ La. Acts 1958, No.258, p.850.

6/ New Orleans (La.) Times-Picayune, June 30, 1964, sec.1, p.1.

the 1963-64 school year the tuition-grant program provided grants-in-aid of up to $360 each to 11,000 pupils attending private nonsectarian schools. 7/

The director of the Louisiana Financial Assistance Commission stated that as a result of the passage of the Civil Rights Act, "there could be a rush of white students from public to private schools." He also said that grants-in-aid are provided for 11,000 students while the public school enrollment is more than 790,000 and that the State is not financially prepared for a huge upsurge in grants-in-aid. He suggested that a special session of the legislature might have to be called. 8/

Baton Rouge

The suit to desegregate the public schools of East Baton Rouge Parish (Baton Rouge) was filed in 1956, but it was eight years before any school desegregation actually occurred. 9/ Four high schools accepted 28 Negro seniors in September 1963. School enrollment for the year was an estimated 57,000, an increase of 1,500 to 1,700 over September 1962. Negroes made up 39 percent of the total enrollment. 10/

In the summer of 1963, under Federal court order to submit a desegregation plan, 11/ the board adopted a reverse stair step plan to begin with grade 12 and progress a grade a year downward. In April 1964 the East Baton Rouge Board of Education approved new school zoning for the 1964-65 school year which will give Negro students in the 11th and 12th grades a choice of attending either the white or Negro high school in their respective districts. One hundred and seven applications were received between April 14 and 18. Sixty-one transfers were approved. 12/

7/ So. School News, July 1963, p.8.

8/ Baton Rouge (La.) State Times, June 20, 1964, p.1.

9/ For discussion of Baton Rouge litigation, see 1963 Staff Report of the U.S. Commission on Civil Rights, Public Education 24.

10/ So. School News, Oct. 1963, p.15.

11/ Davis v. East Baton Rouge Parish School Board, 214 F.Supp. 624 (E.D.La.1963).

12/ So. School News, May 1964, p.6A, and June 1964, p.9.

In April 1964 a leader of the National Association for the Advancement of Colored People (NAACP) asserted that Negroes were discriminated against in the distribution of textbooks. The superintendent angrily accused the leader before the school board of not knowing what he was talking about. He said the only criterion used to determine the amount of money a school received for books was the enrollment of each school. He called on two Negro principals who verified this point. 13/

Several of the board meetings during the year were devoted to a discussion of whether two schools should be changed from white to Negro schools. It was decided not to do so for at least one year, after the citizens living in the area put pressure on the board. 14/ Negro schools being crowded, the local branch president of the NAACP protested to the board about the transfer of Negro pupils to other Negro schools instead of to nearer underutilized white schools. He said complete integration would solve the problem. 15/

Bossier Parish

The United States brought suit 16/ against the Bossier Parish school board to enjoin discrimination against the children of Federal military and civilian personnel in assignment to public schools. The Government contended that the school board had violated a contractual obligation of making school facilities available to the children of Federal personnel on the same terms as to other children "in accordance with the laws of the State." This obligation was alleged to have been part of the contract under which the board received Federal school construction funds. The United States agreed that when the statute 17/ was passed "Federal children" could be provided racially segregated schools in those

---

13/ Baton Rouge (La.) State Times, Apr. 24, 1964, p.1A.

14/ Id. Feb. 21, 1964, p.1A.

15/ So. School News, May 1964, p.6-A.

16/ U.S. v. Bossier Parish School Board, 220 F.Supp.243 (W.D.La. 1963).

17/ School Construction in Areas Affected by Federal Activities, sec.8, 72 Stat.551 (1958), 20 U.S.C. sec.636(B)(1)(f)(1958).

States whose laws so provided. But the United States contended that when State law changes so does the meaning of the assurance. Since segregation is unconstitutional the State law must be construed as prohibiting racial segregation. The United States also argued that it had implied authority to enforce the provisions of the contract to protect the efficiency of the military establishment and assure the legal use of Federal funds both of which were infringed by the school board's violation of the rights of Federal children under the 14th amendment.

The court granted the board's motion to dismiss on the grounds that the statutory assurance had not been violated and that the United States lacked standing to sue. The court held that: (1) the original intent of Congress was to provide funds despite segregation in the schools; (2) Congress since 1954 had repeatedly refused to withhold funds from segregated systems; (3) interpretation of the statutory assurances so as to permit aid to segregated schools does not render the statute unconstitutional because the Supreme Court decisions do not require immediate desegregation but allow a transitional period; and (4) Congress has authorized the attorney general to bring suits under the 14th amendment only in voting cases. As to the second argument, there was no proof that military inefficiency was caused and no child had applied for admission on a nonsegregated basis. The court of appeals heard arguments on the appeal on February 11, 1964. 18/ No decision had been reported at the date of writing.

Iberville Parish

On January 22, 1964, suit was filed by the NAACP against the Iberville Parish School Board seeking to enjoin the board from maintaining and operating a compulsory segregated school system and assigning students, teachers, and other school personnel on the basis of race. 19/ The school system contains eight schools with white enrollments totaling 3,200 pupils and nine schools with Negro enrollments totaling 4,600. 20/ A motion for a summary

---

18/ So. School News, Mar. 1964, p.14.

19/ Williams v. Iberville Parish School Board, Civ.No.2921, E.D. La.

20/ Baton Rouge (La.) State Times, May 22, 1964, p.2.

judgment was filed in June. 21/ On July 9, 1964, a Federal district court granted plaintiffs motion saying that every essential fact alleged by the plaintiffs had been admitted by the defendant school board. The school board was ordered to submit a desegregation plan within 60 days. The court agreed with statements made by the school board's attorney that more harm than good had been done to the public school system because of desegregation. However, the court said that it must follow the law. 22/

Jefferson Parish

An end to the operation of a racially segregated school system in Jefferson Parish was asked in a suit filed in a Federal district court on July 30, 1964. As an alternative the petition sought a desegregation plan. 23/ The action was taken on behalf of 16 Negro students who were among 25 who sought to enroll in an all-white parish high school. 24/ In their complaint the plaintiffs noted that desegregation at the rate of one grade a year was no longer sufficient. 25/ No decision had been reached at the date of writing.

Lake Charles

On February 3, 1964, the NAACP filed suits in a Federal district court to desegregate the schools in Lake Charles and Calcasieu Parish. 26/ Lake Charles, near the Texas border, is one of the State's five largest cities.

New Orleans

The Negro enrollment in formerly all-white schools tripled in New Orleans as compared to the previous year, and the city experienced its first school desegregation above the elementary school level as 14 Negro pupils were enrolled at a high school for superior students. One white student was also enrolled in a formerly

---

21/ So. School News, July 1964, p.9.

22/ Id. Aug. 1964, p.4.

23/ Danderidge v. Jefferson School Board, Civ.No.14801, E.D.La.

24/ New Orleans (La.) Times-Picayune, July 16, 1964, p.4, sec.2.

25/ So. School News, Aug. 1964, p.4.

26/ Conley v. Lake Charles School Board, Civ.No.9981-LC, W.D.La., Booker v. Calcasieu Parish School Board, Civ.No.9981-LC, W.D.La.

all-Negro school. The school enrollment was 95,186, or 2,986 more than were registered during the 1962-63 year. Of the total, 58,077 pupils were Negro and 37,109 were white. 27/

In May 1964, the New Orleans Parish School Board voted 4 to 1 to register kindergarten children without discrimination for the 1964-65 school year. The board acted in compliance with an interim order handed down by a Federal district court. 28/ The court said it would not order desegregation until the 1964-65 school year. The desegregation was ordered in accordance with the single zone system as grades 1 and 2 were during the 1963-64 school year. Under the single zone system one set of attendance lines are drawn for pupils of both races while under the dual zone system, one set of attendance lines are drawn for Negro children and Negro schools and one for white children and white schools. 29/ The single zone system will cover kindergarten through grade three for the school year 1964-65. 30/

On May 26, 1964, the board approved the administrative procedure for registration which took place on June 1 and 2. Kindergarten or first-grade children were to be registered by their parents or guardians at the school of their choice. If they lived in the attendance area of the school of their choice, an application for school assignment was to be executed. If the school chosen was not the one designated for the zone of residence, an application for a permit was to be executed. After verification of the data, first grade enrollments were to be made. Kindergarten enrollments were deferred until a later date. 31/ In October 1963 there were 99 kindergarten classes for 2,462 white children and 109 kindergarten classes for 2,234 Negro children. 32/

27/ So. School News, Sept. 1963, p.15.

28/ Bush v. New Orleans, 230 F.Supp.509 (E.D.La.1963).

29/ New Orleans (La.) Times-Picayune, May 26, 1964, p.1.

30/ So. School News, June 1964, p.9.

31/ Ibid.

32/ Ibid.

On March 9, 1964, the board repeated its rejection of a plea by a Negro parent-teacher group to broaden the base of desegregation in elementary schools and on March 15 the Negro group asked for employment and assignment of professional and nonprofessional staff without regard to race. The board said extending desegregation was not feasible from an administrative, financial or educational point of view, and that the gradual grade-a-year plan adopted by the board was more than sound. 33/

The board also set out its goals: 34/

(a) to raise the achievement level, and the quality of instruction, and to improve the curriculum of all the public schools of the parish;

(b) to increase the number of consultants, and assistant principals at the junior high school level and in the larger elementary schools;

(c) to alleviate overcrowded conditions which exist in some of the schools;

(d) to find the additional financial support necessary to accommodate the anticipated continued growth of the public school system; and

(e) to accomplish all the foregoing while continuing to comply with the orders of the Federal court to desegregate the public schools with all deliberate speed.

Negroes in New Orleans launched the first, unsuccessful attempt, to desegregate private schools receiving State grant-in-aid support. 35/ The schools were organized by white parents after court-ordered desegregation in 1961.

33/ Id. Apr. 1964, p.12.

34/ Ibid.

35/ Baton Rouge (La.) State Times, Jan. 24, 1964, p.1A; New Orleans Times-Picayune, Jan. 25, 1964, p.12I.

The Junior University of New Orleans, a private, segregated, white high school in financial trouble from its beginnings, closed. Teachers were asking for $9,200 back pay, suit was filed on a mortgage note of $359,838, and a construction firm filed a claim for $20,094. 36/ The school was ousted from its building which was sold at auction on February 28, 1964. Efforts to find new quarters failed as the sites chosen were held unsuitable by health authorities. The school was the largest private, nonsectarian school in the State, supported largely by the State-financed grant-in-aid program. 37/

St. Helena Parish

On February 27, 1964, the NAACP renewed its motion in the Federal district court to desegregate the schools of the parish. The court was asked to order the school board to present a plan for desegregation within 30 days from the date of the order. The original suit was filed September 4, 1952. Eight years later, the court ordered the board to put an end to segregation 38/ but did not require the board to submit a desegregation plan. No further action had been taken despite plaintiffs' motions filed in January 1962 39/ and March 1963 40/ for an order requiring the school board to submit a plan.

On March 6, 1964, the motion was taken under study. The court indicated that the St. Helena School Board would have "ample time" to work out a plan to desegregate--"more than 30 days." The court also noted that another Federal court had ordered the board to submit plans for desegregation but had not given the board a time limit. The court said the standard procedure is for the school board to wait until they had been given a definite deadline before submitting a plan. 41/

36/ So. School News, Mar. 1964, p.14.

37/ Id. Apr. 1964, p.12.

38/ Hall v. St. Helena Parish School Board, Civ.No.1068, E.D.La., May 24, 1960, 5 Race Rel.L.Rep.654 (1960), aff'd, 287 F.2d 376 (5th Cir.1961),cert.denied, 368 U.S.830 (1961).

39/ So. School News, Feb. 1962, p.8.

40/ Id. Apr. 1963, p.15.

41/ Baton Rouge (La.) State Times, Mar. 6, 1964, p.1A; Feb. 27, 1964, p.1A.

Early in June 1964, a mandamus proceeding was filed in the Court of Appeals for the Fifth Circuit against the Federal district judge in an effort to force the judge to order desegregation of St. Helena Parish schools. 42/ On June 8, 1964, the court gave the judge 20 days in which to answer the complaint that he was taking too much time to order the desegregation in St. Helena Parish. 43/ The judge then requested the Department of Justice to defend him in the mandamus suit by presenting reasons for delaying desegregation to work out "what I consider to be essential details." The Department of Justice refused, so the Attorney General of Louisiana accepted the defense duties. The defense argued that "mandamus, prohibition and injunction against judges are drastic and extraordinary remedies" which "should be resorted to only where appeal is clearly an inadequate remedy," that the judge has discretion in handling the docket. The defense continued that while the court of appeals "may have the authority, in certain cases, to require a district judge to make a ruling in a case pending before him, it most certainly does not have the authority in such a proceeding to direct what ruling he should make, or dictate the actual decision to be made in the ruling." 44/

On July 9, 1964, the Court of Appeals for the Fifth Circuit ordered the district judge to require the St. Helena Parish board to submit a school desegregation plan for the 1964 fall session and directed that the plans submitted "shall contain as a minimum a good faith start by the parish board in the schools of the parish within the requirements which have heretofore been set down by this court" in the Savannah, 45/ Mobile 46/ and Birmingham 47/ cases.

42/ Hall v. West, Civ.No.21580, 5th Cir., July 9, 1964.

43/ Ibid.

44/ So. School News, July 1964, p.9.

45/ Stell v. Savannah-Chatham Board of Education, 333 F.2d 55 (5th Cir.1964).

46/ Davis v. Board of School Commissioners (Mobile), 333 F.2d 53 (5th Cir.1964).

47/ Armstrong v. The Board of Education (Birmingham), 333 F.2d 47 (5th Cir.1964).

These decisions held that one grade a year is no longer fast enough to desegregate public schools. The court of appeals also chastised the district judge for the long delay and for his "'unusual' procedure in conferring with the members of the school board and its attorneys instead of all parties in the desegregation suit." 48/

On July 21, 1964, Federal District Judge E. Gordon West ordered the school board to file a gradual desegregation plan by July 24. He said that if the plan was not filed, "an immediate and full desegregation plan proposed by Negroes would take effect." 49/

On July 24, 1964, Federal District Judge West granted the St. Helena School Board's motion for a delay of school desegregation because the school board had asked the newly created United States Community Relations Service and the U.S. Commissioner of Education 50/ for help in solving its desegregation problem. The Service reported that it was the first civil rights case referred to it for solution.

St. John's Parish

Suit was filed on March 1, 1964 to desegregate the public schools of the parish. 52/ A motion for summary judgment was made and arguments were to be heard on July 1, 1964. 53/

Terrebonne Parish

Indian pupils filed suit in a Federal district court against the Terrebonne Parish School Board alleging that they were segregated in school on the basis of race. 54/ On August 29, 1963, the court

48/ Hall v. West, supra note 42.

49/ N.Y. Times, July 23, 1964, p.13C.

50/ Baton Rouge (La.) State Times, July 24, 1964, p.1.

51/ Washington (D.C.) Post, July 25, 1964, p.4A.

52/ Harris v. St. John the Baptist Parish School Board, Civ.No. 13212, E.D.La.

53/ New Orleans (La.) Times-Picayune, June 17, 1964, p.3.

54/ Naguin v. Terrebonne Parish School Board, Civ.No.13291, E.D.La., Aug. 29, 1963, 8 Race Rel.L.Rep.1421, 1422 (1963).

issued a preliminary injunction restraining school officials from denying plaintiffs equal access to the white public schools. All Indian pupils in the 11th and 12th grades were given an immediate option of "attending the formerly all-white or formerly all-Indian school nearest his home."55/ The board also was directed "to conduct a survey to determine the feasibility of prompt desegregation of the Indian and white races in the tenth grade in the public schools" of the parish, and to submit a plan by August 1, 1964 for the prompt and timely desegregation of the remaining grades in the public schools. 56/

55/ Ibid.

56/ Ibid.

ADDENDUM

Bossier Parish

On August 25, 1964, the district court's decision on the defendant school board's motion to dismiss on the ground of no standing in the Bossier Parish case was affirmed by the Court of Appeals for the Fifth Circuit. The court of appeals cited United States v. Madison County Board of Education (326 F.2d 237 (5th Cir.1964)) as controlling. (United States v. Bossier Parish School Board, Civ.No.20903, 5th Cir., Aug. 25, 1964.)

Iberville Parish

The parish school board approved a plan to desegregate the parish public schools which was to be submitted to the Federal district court on September 8, 1964 in the Williams case. (So. School News, Sept. 1964, p.9.

Jefferson Parish

On August 10, 1964, the Danderidge case, which was a suit to desegregate the public schools of Jefferson Parish, was taken under advisement by a Federal district court. The judge said from the bench that it was a foregone conclusion that States can no longer operate segregated schools, but that it was the duty of the court to see that the school system was not disrupted in the transition process. The court heard testimony from the school superintendent that the school system was one of the fastest growing systems in the State and that desegregation would impose severe administrative problems. (New Orleans (La.) Times-Picayune, Aug. 11, 1964, p.14A.)

New Orleans

On August 12, 1964, the Federal district court ordered desegregation of kindergarten in the public schools in September 1964. The order was in conformity with a decision rendered last year in the Bush case. In compliance with that decision the school board registered 127 Negro pupils for kindergarten in formerly white schools. The court took under study a petition to accelerate the grade-a-year desegregation plan of the parish public schools. (So. School News, Sept. 1964, p.9.) On August 25, 1964, the parish school board voted

to comply with the court order of August 12. (New Orleans (La.) Times-Picayune, Aug. 26, 1964, p.1A.)

On August 28, 1964, suit was filed to desegregate the Delgado Trades and Technical Institute in New Orleans. Plaintiffs asked that the court issue a temporary restraining order as well as a permanent injunction against Delgado officials from continuing the policy of segregation at the school. (New Orleans (La.) Times-Picayune, Aug. 29, 1964, p.23C.)

St. Helena Parish

On August 6, 1964, the Federal district court on its own motion approved and adopted a desegregation plan for the parish. The court stated that it had given due consideration to the facts developed by the United States Community Relations Service and the United States Commission of Education.

The plan provided that all assignments made prior to the order of approval, even though made on the basis of race would be considered adequate. However, from August 10 to August 31, all students in the 11th and 12th grades would be permitted to apply for a transfer to schools of their choice regardless of whether it was formerly a white or Negro school. Transfers were to be made in accordance with the current procedures of the parish school board. The school board was ordered to grant transfers liberally and "in no instance unreasonably" to deny them. However, the court specified certain factors as proper criteria to be applied in granting transfers. They were desires and wishes of pupils, parents and guardians; availability of space or other facilities; age of student as compared to the age of students attending the school to which a transfer was being requested; availability of requested or desired courses; scholastic record and aptitude as determined from his prior school record and the student's compatibility in this regard with the school to which transfer is requested. The order also gave the board authority to assign an applicant for transfer to a school other than that applied for if space was available in another school comparable to the school requested and closer to the applicant's residence. The order specified that only one transfer had to be granted to a pupil in any one school year but forbade denial of transfer solely on technical errors or omissions in the application.

The court directed the board to notify all the pupils requesting transfer in writing by August 15, 1964, of the action taken by the board. Specific reasons for denial had to be clearly set forth in the notification. Applicants were entitled to file objections to a denial with the superintendent not later than August 18, 1964 and to request a conference with the superintendent in order to discuss the reasons for rejection. If the appeal procedure had been followed and applicant wished further relief, it had to be sought through judicial proceedings.

Beginning with the 1965-66 school year, all initial assignments of pupils grades 9 through 12 were to be made on the basis of individual choice, reserving the right of the pupil to apply for a transfer and the right of the board to assign a pupil to a comparable school nearer the pupil's residence. In each succeeding year two additional grades were to be desegregated according to the plan. The method of initial assignment was made subject to all reasonable procedural requirements that the board might adopt. The dual or biracial school attendance system was to be abolished grade by grade as the plan progressed. The defendants were permanently enjoined from interfering with the orderly administration of the plan. (Hall v. St. Helena Parish School Board, Civ.No.1068, E.D.La., Aug. 6, 1964.)

On August 11, 1964, the United States Court of Appeals for the Fifth Circuit approved the desegregation plan ordered by the district court on August 6. (New Orleans (La.) Times-Picayune, Aug. 12, 1964, p.13C.)

Three Negro high school students enrolled in a formerly white school in St. Helena Parish on August 17, 1964 to mark the first school desegregation in this rural Louisiana parish. The court-ordered desegregation took place without incidents. (N.Y. Times, Aug. 18, 1964, p.M32.) Four Negro students had received transfers, but one changed her mind and gave no reason for her decision. (Baton Rouge (La.) State Times, Aug. 17, 1964, p.1A.)

On August 21, 1964, appeals of four Negro students whose application for transfer had been denied were turned down. The reasons for denial in the case of three of the students were reported to be listing the wrong school on their application, and in the case of the other, his scholastic record. (Baton Rouge (La.) Times, Aug. 21, 1964, p.1A.)

Maryland

General

At the end of the 1963-64 school year all of Maryland's 23 biracial school districts were reported to be desegregated in some degree, in fact or by policy. There were 76,906 Negro pupils (47.8 percent of the State's total Negro pupils) enrolled in classes with white pupils. 1/ Almost one-half of Maryland's public schools were desegregated, according to a report released in April 1964 by the Maryland Department of Education. The report stated that there were 544 (or 49.6 percent) of the 1,096 schools in Maryland attended by both white and Negro pupils. The breakdown by districts was as follows: 2/

	Fall of 1962			Fall of 1963		
District	All Schools	Biracial Schools	Negroes Enrolled	All Schools	Biracial Schools	Negroes Enrolled
Allegany	34	15	295	34	17	289
Anne Arundel	75	41	1,524	76	44	1,972
Baltimore City	189	89	34,259	190	100	38,817
Balto. County	114	74	1,821	125	83	2,085
Calvert	16	1	3	16	1	6
Caroline	11	1	1	11	3	16
Carroll	25	11	85	25	14	209
Cecil	25	13	206	25	17	292
Charles	15	3	44	15	4	53
Dorchester	26	2	5	26	5	24
Frederick	33	20	1,342	33	25	1,402
Garrett	19	-	-	19	-	-
Harford*	26	17	416	27	21	543
Howard	20	10	113	20	11	194
Kent	13	1	1	13	0	0

*Has no Negro school children.

1/ Appendix table 2.

2/ Maryland State Department of Education, "Status of Desegregation, Maryland Public Schools," Apr. 3, 1964.

District	Fall of 1962 All Schools	Biracial Schools	Negroes Enrolled	Fall of 1963 All Schools	Biracial Schools	Negroes Enrolled
Montgomery	130	86	3,498	135	87	3,610
Prince George's	147	53	769	154	72	1,235
Queen Anne's	14	0	0	14	0	0
St. Mary's	19	4	45	19	4	89
Somerset	18	0	0	18	1	4
Talbot	14	3	31	14	5	48
Washington	46	17	215	46	22	335
Wicomico	23	3	37	23	8	134
Worcester	17	0	0	17	0	0
TOTAL	1,069	464	44,710	1,096	544	51,357

Although all of the State's 23 biracial districts were reportedly desegregated at least in part, only 20 actually had any Negro students attending school with whites in 1963-64, as in the previous school year. 3/ Kent, Queen Anne, and Worcester did not. 4/ All three have had voluntary transfer plans for some years but only Kent has had a Negro student enrolled in schools with whites in previous years. 5/ Somerset County's desegregation in September 1963 was unexpected because the deadline for applications to transfer had passed. However, when four Negro pupils applied late, their applications were accepted. The school board stated that its policy was "not to stand in the way of any desegregation move." 6/

It is estimated that 200 more Negro teachers were assigned to nonsegregated faculties in Maryland for the 1963-64 school year.7/

3/ 1963 Staff Report of the U.S. Commission on Civil Rights, Public Education 25.

4/ Maryland State Department of Education, supra note 2.

5/ Id. supra note 3.

6/ So. School News, Oct. 1963, p.17.

7/ Id. Dec. 1963, p.8.

The following gives the number of Negro teachers on desegregated faculties in 1963-64 by school districts. 8/

Allegany	5
Anne Arundel	26
Baltimore City	1,426
Baltimore County	63
Carroll	2
Cecil	4
Frederick	32
Howard	3
Montgomery	160
Prince George's	24
Washington	9

In the 1963-64 school year local white and Negro chapters of the Maryland State Teachers Association merged in six counties: Calvert, Caroline, Charles, Dorchester, Queen Anne's, and St. Mary's. The Maryland State Teachers Association desegregated in 1951. All county associations are now merged except Kent, Somerset, and Talbot. 9/

The most significant development in Maryland in 1963-64 was the shift in a number of county school systems from initial assignment of pupils by race with the right to apply for transfer to initial assignment by free choice or zone of residence, in some cases following the closing of Negro schools. 10/ The changes reported on the opening of schools in September 1964 will be found in the addendum.

Baltimore City

According to the superintendent's March 1964 report to the Board of School Commissioners, Baltimore had a greater increase in the number

---

8/ Maryland State Department of Education, supra note 2.

9/ Baltimore (Md.) Sun, July 4, 1964, p.10.

10/ See discussion under "Anne Arundel County," "Baltimore County," "Harford County," "Howard County" and "Other Developments" (Carroll, Charles and St. Mary's Counties), infra.

of Negro pupils attending school with whites in the 1963-64 school year than in the previous five years combined.

In the 1963-64 school year Baltimore had 75,890 pupils in "racially integrated school situations," an increase of 14,929 over the 1962-63 school year. Schools were considered to be "racially integrated" if they enrolled not more than 95 percent of one race nor less than five percent of the other. Using that standard 62.8 percent of all white pupils and 24.8 percent of all Negro pupils were in "racially integrated school organizations." At the same time, however, there was a numerical increase in de facto segregation: the number of Negro pupils in nonintegrated or "one-race" schools increased from 77,592 in the 1962-63 school year to 79,431 in the 1963-64 school year. The number of "integrated" schools rose from 58 in 1962-63 to 74 in 1963-64. The number of predominantly (more than 95 percent) white schools dropped from 47 to 33 during the same period, while predominantly Negro schools rose from 84 to 85. 11/ Between 1953, the last year of segregation by law, and the fall of 1963 the number of all-Negro schools decreased from 59 out of a total of 154 schools to 50 out of 192, a decrease in percentage of all-Negro schools from 38 to 26 percent. However, during that period 35 additional schools (18 percent) became "nearly all-Negro" so that in fact proportionately there were more segregated Negro schools in 1963-64 than in 1953. The change in the racial composition of the school enrollment during this period has been a contributing factor; the Negro enrollment increased from 51,827 to 105,563, whereas, the white enrollment decreased from 86,206 to 79,175. 12/

During the 1963-64 school year for the first time there were more Negroes (36,075) than whites (35,201) attending secondary schools in Baltimore. On the elementary level there were 69,488 Negro (61 percent) and 43,974 white pupils. 13/

11/ So. School News, Apr. 1964, p.18.

12/ Ibid.

13/ Ibid.

The following chart is a racial breakdown of schools by enrollment: 14/

Baltimore Enrollment in Biracial Schools

(Net Enrollment, Oct. 31, 1963*)

	BIRACIAL ORGANIZATIONS		ONE-RACIAL ORGANIZATIONS			
	Pupils Enrolled	No. of Orgs.	Pupils Enrolled	No. of Orgs.	Total Pupils	Total Orgs.
Elementary						
White	31,069	91	12,905	19	43,974	
Negro	41,542	91	27,946	39	69,488	
Total	72,611	91	40,851	58	113,462	146
Secondary and Vocational						
White	33,432	38	1,769	2**	35,201	
Negro	22,863	38	13,212	12	36,075	
Total	56,295	38	14,981	14	71,276	52
Total						
White	64,501	129	14,674	21	79,175	
Negro	64,405	129	41,158	51	105,563	
Total	128,906	129	55,832	72	184,738	201

*Data compiled by Baltimore Department of Education.

**Secondary organizations housed in elementary buildings and included with elementary totals in tabulation of schools by race. Baltimore has 201 organizations housed in 192 buildings.

In 1963-64 Baltimore, Maryland's largest school system, was in its ninth year of desegregation and in the midst of a controversy over de facto school segregation, and the existence of all-Negro or predominantly Negro schools. In June 1963 the NAACP

14/ Ibid.

demanded that the school board take steps to: "(1) revise administrative policies that contribute to the continued existence of one-race schools, including districting and transfer policies; (2) redistribute part-time classes equitably throughout the city; and (3) adopt a policy statement recognizing the 'educational undesirability' of one-race schools and unequivocally committing the board to achieving maximum desegregation in the public schools." 15/

The Baltimore superintendent of schools called the de facto segregation problem a "national issue with a local focus" and arranged a conference (August 5-7) with school superintendents of nine Northern and Border-State cities to discuss the urgent problems of de facto segregation. 16/ A short summary of the conference released for public information indicated that "the participating superintendents and State commissioners gained a sense of urgency in working toward the solution of de facto segregation." Adaptation of present solutions, the need to develop new designs and patterns in view of the urgent need to correct inequalities caused by imbalance, and the basic principles involved in working out new solutions and restudying programs already in effect were discussed. Also discussed were zoning, adaptations of reorganization of schools by grades, administrative reorganization, and feeder patterns. 17/

Following the conference the superintendent said he would make recommendations after he received from the city solicitor a legal opinion on de facto segregation. The solicitor's opinion said that the board had the authority to adopt measures intended to promote racial integration, as a matter of sound educational policy, but that the board was not constitutionally compelled to do so. The NAACP did not agree with the solicitor's opinion that there was no legal compulsion to promote racial balance. 18/

15/ Id. Oct. 1963, p.19.

16/ Id. Sept. 1963, p.20.

17/ Ibid.

18/ Ibid.

On August 21, 1963, the League of Women Voters of Baltimore announced its support of "measures designed to improve active racial integration" of schools and staffs throughout the city. 19/

In September 1963, the Baltimore school board issued a policy statement which said: 20/

> Insofar as racially imbalanced schools may lead to educational, psychological and sociological problems, the board will do all it possibly can to remedy this situation. Board policies and school practice shall be reviewed to insure that they are not discriminatory or do not contribute intentionally to racial imbalance.

The board initiated a program to transport students from the overcrowded, predominantly Negro inner-city schools to underutilized, outlying predominantly white schools. This aroused the hostility of white parents who protested to city councilmen and to the school board. Involved were 2,600 elementary students, 13 sending and 16 receiving schools. The school board was charged with "forced integration" of pupils, councilmen asked for a hearing as to why the school board "has failed the community in planning for the public school system," and demands were made that the school board return to the neighborhood school plan. 21/ The superintendent said that the "students are being transferred in a manner approved by the city solicitor and in such a way so as not to engender segregation." 22/

In November 1963 it was announced that Baltimore City would begin transporting 520 more children from the inner city to the outer belt, raising the total transported to 3,868. This reduced the number of children on part-time schooling to 6,041. In October 1962 the part-time total stood at 11,501. 23/

19/ Ibid.

20/ Baltimore (Md.) Sun, Sept. 6, 1963, p.40.

21/ So. School News, Oct. 1963, p.17.

22/ Id. at 20.

23/ Id. Dec. 1963, p.8.

On July 31, 1963, the Baltimore school board released a point-by-point reply to a charge made in June by the Interdenominational Ministers Alliance that Negroes with advanced degrees had been passed over, there were no professional Negro employees in the business office, Negroes were given administrative posts only in predominantly Negro schools, and those with the most potential were systematically being denied experiences essential to advancement.24/ The reply stated that there were 64 Negroes of professional status in the business office, three who were principals of predominantly white schools and two vice-principals; that only two out of nine Negroes with doctoral degrees were still classroom teachers as compared with 12 out of 39 white teachers. The reply also listed many advancements made by Negroes in the education department. Further, the board stated that it had retained Dr. Willard S. Elsbree, Teachers College, Columbia University, as an expert to assure itself that present policies and practices related to promotions were reliable. 25/

A report released in February stated that the consultant had found no evidence of racial discrimination in staff promotions. He said there was "not one thread of evidence pointing to discrimination in the five cases which have been challenged." 26/ However, recommendations for tighter procedures to close "possible loopholes for favoritism or inefficiency" were made. Among specific suggestions were these: (1) vacancies should be publicized and open to every qualified person; announcements should carry detailed descriptions of responsibilities and qualifications, and should be posted well in advance of examinations; (2) rules concerning written examinations should be established fixing the cut-off for a passing grade and the weight to be given to written examinations, and procedures for oral examinations should be clarified; (3) supervisor's and principal's evaluations should supply more information on possible candidates; (4) applicants should be allowed to take a second examination if they fail the first; (5) more persons should be added to the currently understaffed personnel department. 27/

24/ Id. Sept. 1963, p. 20.

25/ Ibid.

26/ Id. Mar.1964, p.3.

27/ Baltimore (Md.) Sun, Feb. 7, 1964, p.40.

The Interdenominational Ministers Alliance rejected the report saying "that the facts speak for themselves," and that Negro teachers are afraid to speak out against discrimination. 28/ The chairman said that four qualified Negroes were passed over in promotions to supervisor. 29/

In October 1963 the mayor of Baltimore introduced a civil rights measure to the city council which included unlawful practices in all public and private educational institutions, exclusive of parochial schools. 30/ As adopted and approved by the mayor on February 26, 1964, the portion of the ordinance dealing with education prohibited discrimination in employment, and admission of students, including quota systems. The ordinance also made it unlawful for any employer, employment agency or labor organization to inquire into or record the race, color, religion, national origin, ancestry of any applicant for employment or membership, or indicate any preference or limitation in any published notice or advertisement. Labor unions and employers' associations were specifically prohibited from discriminating in apprenticeship training programs. 31/

In March 1964 the chairman of the Baltimore Community Relations Commission charged that there was discrimination in the city's school system's work-study program. He said that the program, which allows students to work part-time and attend school part-time, works well for white students but that Negro students were at a disadvantage because private employers either did not hire them, paid them less, or assigned them menial tasks. He claimed the school staff was inadequate to police the situation. The superintendent conceded that Negro students suffer discrimination in "certain kinds of employment. 32/

28/ Id. Mar. 25, 1964, p.44.

29/ Ibid.

30/ So. School News, Nov.1963, p.10.

31/ Baltimore, Md., Ord.103,sec.10,12, Feb. 26, 1964.

32/ So. School News, Apr.1964, p.18.

Anne Arundel County

The school system entered into its eighth and final year under a plan of desegregation by which all pupils have the choice of attending the nearest school or their present school. In the 1962-63 school year grades 11 and 12 were desegregated simultaneously as a consolidated last step. 33/ Although theoretically the school district has completed its voluntary desegregation plan, Negroes have protested the free choice plan and the county's policy on transportation of pupils. 34/ As of the fall of 1963, although 1,972 Negro students attended 44 formerly white schools, some 5,700 remained in Negro schools. 35/

The president of the county branch of the NAACP described Anne Arundel as having "a desegregated school system with integration as an option." 36/ He has attacked the board's practice of transporting Negro pupils from all over the county to the Negro high school in Annapolis. He proposed that the county require all students to attend schools in their areas, instead of giving Negroes a choice of remaining in an all-Negro school or transferring to a predominantly white school. 37/

In June 1964 the Anne Arundel County branch of the NAACP requested that: (1) all elementary schools of the county be reassigned to supervisory areas on the basis of geography and that the two supervisors presently assigned exclusively to Negro schools be assigned to schools on the basis of geography as are their white counterparts; (2) Negro visiting teachers having responsibility for Negro students only, be assigned to students on the same basis as their white counterparts rather than on the basis of race; (3) the present policy which requires Negro pupils to apply for transfer be cancelled. The effect of the policy, they claimed, has been to drain off the top students from the Negro schools, thus lowering the average ability of the pupil population in the Negro schools. 38/

33/ Maryland State Department of Education, supra note 2, Resolution of Anne Arundel Board of Education, May 2, 1956.

34/ So. School News, Apr.1964, p.19.

35/ Id. May 1964, p.8A.

36/ Id. Apr.1964, p.19.

37/ Ibid.

38/ Baltimore (Md.) Sun, June 3, 1964, p.11.

The president of the local branch of the NAACP said on July 1, 1964, that pressure might be exerted unless action to achieve more actual school desegregation were taken. 39/

Baltimore County

During the 1953-54 school year the county had 14 all-Negro schools, 12 of which were elementary schools. At the end of the 1963-64 school year, five all-Negro units were still in operation, four of them elementary schools. These schools are slated to be closed eventually. In 1963-64 the County Human Relations Commission urged prompt closing; school officials planned closing dates several years hence, except for one school which was losing its enrollment. 40/ The proportion of Negroes in segregated schools in the county has steadily decreased from 79.5 percent in 1957, to 50.3 percent in 1963. 41/ In the 1963-64 school year the school system had 2,075 Negroes in 83 predominantly white schools and 2,017 Negroes in five all-Negro schools. Thirty-seven schools had all-white enrollments. The county has 97,802 white pupils. 42/

On March 4, 1964, the County Human Relations Commission asked the County Board of Education to end all segregation in elementary schools by the fall of 1964. The commission's executive director suggested that four segregated elementary school units could be closed and reopened as racially-mixed annexes to already integrated schools. 43/

On April 2 the commission's staff urged the school board to eliminate the last all-Negro classrooms in Catonsville and Dundalk. Specifically, it recommended that: 44/ (1) "District lines for elementary and secondary schools could be redrawn and revised when

---

39/ Id. July 2, 1964, p.7.

40/ Baltimore (Md.) Sun, Apr. 5, 1964, p.14.

41/ Id. Apr. 24, 1964, p.10.

42/ So. School News, Apr.1964, p.19.

43/ Baltimore (Md.) Sun, Mar. 5, 1964, p.38.

44/ Id. Apr. 3, 1964, p.44.

necessary so that racially mixed patterns of enrollment will be insured. . .," and (2) Banneker, Bragg and Turner elementary schools be closed at the end of the 1963-64 school year. A board member said that it was too early to comment on the recommendations.

On the same day, upon the recommendation of the county superintendent, Bragg Elementary School was closed. It was said to be no longer needed because a nearby housing development was losing its tenants. 45/

On April 6, 1964, the Human Relations Commission said that its staff report had been misrepresented, perhaps intentionally. It was reported that many people thought the commission advocated the Princeton Plan. 46/ On April 11 the commission chairman criticized the school board's policy of permissive transfer for Negro pupils, describing it as inadequate and "extremely cumbersome." 47/

On May 21, 1964, the Baltimore County Board of Education moved to meet the issue of de facto segregation by calling on the superintendent to "continue to plan the construction of new facilities in such a manner as to provide the best educational opportunities for the whole school population, and in a manner that will enhance the creation of conditions that will encourage understanding among all people." 48/ As a consequence, the board gave a higher priority to construction of a new elementary school in the Catonsville area, which would eliminate the need for the all-Negro Banneker school. The one all-Negro high school is scheduled to be eliminated in 1967. 49/

45/ Ibid.

46/ Id. Apr. 7, 1964, p.24. The Princeton Plan is a pairing of two schools that serve the same grades, and assigning some grades to one school and the rest to another so that together they serve all grades of the level involved, e.g., one school, kindergarten to third grade; the other, grades 4 through 6.

47/ Id. Apr. 12, 1964, p.24.

48/ So. School News, June 1964, p.5.

49/ Ibid.

On June 3, 1964, the Human Relations Commission recommended that one of the Negro elementary schools be closed as such and the building used as an annex to another school no later than September 1965 and that vacant classrooms in the Negro secondary unit also be used as an integrated annex as the Negro secondary students gradually moved out. It was further recommended that the other two Negro elementary schools be closed, one as soon as possible and the other by 1966. County school officials have said that the one Negro secondary unit will be closed in 1967 and one elementary unit in 1969. The other two elementary schools serve a predominantly Negro residential area and officials have said that there is no "natural" way to solve the problem. The county does not transport children to achieve racial objectives. 50/

Dorchester County (Cambridge)

In September 1963, 17 Negro students entered four previously white schools in Cambridge, located in Dorchester County on the Eastern Shore. This compared with three in the 1962-63 school year, all of whom withdrew after about two weeks. Seven other Negro students entered predominantly white schools in other parts of the county, two of whom had been enrolled in the 1962-63 school year. 51/ Accelerated school desegregation had been assured by an agreement signed on July 23, 1963, by white city officials and Negro leaders. No serious incidents took place. The schools bore the initial brunt of racial change because the central issue of public accommodations was not settled by the agreement on July 23. 52/

In October the Cambridge Nonviolent Action Committee (CNAC) reiterated that its educational goals were: (1) "automatic assignment" of Negroes to the nearest schools, which in many instances would mean to white schools, (2) conversion of one of the city's high schools to serve as a vocational school, while the other remained an academic school. 53/ At present, one is all-Negro and the other is nearly all-white. The chairman of CNAC said that white leaders oppose an automatic assignment plan on the ground that it would be forced integration, "but we say it is the best way." The chairman of CNAC claimed that nonracial assignment would take the

---

50/ Id. July 1964, p.16.

51/ Id. Oct. 1963, p.17.

52/ Id. Sept.1963, p.20.

53/ Id. Nov. 1963, p.10.

burden off the Negro parents to seek transfer and relieve them of possible harassment; that Negroes needed school board backing. 54/ The chairman also said that the group was prepared to resume demonstrations if white leaders did not make substantial progress toward meeting Negro demands. 55/

On January 30, 1964, the chairman of CNAC announced that a school boycott would take place between then and February 25. This statement was made following a meeting in Washington between the Cambridge Human Relations Committee and Senator Daniel Brewster of Maryland. Senator Brewster had urged the committee to renew efforts toward a peaceful settlement of racial differences and the meeting was a report on progress. The chairman of CNAC, an observer at the meeting, called it a waste of time. 56/

On February 11, 1964, the boycott initiated by CNAC in protest of de facto segregation took place. The chairman said her prediction that 75 percent of the pupils would stay away from school was fulfilled but a snowstorm may have contributed to the absenteeism. 57/ A second school boycott on May 11 was ineffective; attendance was nearly normal. 58/

The CNAC put out a newsletter on May 6 touching on one of their major objectives, the assignment of children to the schools nearest their homes instead of requiring them to seek transfers. The newsletter said in part: 59/

> The burden of transferring Negro children is left to parents rather than to the Board of Education where it rightfully belongs. This tactic of course leads to continued segregation in the school system. Moreover, Negro parents are reluctant to transfer the children, given the high possibility of being fired.

54/ Ibid.

55/ Ibid.

56/ Id. Feb. 1964, p.10.

57/ Id. Mar. 1964, p.3.

58/ Id. June 1964, p.5.

59/ Ibid.

By June Cambridge was reportedly calm, but on June 18 the leader of CNAC said that de facto school segregation remained a major obstacle to calming Negro frustration. During the 1963-64 school year, Dorchester County had 24 Negroes, which is estimated to be about one percent of the Negro school age population, 60/ in predominantly white schools under the voluntary transfer program. 61/ In 1963-64 pupils in all grades were eligible to apply for transfer. 62/

Harford County

The Harford County Board of Education adopted a new four-step desegregation plan in March 1964. By September 1967, the county's two Negro schools are scheduled to be closed and their 1,600 Negro pupils reassigned to predominantly white schools. Under the earlier transfer plan initiated in September 1957, which was limited as to the elementary schools to which transfer could be made and included more schools and grades annually for seven years, 63/ one-fourth of the county's Negro pupils already had transferred to 21 of the 24 white schools. Three-fourths of the Negroes remain in two consolidated schools (1-12) at Bel Air and Havre de Grace. 64/ The new plan calls for reassigning of 9th graders at these two schools to predominantly white schools in September 1964, grades 10, 11, and 12 in the fall of 1965, first grade in the fall of 1966, and, all the remaining grades in September 1967. 65/ The Harford County Human Relations Commission, the county and State branches of the NAACP, and the teachers at one of the Negro schools all promptly

---

60/ Maryland no longer publishes total public school enrollment by race. However, the 1960 Census, vol. 1, part 22, table 27, shows 2,492 nonwhite children in Dorchester County, age 5 to 18 years.

61/ So. School News, July 1964, p.16.

62/ Maryland State Department of Education, "Status of Desegregation, Maryland Public Schools," Apr. 3, 1964.

63/ Id. May 1, 1957. Resolutions of Harford County Board of Education, Feb. 6, 1957, and June 5, 1957. High school students were given a right to transfer only if they could establish academic and other qualifications.

64/ So. School News, April 1964, p. 18.

65/ Maryland State Department of Education supra note 62, Harford County, p.4.

assailed the plan as too slow. 66/ A suit challenging the pace of the new program and racial discrimination in the hiring and assignment of teachers was filed in a Federal district court. 67/ On May 3, 1964, the court entered a "show cause" order in response to the NAACP's contention that the county's schools could be fully desegregated in the 1964-65 school year. On May 25, the board of education asked that the suit be dismissed saying that time was needed to redesign and reequip schools for the change-over and that "school loyalties would have to be nurtured by a substantial and long-term period of public information."68/

On June 23, the district court provisionally approved the four-step desegregation plan of the Harford County school board. However, the court said that "/n/o legally acceptable reason has been presented for including the third phase--the elimination of only one grade (the first grade) in the Negro schools in the fall of 1966, and postponing the elimination of the other elementary grades until 1967." Final judgment on the plan will not be made until after additional evidence is heard in the spring of 1965. Originally the board had planned to limit or discontinue individual transfers during the transition period. However, the plan was abandoned because of instant opposition. 69/ The court noted that with 340 new transfers already granted and the expectation of more Negro children entering the first grade in formerly white schools,

---

66/ So. School News, Apr.1964, p.19.

67/ Christmas v. Board of Education (Harford County), Civ.No.15532, D.Md., filed May 1, 1964. Harford County Board of Education has been before the Federal district court before. In Moore v. Board of Education, 146 F.Supp.91 (1956); 152 F.Supp.114 (D.Md.1957), aff'd sub nom. Slade v. Board of Education, 252 F.2d 291 (4th Cir.1958), cert.denied 357 U.S.906 (1958), the court approved a 7-year plan initiated in the fall of 1957. In Pettit v. Board of Education, 184 F.Supp.452 (D.Md. 1960) the denial of transfer under the terms of the plan was in issue.

68/ So. School News, June 1964, p.7.

69/ Christmas v. Board of Education, 231 F.Supp. 331,335 (D.Md. 1964).

"more than 40 percent of the Negro children in Harford County will be attending desegregated schools" in September 1964. 70/

The complaint also alleged unlawful discrimination in the hiring of new teachers and in the continued assignment of Negro teachers already employed exclusively to Negro schools. With regard to these issues the court found that there were 808 teachers in the Harford public schools in 1963-64 of whom 74 were Negroes, all assigned to the two consolidated Negro schools. The court states that the white teacher turnover is heavy in the county due to the practice of hiring wives of military and civilian personnel assigned to Aberdeen Proving Grounds and Edgewood Chemical Center. The court noted that "/c/ompetent Negro teachers also are available from these sources." 71/

The court found that in spite of a school board policy statement declaring that teacher hiring should be racially nondiscriminatory and that more than 800 Negro children would be enrolled in desegregated schools in the fall of 1964, in June the board had appointed 95 new white teachers and no Negro teachers. The court found further that 45 vacancies remained to be filled, 45 Negroes with the requisite educational training had applied for appointment and the staff was submitting the names of 15 white teachers and no Negro teachers to the board for election to these vacancies. On this showing the court concluded that "the Board of Education of Harford County has been discriminating on the basis of race in hiring new teachers, and is still discriminating." 72/ The court enjoined a continuation of this practice.

As to the assignment of Negro teachers only to Negro schools, the superintendent testified that he intended to assign eight Negro teachers to desegregated schools in the fall of 1964. The court said it "does not approve or disapprove at this time the number to be transferred." Its fairness depends on several factors, including the number of new Negro teachers who may be employed and assigned to desegregated schools. 73/ The court retained jurisdiction of the case for such further relief as might be proper.

70/ Id. at 335, note 6.

71/ Id. at 337.

72/ Ibid.

73/ Id. at 338.

Howard County

Beginning with the 1956 fall term grades 1-5 were declared officially desegregated by the Howard County Board of Education under a plan whereby "parents of children living nearer to a school other than the school their children now attend may apply in person with the child" to the superintendent of schools and request transfer during a specified period. Transportation facilities were not to be changed but adjustments were permitted at the discretion of school officials. Applications for transfer could be postponed or denied "due to lack of facilities or for any other justifiable reason." 74/ The same transfer plan for 12th grade students was made effective in the fall of 1963. 75/

By resolution adopted August 21, 1963, the board fixed a schedule for closing out the four Negro elementary schools and the Negro high school as segregated schools over a period of four years beginning in 1964-65. Pupils who attend these schools will enroll in the schools serving the area in which they live after closing. Transportation is to be integrated. 76/

Reassignment of about 200 Negro pupils in the fall of 1964 was expected to be more than double the number of Negroes who attended predominantly white schools in the 1963-64 school year. Three Negro elementary schools, two of which were scheduled for closing in 1965-66, and a white elementary school were closed in June 1964. Upon the completion of new additions by the fall of 1966 the Negro high school (412 students)will also serve students from a predominantly white residential area so that the school will no longer be segregated. Negroes living closer to other high schools will be reassigned. New district lines are slated to be drawn before the 1967-68 school year, so that the one remaining Negro elementary school (366 pupils) will be a nonsegregated unit. 77/

74/ Maryland State Department of Education, supra note 62, Resolution Howard County Board of Education.

75/ Id. Resolution, Mar. 12, 1963.

76/ Id. Resolution, Aug. 21, 1963.

77/ So. School News, July 1964, p.16.

Other Developments

The desegregation plan in Washington County will be completed in the 1964-65 school year when 130 Negro children (one school) in Hagerstown will be transferred to previously white schools. 78/

Carroll County enters its second year under a grade-a-year plan whereby Negro children may enroll in the former white school in the area in which they reside. Desegregation of other grades will continue on a transfer basis. 79/

The Charles County school board, which initiated a transfer plan for first grade pupils in 1956, later extended to other grades, adopted a free choice of school desegregation plan for all grades, effective in September 1964. 80/ The superintendent of schools informed the Commission that 370 Negro children had enrolled in predominantly white schools as a result of the change in policy, which added to the 52 previously enrolled, brought the total for the fall of 1964 to 422 as of June 1964. Board action to integrate the school system in 1964-65 further provides for desegregation of the transportation system, a beginning of teacher integration with a few Negro teachers assigned to predominantly white schools, bringing the white and Negro central office staff together under one roof, and a building program to provide integrated (as opposed to desegregated) senior high schools within the next few years. 81/

St. Mary's County initiated a new desegregation plan during the 1963-64 school year. Negro students could register at any time at the school nearest their homes without applying for a transfer. Under the previous plan, Negro students were required to apply for a transfer. 82/ The new policy was termed a "complete success." 83/

78/ Baltimore (Md.) Sun, June 5, 1964, p.44.

79/ Maryland State Department of Education, Carroll County, p.5., supra note 62.

80/ Maryland State Department of Education, supra note 62.

81/ Resolutions of Charles County Board of Education. Letter from Fred Brown, Jr., superintendent of Charles County public schools, to the Commission on Civil Rights, Aug. 13, 1964.

82/ Maryland State Department of Education, supra note 62, St. Mary's County, p.2.

83/ Washington (D.C.) Post, Dec. 4, 1963, p.1B.

The Calvert County Community Relations Commission said in December 1963 that school desegregation in that county was "no more than token by practice." Calvert, the only county in Maryland where Negro students constitute a majority of the public school population, 84/ initiated desegregation in the fall of 1962. All transferees in the first two years were senior high school students. No applications for transfer have been refused. 85/

84/ So. School News, Jan. 1964, p.3.

85/ Maryland State Department of Education, supra note 62, St. Mary's County.

ADDENDUM

Charles County

The free choice of schools plan initiated in Charles County in September 1964 brought the total number of Negro pupils enrolled in the formerly white schools to 280 instead of the 422 expected based upon the spring enrollment. Nevertheless the total represented more than five-fold increase over 1963-64. (Letter from Fred Brown, Jr., superintendent of Charles County public schools, to the Commission on Civil Rights, Sept. 16, 1964.)

Dorchester County

Members of the Cambridge Nonviolent Action Committee (CNAC) met with the State Superintendent of Schools on September 4, 1964 and requested that pupil assignment in Dorchester County be placed on a geographic basis at the opening of the 1964-65 school year. This was the second meeting of CNAC with the State Superintendent since he took office in June. Counsel for CNAC said the meeting was "very unsatisfactory." In addition to its complaint that Negroes were assigned to school in Negro districts instead of to a school near their homes, CNAC complained of segregated teaching staffs in the white and Negro schools. The State Superintendent reportedly refused to take any action pending a full interpretation by the Federal authorities of the Civil Rights Act of 1964. ((Baltimore(Md.) Sun, Sept. 5, 1964, p.30.)

When schools opened on September 8, 1964, 78 Negro pupils were enrolled in predominantly white schools in Dorchester County. This was more than three times the number enrolled in 1963-64. ((Baltimore) Sun, Sept. 9, 1964, p.44.)

Mississippi

General

Legal action initiated by both the Federal Government and private citizens failed to produce any biracial schools in Mississippi in 1963-64. In 1963-64 Mississippi was the only State that had experienced no desegregation of public educational institutions below the college level. However, it appeared that the racial barrier at the public school level might be broken in at least four school districts in the fall of 1964. On July 9,1964, Federal District Judge Sidney C. Mize made permanent his temporary injunction enjoining three Mississippi school districts, Jackson, Biloxi, and Leake County, from operating segregated systems. 1/ Reports on the admission of Negro children to formerly white public schools in Mississippi in the fall of 1964 are summarized in the addendum.

1/ So. School News, July 1964, p.10. Judge Mize issued the temporary order on March 4, 1964,at the direction of the U.S. Court of Appeals for the Fifth Circuit. Evers v. Jackson Municipal Separate School District, 328 F. 2d 408(5th Cir.1964). Separate suits filed in the same Federal court were consolidated on appeal. Judge Mize had dismissed all three actions on the grounds that:(1) no individual plaintiff had requested or been denied entrance to a particular school and (2) the plaintiffs had failed to pursue the administrative remedies available under the Mississippi pupil assignment statute. The court said that it was presumed that Mississippi officials would do their duty under the law if and when application was made to them. Evers v. Jackson Municipal Separate School District, Civ. No.3379, S.D.Miss., June 24 and 29,1963, 8 Race Rel. L. Rep. 968 (1963); Hudson v. Leake County School Board, Civ. No.3382, S.D.Miss. June 24 and July 5, 1963, 8 Race Rel. L. Rep. 970 (1963); Mason v. Biloxi Municipal Separate School District, Civ. No. 2696, S.D.Miss., July 5,1963, 8 Race Rel. L. Rep. 972 (1963).

Jackson, Biloxi, and Leake County

On July 15, 1964, the three school boards submitted virtually identical school desegregation plans in compliance with temporary orders. 2/ Each plan called for desegregation of the first grade in September 1964 and at least one additional grade each year until all grades are desegregated. Additionally, the plans provided that:3/

(1) first grade pupils be admitted to various schools without regard to race, primary consideration being given to the pupil's or his parents' choice;

(2) priority of admission be based on proximity of the pupil's residence where adequate facilities are not available for all applying for a particular school;

(3) a second choice or transfer be permitted only in hardship cases and for valid administrative reasons other than race; and

(4) plans be published in the local newspapers to give parents and pupils notice of their rights.

Negro parents, the original plaintiffs, promptly filed objections to the plans. The plaintiffs contended that the plans failed to meet the minimum standards for initial desegregation as set forth by the Supreme Court and Court of Appeals for the Fifth Circuit. 4/

2/ Jackson (Miss.) Daily News, July 15,1964, p.1. Judge Mize's order had contained a July 15,1964 deadline.

3/ Ibid.

4/ Id. July 16,1964, p.1.

The parents' objections to the plans were: 5/

(1) failure to show why no more than one grade can be desegregated in September and to project rate of future desegregation of more than one grade a year;

(2) failure to provide for elimination of dual school zoning based on race and for the establishment of a single school zoning system for the assignment of all children to school;

(3) vagueness in the use of such terms as "where adequate facilities are not available," and "justifiable administrative reasons;"

4) failure to provide for assignment of new pupils on a nonracial basis and for applications to transfer by students in grades not being desegregated.

Hearings on the sufficiency of the plans were held on July 29, 1964. At that time the Federal district court tentatively approved the plans, but agreed to reexamine them in February 1965 for a possible speed up. The attorney for the plaintiffs indicated that he would not seek an appeal until he had an opportunity to see the plan in effect. 6/

Clarksdale

On April 22, 1964, 17 Negro parents, on behalf of their children, filed a school desegregation suit against the Clarksdale city and county school boards. The plaintiffs sought an injunction against the operation of a segregated school system. 7/ On June 26,1964, the Federal district court granted a preliminary injunction enjoining the school board from assigning pupils to school on the basis of race. The court also ordered the school officials to submit a desegregation plan and one or more alternate plans by July 30,1964,

---

5/ Ibid.

6/ Evers v. Jackson Municipal Separate School District, Civ.No.3379, S.D.Miss., July 29,1964; Hudson v. Leake County School Board, Civ.No.3382, S.D.Miss., July 29,1964; Mason v. Biloxi Municipal Separate School District, Civ.No.2696, S.D.Miss., July 29,1964.

7/ So. School News, May 1964, p.2A.

designating the order of preference assigned to the plans if it wished to do so. The court directed that the plans provide for desegregation with all deliberate speed "until all grades in all schools shall be included in said plan," and "that a minimum of one grade in all schools shall come under said plan at the beginning of the school term in September 1964." 8/

On July 27 the school board filed four plans for desegregating its schools. All plans called for the establishment of nine separate attendance areas for elementary schools, and two each for junior and senior high schools. These attendance areas would govern pupil assignment to the grades desegregated as the plan progressed each year. In each plan the attendance areas for elementary schools included two schools not ready for occupancy, one to be completed in January 1965 and one to be built when funds become available. The plans assumed that the latter school would be ready for occupancy in September 1966. Special provision was made in each plan for children living in the attendance areas of the two elementary schools not ready for occupancy until the projected completion date of the schools. The differences in the four plans were in the starting date and the rate of progression.

Plan 1, in conformance with the court's order of June 26, called for a start in September 1964 in grade one, and an upward progression of one grade a year until September 1970 when all three junior high grades, 7 through 9, would be desegregated. The last step would be the senior high grades 10 through 12 in September 1971.

Plan 2 called for the initiation of assignment by the new attendance areas in grades one and two in January 1965 and an additional grade in September 1965 and one more grade each September thereafter until the six elementary grades would be desegregated in September 1968. This plan called for pupil assignment by attendance areas of all junior high grades in 1969 and all senior high grades in 1970, thus completing the transition one year earlier than plan one by reason of including two grades instead of one in the 1964-65 school year.

8/ Henry v. Clarksdale-Coahoma School Board, Civ.No.DC6428, N.D.Miss., June 26,1964.

Plan 3 like plan 2, called for a start with two grades in January 1965 but thereafter would move more quickly, grades 3 and 4 in September 1965, grades 5 and 6 in September 1966, grades 7 through 12 in September 1968.

Plan 4 likewise called for completion of the transition period in September 1968. It differs from plan 3 only in the start with grades one and two in September 1964 instead of January 1965. 9/

Biloxi and Gulfport

A Federal district court dismissed a suit brought by the Federal Government to enjoin the school boards of Biloxi and Gulfport from assigning any dependents of military personnel or civilian employees of the United States to the public schools operated by the districts on the basis of race. 10/ The Government's suit was based primarily on alleged violation of an implied contract between the Federal Government and school districts receiving "impacted area funds," 11/ and secondarily, on the claim that the violation of the 14th amendment rights of children of members and employees of the Armed Forces burdened the exercise of the Government's war power. 12/

The Federal district court rejected both contentions and held that the United States had no standing as a plaintiff to enforce any rights under the 14th amendment, and that the Government had failed to state a claim on which relief could be granted. 13/

9/ Id. July 27,1964.

10/ U.S. v. Biloxi Municipal School District and U.S. v. Gulfport Municipal Separate School District, 219 F.Supp.691(S.D.Miss.1961)

11/ School Construction in Areas Affected by Federal Activities, sec. 6, 72 Stat.551(1958), 20 U.S.C. sec.636(B)(i)(f)(1958); Financial Assistance for Areas Affected by Federal Activities, sec.1, 64 Stat.1100(1950), 20 U.S.C. sec.237(Supp.1959-63).

12/ U.S. v. Madison County Board of Education, 326 F.2d 237(5th Cir.1964).

13/ U.S. v. Biloxi Municipal School District, supra note 10.

The Court of Appeals for the Fifth Circuit affirmed the district court's decision, and said specifically: 14/

> We think it clear that the defendants are not under such a contractual obligation to the United States as may be specifically enforced by injunction not to assign federally connected children to local schools on the basis of race or color. No one would be so rash as to claim that a local school board in either of the 'hard core' States of Alabama or Mississippi would intentionally enter into a contract which it understood to provide for even partial desegregation of the races in the public schools under its jurisdiction. A more improbable official action of such a local school board can scarcely be imagined.
>
> * * * * * *
>
> The consequence of any attempted direct exercise of the war power outside of military bases without any authorization by Congress and during peace time are so extreme as to be unthinkable.

The Federal Government had a similar suit pending in another jurisdiction, 15/ but the Biloxi case was the first one to reach a court of appeals, and was heard as a consolidated case, one from Alabama and two from Mississippi. 16/

Legislative Activity

The official attitude of the State continues to be one of maintenance of racial segregation in the public schools for the indefinite future. In view of the court-ordered desegregation of four

---

14/ U.S. v. Madison County Board of Education, supra note 12, at 239, 243.

15/ U.S. v. Bossier Parish School Board, 220 F.Supp.243 (W.D.La. 1963).

16/ The Alabama case is styled in the Federal district court as U.S. v. Madison County Board of Education, 219 F.Supp. 60 (W.D.Ala. 1963).

of the State's 150 school districts, the Governor called the legislature into special session in June 1964 to design methods to circumvent those orders. 17/

At the special session, the State legislature passed several bills designed to cope with the legal thrusts of desegregation. One new law permits the State to give private school pupils up to $185 per year for tuition, providing they do not attend sectarian or parochial schools. It also authorizes local school districts to levy a property tax to augment the State tuition grant. The legislature also adopted a provision permitting the separation of the pupils by sex. Among the other measures which passed was one requiring tests for students applying for transfer to another school to determine the starting grade. Under this law a student could be set back or advanced up to three grades depending on his test score. Another law banned from classes students older than the class average if their presence might disrupt the educational atmosphere. 18/ Under a previous law, the Governor has the authority to close public schools when he believes such closure would be in the best interest of the State or would promote public peace and tranquility. 19/

17/ So. School News, July 1964, p.10.

18/ Jackson (Miss.) Daily News, July 16,1964, p.1.

19/ Miss. Laws 1958, ch. 311, p.527; see discussion Report of the U.S. Commission on Civil Rights 1959 at 238.

ADDENDUM

General

Three public systems in Mississippi enrolled white and Negro pupils in classes together at the opening of the 1964-65 school year to mark the first public school desegregation in the State. Mississippi was the last State to lower racial barriers below the college level. No incidents were reported at the sites of any of the schools integrated.

Negro students sought unsuccessfully to enroll in formerly white high schools at Marks and Canton. (Evening ((D.C.)) Star, Sept. 2,1964, p.11A.)

Biloxi

The first school desegregation in the State took place in Biloxi on August 31,1964, as 16 first grade Negro pupils enrolled in four previously all-white schools without incident or crowds. The Negro pupils were reportedly well received at the schools. The Negro attorney for the children credited school officials and city and community leaders with preparation leading to the peaceful school opening. (N.Y. Times, Sept. 1,1964, p.1.)

Clarksdale

On August 22,1964, the Federal district court ordered the Clarksdale school board to put desegregation plan 1, previously submitted to the court, into effect "as a tentative and interim procedure until a further hearing with respect thereto is had..." for the first semester of the 1964-65 school year. Plan 1 required the assignment of all first grade pupils by attendance areas beginning in September 1964. The court further ordered that plan 2 be put into effect at the beginning of the second semester. Plan 2 required the assignment of both first and second grade pupils by attendance area in January 1965. Both plans called for the establishment of nine attendance areas for elementary school assignment, effective as desegregation progressed. (Henry v. Clarksdale-Coahoma School Board, Civ. No. DC6428, N.D.Miss., Aug. 22,1964.)

It is reported that no Negro pupil sought to register at a white school in Clarksdale when the 1964-65 session started, despite the Federal court order. A white pupil who sought to register at an all-Negro school was turned away by the Negro principal on the ground that he did not have the required birth certificate. It is reported that the pupil's parents later withdrew the child's application. (Washington (D.C.) Post, Aug. 25, 1964, p.4A.)

An attorney for the Negro plaintiffs in the school desegregation case accounted for the fact that no Negro pupils were assigned to biracial classes by saying that the boundary lines of attendance areas had been gerrymandered to separate white and Negro pupils; and that Negroes living in the attendance area of a white school had been encouraged to move. (N.Y. Times, Aug. 25,1964, p.16C.)

Jackson

On September 14,1964, 39 Negro first graders entered eight formerly white elementary schools in the State's capital, which was the third school system in the State to operate biracial schools. Five other Negro pupils had registered but did not appear on opening day. The desegregation took place without incident and only a small decrease in the number of white pupils enrolled. A boycott of the integrated schools had been called by the White Citizens Council, but it was ignored by the great majority of white parents and pupils. (N.Y. Times, Sept. 15, 1964, p.29C.)

The mayor, chamber of commerce and leading citizens of Jackson had asked residents to cooperate with school and police officials, and to accept the court-ordered desegregation peacefully. (Jackson (Miss.) Daily News, Aug. 7,1964, p.18.)

Leake County

Some Negro pupils boycotted three Negro schools which opened on August 11,1964. The boycott was in protest of the early opening of the Negro schools (which recess for a few weeks during the fall for the cotton harvest). A spokesman for the group said that they also sought to have students assigned to the schools of their choice without regard to race, and to improve school conditions generally. (Washington (D.C.) Post, Aug. 14, 1964, p.2A.)

One Negro first-grader enrolled in a formerly all-white school in Leake County on September 1,1964, "under rigid security provided by the local police and Federal officials." A Negro lawyer reported that eight other Negro pupils were scheduled to enroll at the school but dropped out after pressure had been brought against their parents by white community leaders. (N.Y. Times, Sept. 2,1964, p.20C.)

Missouri

General

At the end of the 1963-64 school year, 203 of Missouri's 212 biracial districts were desegregated at least in part and an estimated 40,000 (42.1 percent of the State's total) Negro students were attending classes with 90,000 white students. 1/ Reports from the State capital indicate that Missouri has made progress toward complete classroom desegregation, 2/ but there are no statistics to show the exact extent or how much remains to be done. Segregated schools exist in some areas and in other areas desegregation is only token. A few districts, mostly in southeast Missouri, are segregated on all levels. Every county has at least token desegregation since two districts in Pemiscot County desegregated in the fall of 1963. The State Commissioner of Education estimated "that 95 percent of the school districts in the State are desegregated at some level." Ninety-seven percent of the Negro residents of the State live in districts which are desegregated, but some sources say that "not many more than half of the State's Negro students attend integrated schools, even though the school districts they live in are technically mixed." 3/

Teacher desegregation has not been as rapid as classroom desegregation. The Missouri Commission on Human Rights is conducting a study to determine whether the State's fair employment practice law is being violated by school systems; what happens to Negro teachers when schools are integrated; "whether discriminatory hiring practices are used and whether Negro teachers are allowed to teach" in desegregated schools. 4/

1/ Appendix, tables 1B, and 2.

2/ St. Louis (Mo.) Post-Dispatch, May 24, 1964, p.3A.

3/ Ibid.

4/ Ibid. A report issued in April 1964 (Mo. Commission on Human Rights, "Equal Employment Opportunities in Missouri State Agencies") does not include local boards of education as employers.

"As of June 30, 1963, the State Department of Education put the State's total public school population at 888,000 in grades kindergarten through 12, and the total classroom teachers at 32,840." Unofficially it was estimated that 95,000 school children and 2,579 teachers were Negro, which is a Negro proportion of about 11 percent for children and eight percent for teachers. 5/ According to the 1960 census, Missouri had a total population of 4,319,813 which included 390,853 Negroes (nine percent) of whom 354,289 lived in urban places. 6/ The great majority of Negroes are concentrated in St. Louis and Kansas City. 7/ Of 95,000 Negro school children in the State's public schools, St. Louis in 1962 had 60,109 (55 percent), and Kansas City in 1963 had 26,442 (34 percent). The 1960 census figures indicate that there were fewer than 6,000 school-age Negro children in southeast Missouri, fewer than 5,000 in St. Louis County, and lesser numbers elsewhere in the State. Considerable numbers of Negroes are still living in rural southeast Missouri, but some 13 of Missouri's 115 counties have no Negro residents and 46 have less than one percent. 8/

St. Louis

On February 11, 1964, the board of education approved a study by its professional staff which showed that there was extensive desegregation in the St. Louis public schools despite continued residential segregation. The study revealed that between 1953 and 1963 the number of white pupils had decreased from 59,142 to 47,939, a loss of about 19 percent, while the number of Negro pupils increased from 31,185 to 64,102, a gain of about 105 percent. In 1953, the school enrollment was 65 percent white; in 1963 it was 57 percent Negro. During the decade the school system had gained about 3,300 Negro children annually and lost about 1,100 white children. In September 1963, for the first time, no high school was all-white or all-Negro. There were 11,173 white pupils and 8,940 Negro pupils in the nine general high schools. The elementary school population was 60 percent Negro in 1963. 9/

5/ So. School News, Dec.1963, p.11.

6/ 1960 Census, P.C.27, table 13, 27-41 and 42.

7/ Id. table 21,27-22.

8/ Id. table 87,27-311 and 312.

9/ Board of Education of the City of St. Louis, "Current Status of Integration in the St. Louis Public Schools," 4,6 and 7.

A biracial enrollment was achieved in five schools by transporting 4,560 pupils, primarily Negroes from overcrowded West End schools to predominantly or all-white schools. In nine receiving schools, the length of travel time prevented the synchronization of class schedules, according to the school board. Where classroom integration was impossible, playgrounds, lunchrooms and other non-academic activities were desegregated.

As to faculty desegregation, the study indicated that in 1953 there were 1,818 white and 886 Negro teachers in the school system. In 1963, there were 1,811 white and 1,670 Negro teachers. 10/ "The total professional staff (principals, teachers, supervisors, general administrators, certificated employees of the service divisions) increased from 4,051 in 1962 to 4,156 in 1963, an increase of 105. Negro professional employees increased from 1,796 in 1962 to 1,921 in 1963, a gain of 125 positions, whereas the number of whites decreased from 2,245 to 2,224." 11/

In transmitting the report to the board of education the deputy superintendent stated that what St. Louis had accomplished in integration must be viewed in the light of conditions confronting the schools: 12/

> The most crucial is the rapid rise in the number of Negro children and the steady decline in the number of white children. For all practical purposes, there is no integration in the community's housing pattern, and thus Negro and white pupils are not integrated residentially.

The study showed also that "/i/n 1962, three high school faculties were uniracial, whereas in 1963 all high school faculties were integrated to some extent." 13/ This was said to have been achieved by encouraging white teachers to transfer from all-white to biracial schools, and Negro teachers to transfer from

---

10/ Id. at 8-11.

11/ Id. at 12.

12/ Letter from Wm. Kottmeyer, Deputy Superintendent to Members of the Board of Education, Feb.1964.

13/ Board of Education of the City of St. Louis, supra note 9 at 13.

predominantly Negro to predominantly white schools. 14/ The study also showed the racial composition of the faculties of the 134 elementary schools by groups. Twenty-three schools with all white pupils had 351 white and three Negro teachers; 36 schools with all Negro pupils had 15 white and 705 Negro teachers. The other 75 schools had large numbers of both white and Negro teachers but the distribution among the group was not given. In 1963 there were a total of 1,358 Negro and 1,157 white elementary teachers. This was an increase of 86 Negro teachers in the elementary system over 1962. 15/

On August 7, 1963, the St. Louis board of education, under fire by the Negro community for failure to avoid "resegregation" of schools, filed suit 16/ in a Federal district court seeking a decision upholding the legality of its bus transportation program and an injunction restraining Negro and civil rights groups from interfering with the transportation of pupils. The three Negro members of the board refused to support the request for injunctive relief against demonstrations, contending it exceeded the board's authority. As stated above, some of the children transported by bus to underutilized schools in predominantly white districts were kept in separate classrooms. The board said in its brief that the policy of separate classes for the transported pupils at the receiving schools was not based on race, but was dictated by sound educational principles. 17/ (The addendum covers developments since August 1, 1964.)

14/ St. Louis (Mo.) Post-Dispatch, Feb. 7, 1964, p.8A.

15/ Board of Education of the City of St. Louis, supra note 9 at 15.

16/ Board of Education (St. Louis) v. St. Louis Branch NAACP, Civ.No.63C293(3) E.D.Mo.

17/ So. School News, Sept.1963, p.6. On February 14, 1964, the NAACP filed its answer to the Board of Education suit seeking an injunction to prohibit interference with its bus transportation program. The answer contended that it was unconstitutional to keep transported Negro students in classrooms separate from white students, and that the school board building program perpetuates segregation and denies Negro children fair and equal education opportunities. Id. Mar.1964, p.9.

On August 20, 1963, the NAACP filed suit charging the board with operating a segregated system and asked for an injunction restraining school officials from placing the transported Negro pupils in separate classrooms at the predominantly white receiving schools. Specifically the Federal court was asked to enjoin the defendants from: 18/ (1) "refusing and failing to adopt school boundaries creating and perpetuating positive biracial patterns;" (2) maintaining racially segregated facilities; (3) "operating and providing racially segregated schools by assigning Negro pupils to segregated schools and controlling transfer and assignments to further existing patterns of segregation; and (4) assigning Negro pupils to overcrowded segregated schools with unequal classroom and recreational facilities." It was asked that the board reassign a reasonable number of qualified teachers on a nonracial basis throughout the school system in order to achieve racial desegregation of faculties. 19/ On August 25, 1963, the NAACP announced that parents, Negro and white, would be asked to keep their children out of school beginning September 5. 20/ However, the planned boycott was dropped and the fall term opened without incident on September 4, 1963. 21/

On September 26 the board announced a policy called permissive transfer or modified open enrollment. Under the plan 1,195 unfilled seats--526 in 33 elementary and 669 in two high schools--would be available to students who wanted to transfer and whose educational achievement was adequate for the instructed program. Elementary pupils could transfer immediately and high school pupils at the start of the spring semester on January 27, 1964. The plan was assailed by the NAACP as inadequate. 22/

18/ Layne v. St. Louis Board of Education, Civ.No.63C311(3), E.D. Mo. On Sept. 5, 1963, the school board filed an answer denying the allegations in the complaint of the NAACP.

19/ So. School News, Sept.1963, p.6.

20/ On Jan. 29, 1964, the suits brought by the school board and the NAACP were combined, Board of Education (St. Louis) v. St. Louis Branch NAACP; Layne v. St. Louis Board of Education, supra notes 16 and 18.

21/ So. School News, Oct.1963, p.12.

22/ Ibid.

On October 8, the Reverend John J. Hicks, a Negro, was elected president of the St. Louis Board of Education. The Reverend Hicks said that the policy of permissive transfer and the redrawing of school boundary lines gave rise to new hope in the achievement of democratic ideals in the community. He said one of his major goals would be to extend the modified open enrollment policy to all St. Louis public schools. 23/

On January 14, 1964, the board approved construction of 34 transportable classrooms to relieve overcrowding in the city's congested, predominantly Negro West End. One objective was to end the controversial bus transportation program. 24/ The NAACP said the location of the mobile classrooms reinforced the Negro ghetto and the policy of containment of the Negro. The NAACP recommended redrawing of school boundaries to achieve maximum integration of schools and nonracial assignment of teachers. The organization proposed that the board select school sites in keeping with such redistricting so that each school would be assured an integrated student body as well as an integrated faculty. 25/

On February 3, the NAACP demanded the dismissal of the acting superintendent in a protest against plans to build the 34 supplementary classrooms. On February 4, a group called Parents for Integrated Education appeared at the acting superintendent's office to protest the supplementary classrooms. The group wanted permanent school buildings erected in congested Negro neighborhoods or transportation to available classrooms in other schools on a nonsegregated basis. The St. Louis Post-Dispatch editorially supported the acting superintendent's supplementary classroom plan. The newspaper said that supplementary classrooms would decrease transportation of pupils to less crowded classrooms thus allowing more room for pupils who would like to take advantage of the permissive transfer policy. Besides, the newspaper continued, "the target of protests should be the school board which makes the policies and is responsible to the voters, not the superintendent who recommends policy." 26/

23/ St. Louis (Mo.) Post-Dispatch, Oct. 9, 1963, p.1.

24/ Id. Jan. 15, 1964, p.9A.

25/ So. School News, Feb.1964, p.6.

26/ Id. Mar.1964, p.9.

In March 1964 the school board approved a four point proposal by the acting superintendent designed to end the costly bus transportation program and keep the school system on the neighborhood policy. The proposal called for: (1) "redrawing of school boundaries wherever feasible to siphon off children to nearby schools with unused classrooms," (2) "construction of 34 supplementary classrooms on playgrounds of three elementary schools and adjacent" to an abandoned stadium (3) borrowing 12 classrooms from a high school, and (4) seeking suitable facilities in existing buildings. 27/

On March 7, it was announced that the board had requested the Roman Catholic diocese to sell or rent some of its school facilities in the West End to the public school system. A large number of white Catholic families have moved from the West End, resulting in many empty classrooms. The great majority of Negro families who have moved into the West End are Protestant. Some Catholic officials are said "to view the public school request as a means to save the so-called 'changing parishes' from extinction." Others feared that Negroes would interpret such a move as "church support for containing Negro pupils in the neighborhood." 28/

On March 10, the board of education rejected a proposal advanced by Community Resources, a newly created organization, to form "multi-school complexes" by merging some West End elementary school districts, and reaffirmed plans to construct 34 supplementary classrooms to relieve overcrowded conditions. The Community Resources group had urged the blending of overcrowded school districts with adjacent schools with unused seats. The proposal called for transporting children within the expanded districts when walking distances were excessive. The school administrators raised five major objections to the proposal: (1) the neighborhood school concept which allows "pupils to attend elementary schools within walking distance of their homes, whenever possible" is sound; (2) "large numbers of pupils living close to their district school should not be bussed to other schools;" (3) there would be "widespread dissatisfaction" among parents whose children would be transported when they live within walking distance of a school; (4) there may not be enough buses available; and (5) "the bussing involved in the proposal would have to continue until another substantial bond issue is passed and new schools built." 29/

27/ Id. Apr.1964, p.15.

28/ Id. Apr.1964, p.13.

29/ Ibid.

On March 22, the Presbyterian Interracial Council requested the board to establish by the fall of 1964 one or more elementary schools with an equal balance between white and Negro pupils. Attendance would be voluntary by children "whose parents desire this healthy experience for them." The school board was asked to put this plan back on its agenda. 30/

On June 16, it was announced that a total of 166 applications for pupil transfers in the fall of 1964 under the open enrollment plan had been received. Of the 34 who had applied for vacancies in elementary schools, 25 were approved. Five applications were withdrawn and four had applied for vacancies already filled. There were 132 applications for vacancies in high schools, of which 64 were approved. The other applications were not approved because the vacancies had been filled, or the application was to a school not included in the plan. There were a total of 881 vacancies available on a first-come, first-served basis without regard to race. Among those receiving transfers only one elementary pupil was a Negro. There were 52 Negro transferees at the high school level.31/

Kansas City

On August 1, 1963, the Kansas City Board of Education announced a general policy which favored maximum racial desegregation "without destroying the fundamental principle of the school as a major service unit to the neighborhood of which it is a part." 32/ On August 15, the Kansas City Congress of Racial Equality (CORE) called the statement "another milestone in the history of educational progress in this city." 33/

On August 1, the board turned down a request by CORE that 195 Negro students be transported to all-white high schools. The board explained that its practice was to provide bus transportation only when overcrowding could not be relieved by other means. The school board said, however, that it would continue to permit students to transfer for valid reasons to schools having vacant space, stressed

---

30/ Ibid. The school board has had such a proposal under study since Sept.1963.

31/ St. Louis (Mo.) Post-Dispatch, June 16, 1964, p.9A.

32/ Board of Education of the School District of Kansas City, Mo., "Integration and the Kansas City Schools," p.3.

33/ So. School News, Sept.1963, p.6.

that no white student would be given a transfer solely to avoid attending a school where Negro children were enrolled and said that Negro students would be permitted to transfer to previously all-white schools for valid reasons. The board also denied CORE's request that it set up a biracial committee of six members to make plans and suggestions for implementation of a desegregation policy, saying that Kansas City already has organizations dealing with human relations. 34/

On October 15, the Kansas City public schools issued their ninth annual report on the progress of desegregation. It showed that the Negro proportion of the total school population, including junior colleges, had increased from 32.6 percent in September 1962 to 34.5 percent in September 1963. The study indicated a continued increase in 1963-64 of Negro pupils in the elementary schools to 37.7 percent and in the secondary schools to 32.4 percent. 35/

Among the 17 major secondary units, 15 schools have both Negro and white students and two schools have only white pupils. Among the 85 elementary units, 46 have both Negro and white pupils, six are all Negro, and 33 are all-white in enrollment. The data on secondary schools showed that Little Blue High School was 100 percent Negro in September 1963, while Lincoln was 99.8 percent, Central was 99.1 percent, and Manual was 91.8 percent. In the 1962 report, Lincoln was 100 percent Negro. The all-white high schools last September were McCune Home and Van Horn, while Northeast and Southwest were nearly all-white. 36/ Reportedly more than three-fourths of the Negro pupils attended schools ". . . in which less than 10 percent of the students were white." "More than 12 percent of the Negroes attend schools in which no whites are enrolled, and about 40 percent of the 26,000 Negro pupils are in schools with less than 10 white students." 37/

A sizable increase in the number of schools having biracial faculties was announced by the president of the Kansas City Board

---

34/ Board of Education, supra note 32, at 5-6.

35/ So. School News, Nov. 1963, p.5.

36/ Ibid.

37/ St. Louis (Mo.) Post-Dispatch, May 24, 1964, p.3A.

of Education. In 1962-63, only 12 schools had biracial faculties but in 1963-64 there were 31 schools which had both white and Negro teachers. There was a total of 2,193 white and 663 Negro teachers. 38/

The Kansas City Call, a newspaper read primarily by Negroes, took notice of the election of a Negro to the presidency of the St. Louis Board of Education, and stated editorially that in Kansas City the board members are politically appointed and that repeated requests for the appointment of a Negro member had been ignored. 39/

Webster Grover

On August 21, 1963 the NAACP announced that it would attempt to end de facto segregation in the Webster Grover School District. Webster Grover is a suburb of St. Louis and about five percent of its population is Negro. The branch president said that empty classrooms existed in all-white schools while Negro and white children in the same block were being sent to different schools to maintain segregation. He said school boundaries were gerrymandered to keep Negroes in all-Negro schools. 40/

New Desegregation in the Bootheel

School segregation in the Missouri Bootheel (the southeastern corner of the State which juts into Arkansas) has been more firmly entrenched than elsewhere in the State. Except for token compliance in a few of the larger towns, the Supreme Court's 1954 decision has been reportedly largely ignored. But by Federal court order two school districts in Pemiscot County admitted more than 100 Negro junior and senior high school students to the local white schools for the first term of the 1963-64 school year which began in July, and Charleston in Mississippi County was scheduled to put a desegregation plan into effect at its school opening in August 1964. 41/

38/ So. School News, Nov.1963, p.5.

39/ Ibid.

40/ Id. Sept.1963, p.7.

41/ N.Y. Times, July 27, 1963, p.7.

The two Pemiscot County desegregation cases 42/ were settled by identical consent judgments on June 26, 1963. The plans agreed upon provided for the admission of all Negro students grades 7 through 12 to the local schools on a nondiscriminatory basis in the first term of the 1963-64 school year beginning in July, grades 4 through 6 in January 1964, and in grades one through three in July 1964. The court expressly provided that any Negro student residing in the school district who had attended high school in Hayte (a town in the county but not in either of the two school districts) should be permitted to transfer or initially enroll in the high school located in the respective districts. 43/

The suit to desegregate the schools of Charleston, filed in 1962, 44/ ended in June 1963 when the court approved a plan for the desegregation of its schools in all grades, effective at the opening of the 1963-64 school year. 45/ In April 1963 the court had found that the method of operation of the public schools in the district denied plaintiffs their constitutional rights and had ordered the school board to file a plan to integrate the schools at all levels beginning in September 1963. 46/

In a memorandum filed on the date of the order it appeared that the school district had operated its two high schools and four elementary schools on a racially segregated basis prior to the decision in School Segregation Cases. Thereafter, the school board made two changes in recognition of the unconstitutionality of segregated schools. First, it permitted 11th and 12th grade Negro students to transfer to the white high school for college preparatory courses not offered at the Negro high school. Its second change, made in 1956, concerned the elementary schools but did not affect the segregated character of the schools. The board employed a supervisor for all elementary schools for the stated purpose of raising the scholastic level of the Negro pupils to that of the white pupils. 47/

42/ Walls v. Board of Education (Wardell) Civ.No.S63C21,E.D.Mo., filed Apr. 24, 1963; Lewis v. Board of Education (Deering) Civ.No.S63C25, E.D.Mo., filed May 7, 1963.

43/ Id. June 26, 1963.

44/ Davis v. Board of Education (Charleston) Civ.No.S62C51, E.D. Mo., filed Aug. 25, 1962.

45/ Id. June 4, 1963.

46/ Id. Apr. 11, 1963.

47/ Ibid.

The court found these steps insufficient, saying: 48/

> The action of the Board in permitting transfer of Negro students in the eleventh and twelfth grades of Lincoln High School and the employment of an elementary supervisor looking to the unspecified future time when integration might be instituted, cannot be considered in 1963 as evidencing objective good-faith compliance with its constitutional duty to initiate a complete plan for desegregation. The subjective good faith of the board is not the test. As stated in Dove v. Parham,. . .and repeated in Norwood v. Tucker. . ./T/he question here, however, is not state of mind but required action. Required action is measurable only by objectivity. . . .

The court specifically found the permissive transfer used in the 11th and 12th grades to be unconstitutional because Negro pupils were initially assigned by race and had the burden of applying for transfer to get out of the segregated school.

The school board's plan for reorganization was also held unacceptable both because it would not be fully effective until September 1967 and because, in the court's view, it was a method of perpetuating segregation. Under the proposed time schedule the plan would have been effective for high school students in 1963, seventh and eighth grades in 1964, fifth and sixth in 1965, third and fourth in 1966, and first and second in 1967. The plan itself assigned pupils by geographic attendance areas and allowed transfer upon application in the discretion of the board. The criteria for granting or denying applications were similar to those found in the Alabama Pupil Placement Law. 49/

As to the geographic attendance areas the court said it was not informed as to the basis on which they were drawn nor as to their effect: 50/

48/ Ibid.

49/ Ala. Acts 1955, No.201.

50/ Davis v. Board of Education, supra note 46.

> It does not appear that the attendance areas are based on proximity to schools nor is the projected approximate number of white and Negro pupils from each attendance area shown so as to suggest that the areas were drawn for the purpose of limiting enrollment to the physical capacities of the schools.

As to the transfer provisions the court said they left: 51/

> to the Board the discretion to refuse or permit relocation of pupils from the school of their original assignment by geographic area to subjective considerations which are neither pertinent to the Board's duty to provide a method of operation on a non-racial basis nor susceptible of objective and practical application. . . .

The court instructed the board to bring in a new plan but the board moved for a hearing to present evidence on the rejected plan and a reconsideration of its rejection. This motion was denied on April 25. In its memorandum order of that date the court said that the information included in the school board's motion made it appear that "the rejected plan may contain the seeds of an acceptable plan for elementary school students in its geographical attendance area provision, but the plan as a whole . . . is not acceptable." 52/

The school board filed a new plan and a memorandum in support of the plan in May. 53/ The new plan called for assignment of all pupils resident in the district by geographic attendance areas. Nonresident high school pupils were to be assigned by the school board on the basis of administrative efficiency.

51/ Ibid.

52/ Id. Apr. 25, 1963.

53/ Id. "Plan for Desegregation of Schools" and "Supplemental Material Offered in Support of Plan of Desegregation," filed May 14, 1963.

All pupils were given a right to apply for transfer within a specified period after the opening of school each fall. Transfers were to be granted within limitations of the capacity of the school to which transfer was sought (residents of the area having priority) and administrative feasibility. Transferring students were required to provide their own transportation and were to be subject to transfer back to the school of the zone of residence by board action in event of failure to maintain a satisfactory standard of attendance, conduct, and school work. Transferring students were given the right to return to the school from which they had transferred after one semester or to remain in the school to which they had transferred until the completion of the highest grade in that school. 54/

The "Supplemental Material Offered in Support of the Plan of Desegregation" 55/ gave the enrollment in each school by race in September 1962 and the estimated racial distribution under the proposed attendance areas.

Elementary Schools
September 1962

School	Grades	White	Negro	Plan	
				White	Negro
Mark Twain	1-5	196	0	200	55
Eugene Field	1-6	329	0	319	38
A.D. Simpson	7-8	190	0	189	24
Lincoln	1-8	0	520	6	403

Under the plan the grades offered at the four schools remained unchanged. As a result, under the transfer provisions a Negro pupil resident in the Lincoln zone who secured a transfer to Mark Twain in the early grades might have to apply for transfer two more times to complete the eighth grade in a predominantly white school.

54/ Id. "Plan for Desegregation of Schools."

55/ Supra note 53.

At the high school level the plan provided that all pupils resident in the Mark Twain and Eugene Field school attendance areas would be assigned to Charleston High School (the white school) and all residents of Lincoln Elementary School attendance area would be assigned to Lincoln (Negro) High School. The report stated that of the 462 students at Charleston High in 1962-63, 145 were nonresidents of the Charleston district, and of the 155 at Lincoln, 69 were nonresidents. Although the plan provided that nonresidents would be subject to administrative assignment, residents who might want to transfer to another school (e.g., Negro students assigned to Lincoln) were not specifically given any priority over nonresidents. 56/ It should be noted further that a Negro resident of the Lincoln zone would have to apply for transfer, even if he had graduated from the eighth grade at Simpson, if he wanted to attend Charleston High School rather than Lincoln.

The court approved the plan with two amendments agreed to by the parties and retained jurisdiction "particularly to assure compliance with the transfer provisions and the provisions concerning the assignment of nonresident students." 57/ The amendments required by the court related to those two provisions.

As to transfer, the amendment prohibited racial discrimination in the board's action on applications for transfer and pressure on pupils by teachers or other school officials to persuade pupils to transfer to a school in which their race predominated. 58/ As to nonresidents, the amendment prohibited the school board in the exercise of the discretion granted from assigning students "to schools for the reason that members of their race predominate in those schools." 59/

56/ Supra note 53.

57/ Davis v. Board of Education, supra note 44, June 4, 1963.

58/ Ibid.

59/ Ibid.

ADDENDUM

On September 8, 1964, the St. Louis Board of Education voted unanimously to dismiss its suit filed against the NAACP in August 1963 asking for a declaratory judgment upholding its practice of transporting Negro pupils by classes from overcrowded predominantly Negro to predominantly white schools where they were kept in separate classrooms on a different schedule from the rest of the school.

It was reported that pupils transported in the 1964-65 school year will be integrated into the classrooms of the 10 receiving schools. The completion of six new schools in the overcrowded West End and central city was said to have reduced the number of pupils to be transported by bus from 4,600 to about 750. (St. Louis (Mo.) Post Dispatch, Sept. 9, 1964, p.3A.)

North Carolina

General

One incident attributable to school desegregation was reported 1/ as 22 additional school districts in North Carolina began operating desegregated schools for the first time in September 1963. 2/ This more than doubled the total number of desegregated school districts in the State in a single year. 3/ Much of the new desegregation resulted from court orders and from pending or threatened lawsuits. In all of the 40 out of 171 school districts which had initiated desegregation by the beginning of the 1963-64 school year, it was of token proportions; only about 0.5 percent of the State's Negro public school population was enrolled in biracial classes. 4/

When the public schools opened in September 1963 schools in at least three districts in North Carolina were boycotted by Negro students. Similar boycotts were staged during the school year in other locations within the State. The boycotts took place despite Governor Terry Sanford's warning to school officials that the compulsory school attendance law must be obeyed. 5/ In Monroe, Negro pupils boycotted schools in protest of the school board's refusal to transfer 10 Negro pupils to a white school. 6/ A list of grievances was submitted to the Franklin County School Board by the boycotting pupils. They cited, as reasons for their protest, inadequate facilities, second-hand facilities, and unfair treatment of

---

1/ A white male student was suspended from the newly desegregated high school in Rowan County, reportedly for attacking the first Negro pupil to enter the school. So. School News, Oct.1963, p.5.

2/ 1963 Report of the U.S. Commission on Civil Rights 64, cf., Appendix, table 1A.

3/ From 18 in 1962-63 to 40 in 1963-64. Ibid.

4/ Appendix, table 2A.

5/ Raleigh (N.C.) News and Observer, Sept. 10, 1963, p.1C.

6/ So. School News, Oct.1963, p.5.

three Negro teachers. 7/ In February 1964 about 70 Negro students boycotted the Negro high school in Chapel Hill, in protest of what they called inferior facilities as compared to the city's white high school. 8/ Negro school children boycotted schools in Warren County in April 1964, protesting the poor conditions at the Negro schools 9/ and a Negro school principal whom Negro parents considered an "Uncle Tom." 10/ About 800 Negro pupils boycotted schools in Williamson (Martin County) protesting school segregation. 11/

Several school districts are scheduled to initiate or increase the pace of school desegregation in September 1964, as a result of court orders or voluntarily. "Freedom of choice" of schools has emerged as the most widely used plan of desegregation in the State.

Extension of Desegregation by Court Order

Durham--In 1963 this Commission reported that a Federal district court rejected the Durham school board's plan of gradual merger of the dual system and ordered the board to give all Negro elementary and junior high school pupils "the absolute right to attend the school of their choice" in the 1963-64 school year and grant the same choice to senior high school students in 1964-65. 12/ The district court also ordered the board to submit a plan for total and complete desegregation. This decision was appealed by the Durham school board. On January 27, 1964, the Court of Appeals for the Fourth Circuit upheld the district court's decision, requiring the school board to abide by a "freedom of choice plan," as an appropriate interim decree. However, the court of appeals authorized the school board to propose a revised desegregation plan for the district court's approval. 13/

7/ Ibid.

8/ Raleigh (N.C.) News and Observer, Feb. 15, 1964, p.1.

9/ Id. Apr. 9, 1964, p.6.

10/ Id. Apr. 5, 1964, p.6I.

11/ Id. Feb. 12, 1964, p.1.

12/ 1963 Staff Report of the U.S. Commission on Civil Rights, Public Education 31.

13/ Wheeler v. Durham Board of Education, 326 F.2d 759 (4th Cir. 1964).

In September 1963, 500 Negro pupils were reassigned to predominantly white schools under the district court's "freedom of choice" plan. 14/ On April 28, 1964, pursuant to the order of the court of appeals, the city board submitted a new desegregation plan. Under the plan requests for reassignment will be granted without regard to race if: (1) written applications are submitted to the school board and (2) space is available in accordance with the accreditation standards of the regional accreditation agency (a maximum of 30 students per class in grades one to three and 35 pupils in grades four and above). 15/

It is reported that attorneys for the Negro school children will file objections to the board's plan on the grounds that: 16/

(1) no provision is made for the hiring and placement of teachers and other school personnel, or for the determination of the size and location of sites for new schools on a nonracial basis;

(2) attendance areas are gerrymandered on a racial basis; 17/

(3) the burden of initiating desegregation is on the Negro parents and pupils;

(4) the "feeder" system is still designed to perpetuate racially segregated schools;

(5) no provisions are made to assure that application forms for reassignment will be made freely available. 18/

14/ Wheeler v. Durham City Board and Spaulding v. Durham City Board, Civ.Nos.C-54-D-60 and C-116-D-60, July 24, 1963, 8 Race Rel.L.Rep.975 (1963). So. School News, June 1964, p.13.

15/ So. School News, June 1964, p.13.

16/ Id. July 1964, p.7.

17/ Attendance areas appear to have significance only in automatic reassignment of pupils grades 2 through 12 to the school previously attended.

18/ The school board denied 127 applications for transfer for 1961-62 school year on the ground that they were submitted on "unauthorized forms." Civil Rights U.S.A.: Public Schools Southern States 1962, Staff Report to U.S. Commission on Civil Rights 83.

Yancey County--On September 26, 1963, Yancey County (which had been ordered to admit Negro students to its only high school in 1960) was ordered, by a Federal district court, to desegregate all its schools. 19/ The decree specifically required the school board to assign white pupils to a recently-built, two-teacher Negro elementary school or to assign the Negro pupils to the white elementary school by the second semester of the 1963-64 school year. 20/

School Desegregation by Consent Decree

Cabarrus County--A school desegregation suit was filed on behalf of 108 Negro school children against the Cabarrus County School Board in October 1963. 21/ The plaintiffs asked for an end to segregation in the assignment of teachers, principals, and other school personnel and in the assignment of students to schools, in the construction of new school plants, and in the holding of extracurricula activities. 22/

By consent of the parties on March 17, 1964, the Federal district court issued an interlocutory order setting forth a plan under which the school district will operate during the 1964-65 school session. The court noted that school officials had given assurance that the plan will be administered in good faith. Under the plan, any pupil, without regard to race or color, may apply for and obtain assignment or reassignment to the school within the district of his residence, "without cause or reason" so long as his application is submitted before June 15, 1964. 23/ The forms for application were

---

19/ 1961 Report of the U.S. Commission on Civil Rights 2, Education 49.

20/ Griffith v. Robinson (Yancey County), Civ.No.1881, W.D.N.C., Oct. 28, 1963, 8 Race Rel.L.Rep.1433 (1963).

21/ DuBissette v. Cabarrus County Board, Civ.No.C-190-S-63,M.D.N.C., filed Oct. 25, 1963.

22/ So. School News, Nov. 1963, p.4.

23/ DuBissette v. Cabarrus County Board, Civ.No.C-190-S-63,M.D.N.C., Mar. 17, 1964, 9 Race Rel.L.Rep.205 (1964). There is nothing in the order to suggest that the county was rezoned into a single attendance area system for white and Negro schools. The choice granted Negro pupils seems, therefore, to be contingent on residence in the attendance area of a white school.

specified by the plan. Notice of the plan was to be made by posting a copy of the board's resolution adopting the plan in every school, and publishing the resolution in a local newspaper once a week for three consecutive weeks. 24/ The court reserved the plaintiffs' right to seek further relief and directed the attorneys for both sides to confer on a plan of desegregation for subsequent school years. The court stated that if the parties did not reach an agreement by February 15, 1965, the case would have to go to trial. 25/

Concord--Parents of 47 Negro children filed a suit in November 1963 against the Concord City Board of Education seeking full desegregation of the city schools as to students, teachers and other employees. 26/ This action was a follow-up to a petition to the school board filed by the Negro parents on September 3. The petition asked for the formulation of a plan for desegregation. 27/ The lawsuit was filed because of the board's inaction on the petition.

The Concord school board has filed an answer in the legal proceedings stating that the "Concord schools are operated by custom, tradition and student choice, which has resulted in a voluntary separation of the races." 28/ On April 28, 1964, at a pre-trial conference, the parties agreed upon a "freedom of choice" plan. 29/

Cumberland County--On July 10, 1963, at a pre-trial conference of the parties to the suit to desegregate the schools of Cumberland County, 30/ the school board announced that all plaintiffs

---

24/ Ibid.

25/ Ibid.

26/ Gill v. Concord Board of Education, Civ.No. 223S-63, M.D. N.C., filed Dec. 12, 1963.

27/ So. School News, Jan. 1964, p.10.

28/ Id. Mar. 1964, p.10.

29/ Gill v. Concord Board of Education, supra note 26.

30/ Ford v. Cumberland County Board, Civ.No. 668, E.D.N.C.

in the case had been assigned to formerly white schools. The school board agreed, however, to confer with attorneys for the Negro pupils in drawing up a desegregation plan. 31/ On May 6, 1964, the parties agreed to and the court approved a "freedom of choice" plan of desegregation. 32/

Durham County--In July 1963 a school desegregation suit was filed against Durham County school officials. 33/ As a result of this action, the county school officials submitted a desegregation plan, to be effective in September 1964, which was approved by the court and both parties to the legal action. Under the consent decree entered by the court all pupils in grades 2 through 12 will be assigned to the schools previously attended. These pupils will be given the right to request reassignment to the school of their choice. First-graders and other new pupils will be assigned initially to the school of their choice. 34/

Hendersonville--A school desegregation suit was filed in the fall of 1963 on behalf of nine Negro children in Hendersonville. In the complaint the plaintiffs alleged that they were refused admission to certain schools in Hendersonville because of their race. 35/

On May 5, 1964, the Hendersonville school board approved the application of 56 Negro pupils for reassignment to white schools for September 1964. 36/ The pupils will be enrolled in grades 1 through 12. The school board's action resulted from an agreement reached by the parties to the litigation. The Federal district court issued a consent order similar to the one in the Cabarrus

---

31/ Winston-Salem (N.C.) Journal, Jan. 18, 1964, p.6.

32/ Ford v. Cumberland County Board, supra note 30.

33/ Thompson v. Durham County Board, Civ.No. C-140-D-63, M.D.N.C., filed July 23, 1963.

34/ So. School News, May 1964, p.6A.

35/ Williams v. Hendersonville County School Board, Civ.No.2182, W.D.N.C., filed Oct. 11, 1963.

36/ Greensboro (N.C.) Daily News, May 6, 1964, p.4.

County case, permitting freedom of choice for the 1964-65 school year. 37/

High Point--In March 1963, suit was filed on behalf of eight Negro pupils against the High Point City Board of Education, seeking complete desegregation of the school system in the assignment of pupils and teachers. 38/ While the suit was pending the school board adopted an assignment plan setting up geographic attendance areas without regard to race. As a result in 1963-64 a total of 35 Negro pupils attended previously white schools. 39/

On April 16, 1964, a Federal district court approved the High Point desegregation plan, but added a free choice provision to the plan. Under the added provision any student shall have the absolute right to attend any other school of his or her choice in the High Point school system which teaches the grade to which he has been assigned. 40/ If the school to which assignment is sought is overcrowded, a child may seek reassignment to the next nearest school. The plan as modified by the court was agreed to by the parties. Either has the right to reopen the case if issues arise. 41/

37/ So. School News, June 1964, p.13. See also text supra at note 23.

38/ Gilmore v. High Point Board, Civ.No.51G-63, M.D.N.C., filed Mar. 13, 1963.

39/ So. School News, May 1964, p.6A. In the school year 1962-63, 21 Negro pupils attended previously white schools. Staff Report to the U.S.Commission on Civil Rights, Civil Rights U.S.A. Public Schools Southern States: 1963, North Carolina 15.

40/ So. School News, May 1964, p.6A.

41/ Ibid.

Under the new plan the board announced that 96 Negro students who applied for reassignment will be assigned to 10 previously white schools in September 1964. 42/

Lexington--On May 14, 1964, a Federal district court approved, at a pre-trial conference, an agreement reached between Negro parents and school officials in the Lexington school desegregation case. 43/ Under the agreement Negro pupils may request a transfer (and new students initial assignment) to the school of their choice during the 1964-65 school year. 44/ The parties to the lawsuit will meet again in 1965 to review the operation of the plan, to revise it if necessary and to formulate a permanent policy for the future. 45/

On June 17, 1964, the city school board announced that eight Negro pupils will be assigned to formerly white schools in September. 46/ School officials of Davidson County (wherein Lexington is located), without the pressure of a pending suit, announced that three Negro pupils will be assigned to formerly white county schools in September 1964. 47/

Randolph County--The first school desegregation began in Randolph County on September 11, 1963, when seven Negro pupils were

---

42/ So. School News, July 1964, p.5.

43/ Sowers v. Lexington Board of Education, Civ.No. 20S-64, M.D.N.C., filed Mar. 4, 1964.

44/ So. School News, June 1964, p.13.

45/ Ibid.

46/ Greensboro (N.C.) Daily News, June 18, 1964, p.3B.

47/ Ibid.

assigned to a formerly white school. The action resulted from an agreement reached at a pre-trial conference 48/of the parties to a lawsuit brought to desegregate the county school system. 49/ Attorneys for both sides agreed upon a plan "for initial assignment and/or reassignment of school pupils without regard to race," and to submit the plan to the Federal court by January 31, 1964. 50/

On March 20, 1964, a plan of desegregation was agreed upon by the parties and the Federal district court issued a consent order. 51/ The court noted that the school board had given assurance that the plan would be carried out in good faith. The plan was similar to the popular "free choice" plan in operation in several North Carolina school districts. Under the plan, pupils will be reassigned, as a matter of course, upon application for transfer to any school within the attendance area in which the pupil resides. 52/ In the event of a request for reassignment outside of the attendance area of the pupil's residence, he may be required to furnish his own transportation if existing bus routes cannot be used. 53/

Under the plan the board reserved the right to assign any pupil to the school next nearest the school to which assignment was sought, if the latter was overcrowded. Previously, certain Negro high school pupils attended a segregated school in High Point under an arrangement whereby the Randolph County board paid their tuition and provided transportation. Under the desegregation plan these pupils will be allowed to finish their education at the school in High Point if they so choose. 54/

48/ So. School News, Oct. 1963, p.5.

49/ Belo v. Randolph County Board, Civ.No.209-G-62, W.D.N.C., filed Oct. 1962.

50/ So. School News, Oct. 1963, p.5.

51/ Belo v. Randolph County Board, Civ.No.209-G-62, W.D.N.C., Mar. 20, 1964, 9 Race Rel. L. Rep. 199 (1964).

52/ The order makes clear that maps showing school attendance areas were not redrawn. Unless there is a complete overlap of attendance areas for white and Negro schools, the "free choice" offered may be limited.

53/ Belo v. Randolph County Board, supra note 51.

54/ Ibid.

Warren County--Parents of 53 Negro public school children filed a suit on November 5, 1963, against the Warren County Board of Education. The plaintiffs sought an injunction to prevent the school board from operating a segregated school system. 55/ On July 7, 1964, the court issued a consent decree calling for the desegregation of schools by the freedom of choice plan beginning in September 1964. The order stated that where overcrowding made it impractical to grant a request for assignment or reassignment, "pupils will be assigned to another appropriate school." 56/ The parties agreed and the court order included a provision that the parties would confer not later than January 15, 1965, to see whether an agreement could be reached with respect to the 1965-66 and subsequent school years. If no agreement was reached the case would proceed to trial. 57/

Court Ordered School Desegregation

Buncombe County--In January 1964, parents of 32 Negro children filed suit against the Buncombe County school board for nondiscriminatory assignment of pupils and teachers. 58/ The county had never operated a Negro high school, but transported Negro high school students to Asheville. 59/ The suit was filed 17 days after the school board announced a three-year desegregation plan based on rezoning without regard to race. 60/ Under the plan, pupils in grade one would be automatically assigned to the school in their residential zone, and those in grades two through four could request a transfer to the school of their residential zone in September 1964. 61/ Similar transfer privileges would be available for

---

55/ Turner v. Warren County Board, Civ.No.1482, E.D.N.C., filed Nov. 4, 1963. See also So. School News, Dec. 1963, p.12.

56/ Id., Turner v. Warren County Board, July 7, 1964.

57/ Ibid.

58/ Bowditch v. Buncombe County Board, Civ.No.2196, W.D.N.C., filed Jan. 24, 1964.

59/ Id., Bowditch v. Buncombe County Board, July 20, 1964.

60/ Winston-Salem (N.C.) Journal, Jan. 8, 1964, p.5.

61/ Bowditch v. Buncombe County Board, supra note 59.

grades 2 through 8 in 1965, 2 through 10 in 1966, 2 through 12 in 1967. 62/ In July 1964 the plan was approved by the Federal district court after one major modification. 63/ The court ordered the school board to desegregate all elementary school grades (1 through 8) in September 1964, and the high school grades in two steps, two grades in 1965-66 and the remaining two in 1966-67. 64/ Under the court order school desegregation would be completed one year earlier than under the plan proposed by the school board. In addition to modifying the desegregation plan, the court ordered the school board to admit the plaintiffs who were high school students to the school of their choice in September 1964. The court said: 65/

> /t/hese high school students who are joined as plaintiffs showed initiative not displayed by other members of their class. Also, as a practical matter, there are very few of them who joined as plaintiffs and who are in high school grades--perhaps not more than a dozen. . . . I think it not unreasonable to accord to the particular plaintiffs a quicker remedy than to other members of their class.

In reaching its decision, the court considered the small number of Negro school children in the county (about 3 percent of the total) and the fact that no high school facilities for them were available in the county. 66/

School Desegregation Litigation Pending

Harnett County

In October 1963 suit was filed in a Federal district court against the Harnett County Board of Education 67/ on behalf of 19 Negro

---

62/ Ibid.

63/ So. School News, Aug. 1964, p.12.

64/ Ibid.

65/ Bowditch v. Buncombe County Board, supra note 59.

66/ Ibid.

67/ Felder v. Harnett County School Board, Civ.No.1469, E.D.N.C.

children seeking an injunction against the operation of a racially segregated school system and an order requiring the complete reorganization of schools into a unitary nonracial system. The complaint alleged that two petitions to the board making the same request had been ignored. The fact that one of the plaintiffs had applied unsuccessfully twice for reassignment was alleged to establish the insufficiency of an order for compliance with the provisions of the North Carolina Pupil Placement Law. The plaintiffs also asked that the court halt the construction of facilities for segregated schools. 68/ No developments in the litigation have been reported.

Reidsville

In November 1962 Negro parents filed a suit on behalf of their four school-age children against the Reidsville school board. 69/ While the suit was pending the school board assigned two Negro pupils to formerly white schools. 70/ On March 20, 1964, the parties agreed to a "freedom of choice" plan of desegregation for the 1964-65 school year. The parties also agreed to confer on plans for future desegregation, and that if no agreement is reached by February 1965, the case will proceed to trial. 71/

Wilmington-New Hanover-

In March 1964 parents of 80 Negro school-age children filed suit in a Federal district court against the Wilmington-New Hanover County School Board. 72/ The plaintiffs sought a court order to end school segregation and alleged discrimination. There was only one formerly white school in the system attended by a single Negro pupil when the suit was filed. 73/ In July 1964 the Federal district court ordered

---

68/ So. School News, Nov. 1963, p.4.

69/ Ziglar v. Reidsville Board of Education, Civ.No.C-226-S-62, M. D.N.C.

70/ So. School News, Apr. 1964, p.17.

71/ Ziglar v. Reidsville Board of Education, Civ.No.C-226-S-62, M.D.N.C.,Mar. 20, 1964, 9 Race Rel. L. Rep. 207 (1964).

72/ Eaton v. New Hanover County, Civ.No.1022, E.D.N.C., filed Mar. 24, 1964.

73/ Greensboro (N.C.) Daily News, Mar.25, 1964, p.6A.

the school board to establish a timetable for the Negro plaintiffs to apply for transfer to white schools. The court also allowed other Negro parents to join the suit. The court urged the school board to formulate a "constitutional assignment plan without regard to race" before the hearing of the case in August 1964. 74/

New Desegregation Plan

Winston-Salem

On June 3, 1964, the Winston-Salem school board adopted a new plan of desegregation after receiving a similar recommendation from the Mayor's Goodwill Committee. 75/ The committee felt that few Negro pupils were enrolled in formerly white schools because under the plan in effect Negro parents had the burden of seeking reassignment to get their children out of a segregated school. 76/ Under the new assignment plan, which will become effective in September 1964, all first grade pupils will be assigned to the school in the zone of residence nearest their homes. The plan permits any student assigned to a desegregated school 77/ to ask for and automatically receive reassignment to another school. Desegregation is scheduled to proceed in like manner a grade-a-year thereafter. 78/

School Desegregation Involving Indians

Harnett County--On December 30, 1963, a Federal district court ordered the Harnett County Board of Education to admit 27 American

---

74/ Winston-Salem (N.C.) Journal, July 3, 1964, p.21.

75/ Id. June 4, 1964, p.1.

76/ Ibid.

77/ This feature of the plan appears to be in conflict with a recent Supreme Court decision which held the minority transfer rule unconstitutional, Goss v. Board of Education (Knoxville), 373 U.S. 683 (1963).

78/ Winston-Salem (N.C.) Sentinel, June 4, 1964, p.1.

Indian children to a white elementary school. 79/ The county operates separate elementary schools for white, Negro, and Indian children. In handing down its decision the court cited the School Segregation Cases and held that they were applicable to Indian as well as Negro children. The court held that the Indian children were entitled to have their applications for reassignment entertained by the school board without regard to racial considerations. 80/

The Harnett County School Board voted in May 1964 to discontinue the operation of the Indian school after the 1963-64 session. Beginning in September 1964, the Indian pupils will be assigned to the predominantly white school. 81/

Petitions to School Boards

Lawsuits in Federal courts appear to be the primary vehicle for bringing about and increasing the pace of school desegregation in North Carolina, and the indications are that new lawsuits will continue to be filed in the State. Negro parents filed a lawsuit after the Statesville City school board failed to act on their

---

79/ Chance v. Board of Education (Harnett County), 224 F.Supp. 472 (E.D.N.C. 1963). Indian High school students were admitted to Dunn High School, previously for white pupils only, in 1962. Ibid.

80/ Ibid.

81/ So. School News, June 1964, p.13. The court order entered on Dec. 30, 1963, declared that "the order shall be retroactive to and become effective as of the Fall Session 1963" which would seem to have required reassignment forthwith. Chance v. Board of Education, supra note 79.

petition. 82/ The Pamlico County school board has also received a petition by Negro parents to desegregate the county schools. 83/ Similar petitions have been filed with school boards in Craven, 84/ Guilford 85/ and Perquimans Counties. 86/

Desegregation Scheduled for 1964-65 School Year

In addition to Buncombe, Cabarrus and Davidson Counties, and the cities of Hendersonville, Lexington and Concord, discussed above, 13 other North Carolina school systems have announced the reassignment of Negro pupils to white schools for the 1964-65 school year.

The Stanley County school board announced on April 16, 1964, that two Negro pupils had been reassigned to a white school for September 1964. The school board reported that the two pupils were the first Negroes to request assignment to a white school and that the requests were granted unanimously by the board. 87/

The Tryon City Board of Education announced in April 1964, that 30 Negro pupils had been reassigned to formerly white schools for the 1964-65 school year. 88/

The Iredell County school board approved the applications of nine Negro students for transfer to the county's white high school. 89/ The school officials reportedly stated, in announcing the

---

82/ Nesbitt v. Statesville Board of Education, Civ.No.486 W.D.N.C., filed Mar. 14, 1964; petition to school board reported, Greensboro (N.C.) Daily News, Sept. 12, 1963, p.5C.

83/ Raleigh (N.C.) News and Observer, Jan. 21, 1964, p.5.

84/ Id. Dec. 17, 1963, p.6.

85/ Greensboro (N.C.) Daily News, May 3, 1964, p.15B, see also, id. Apr. 5, 1964, p.20C.

86/ So. School News, July 1964, p.5.

87/ Raleigh (N.C.) News and Observer, Apr. 18, 1964, p.13.

88/ Charlotte (N.C.) Observer, July 2, 1964, p.10A.

89/ Greensboro (N.C.) Daily News, July 15, 1964, p.12B.

decision, that in view of the passage of the Civil Rights Act of 1964, they had no choice but to approve the applications. 90/

Several cities in eastern North Carolina, Rocky Mount, Greenville, Goldsboro, Tarboro, Weldon, and Edenton, have announced that Negro pupils will be assigned to formerly white schools in September 1964. Biracial classes were also scheduled to begin in the rural counties of Bertie, Martin, Warren, and Greene. 91/

90/ Ibid.

91/ Raleigh (N.C.) News and Observer, July 25, 1964, p.1.

ADDENDUM

General

When the 1964-65 school year opened there were 21 newly desegregated school districts in North Carolina. Much of the new desegregation was in token proportions. No incidents were reported as the desegregation took place. (So. School News, Sept. 1964, p.5.)

Durham

On August 3, 1964, a Federal district court ordered the Durham City Board of Education to notify all pupils that they had a right to attend the school of their choice during the 1964-65 school year. In handing down the order, the court disapproved the desegregation plan submitted by the school board on April 28, 1964, because:

> the court is of the opinion that the school zone boundaries. . . in some instances, have been drawn along racial residential lines, rather than along natural boundaries or the perimeters of compact areas surrounding the particular schools.

Nevertheless, the court ordered the board to assign all pupils initially in accordance with the plan disapproved, subject to the right of pupils to apply for reassignment to the school of choice within a specified period. The court declared reassignment to the school of choice would be on a first-come, first-served basis regardless of race. If a particular school reached its capacity the court stated that the board could assign pupils to the next nearest predominantly white school, subject to approval of the court. The procedure for initial assignment and reassignment ordered for 1964-65 was made effective for subsequent years unless the school board presented and, with the approval of the court, adopted some other plan for the elimination of racial discrimination in the school system.

The court deferred ruling on the plaintiffs' request for assignment of teachers and other school personnel on a nonracial basis until the end of the 1964-65 school year. However, the school board was directed to make a detailed study of administrative and related problems during the interim. The court pointed out that the school

board had given assurance that its school construction program would not be directed to perpetuate, maintain or support segregation, and refused to issue an order relative to that matter. (Wheeler v. Durham City Board, Civ.No.C-54-D-60 and Spaulding v. Durham City Board, Civ.No.C-116-D-60, M.D.N.C., Aug. 3, 1964.)

Harnett County

On August 24, 1964, a Federal district court issued an injunction enjoining Harnett County school officials from making assignments and transfers of pupils on the basis of race. The court also ordered the board to admit the plaintiffs who had made proper applications to the school of their choice; and, to permit the remaining plaintiffs to submit applications within a specified time. The court also said that if the school board did not adopt a desegregation plan, it must inform pupils and their parents that they had a right of free choice at the time of initial assignment and at such reasonable intervals thereafter as the board might determine and the court approve. Jurisdiction was retained for further proceedings. (Felder v. Harnett County Board, Civ.No.3230, E.D.N.C., Aug. 24, 1964.)

On September 2, 1964, the Harnett County school board announced that five Negro pupils had been granted transfers to all-white schools. (Raleigh (N.C.) News and Observer, Sept. 2, 1964, p.1B.)

Statesville

On August 2, 1964, a Federal district court said that it had approved a three year plan of desegregation for Statesville city schools. The plan called for desegregation of grades 1 through 6 in September 1964, grades 7 through 9 in 1965, and grades 10 through 12 in 1966. (Greensboro (N.C.) Daily News, Aug. 31, 1964, p.4A.)

Wilmington-New Hanover

On August 5, 1964, the Federal district court ordered the Wilmington-New Hanover school board to admit some of the named plaintiffs to the school of their choice. The parties had agreed that only the rights of individual plaintiffs who had requested transfer would be adjudicated at that time; all other questions, including but not limited to the board's plan and nonracial assignment of teachers, were deferred until after the parties conferred on them in January 1965. The court stated that the board's plan would be approved as the basis for assignment beginning in September 1965 unless the parties agreed upon modifications, or moved for a trial on the merits or for a rehearing.

As to assignments of Negro pupils who had requested transfer effective in September 1964, it was stipulated that 19 had been reassigned to the school of their choice, four had been denied for late filing, and seven had been denied because the school of choice was not the nearest white school, or, in some instances, because the school of choice was crowded. As to the four denied for late filing, the court found no burdensome administrative duty justifying the rigid application of the time limit and ordered the pupils admitted to the school of choice. As to the seven, the court found the rejections to have been made for good and sufficient reason unrelated to race. The court, however, gave these pupils a limited time to elect to attend the other predominantly white school suggested by the board in its letters of rejection. Jurisdiction was retained for further proceedings. (Eaton v. New Hanover County, Civ. No. 1022, E.D.N.C., Aug. 5, 1964.)

After the court order, three of the Negro pupils who had been reassigned to white schools sought transfer back to the Negro schools. On August 31, 1964, the district court issued an order granting their requests. (Eaton v. New Hanover County, Civ. No.1022 E.D.N.C., Aug. 31, 1964.)

Oklahoma

General

By the end of the 1963-64 school year 197 Oklahoma school districts, out of 241 which have both Negro and white pupils, were desegregated in some degree. It was estimated that the total enrollment in the desegregated districts was 359,619, of whom 35,596 were Negroes. However, only 12,289 (35 percent of the State's total) of these Negro pupils attended schools with white pupils. 1/

Oklahoma City

In August 1963, the Oklahoma City Board of Education announced a temporary plan for more complete desegregation of its school system in compliance with a Federal court order issued in July. The order directed the board to stop transferring pupils on the basis of race, to begin faculty assignments without regard to race in September 1963, and to submit a plan for further desegregation. 2/ The minority-majority transfer rule, whereby students could transfer from schools where their race was in the minority to schools where their race was in the majority, having been held unconstitutional by the Supreme Court, 3/ was eliminated. The historic neighborhood school principle was reasserted. However, the board said race would not be considered in establishing or adjusting attendance-area boundaries. Transfers would be granted to allow a student to obtain a more appropriate education program, to make it possible for two or more members of the same family to attend the same school, to allow a pupil to complete the highest grade offered in a school which he had been attending, and for other valid, good-faith reasons. 4/ The board announced that five Negro teachers would be

---

1/ Appendix, table 1.

2/ Dowell v. Oklahoma City School Board, 219 F.Supp.427(W.D.Okla. 1963.)

3/ Goss v. Board of Education (Knoxville), 373 U.S.683(1963).

4/ So. School News, Sept.1963, p.11.

immediately assigned to biracial schools. 5/

The plan was criticized by a Negro leader but verbally approved by the Federal judge who heard the case. The NAACP branch president said that the plan represented "spoon-fed compliance" with the court order. 6/

In December 1963, the superintendent of the Oklahoma City school system announced that three more Negro teachers had been assigned to biracial schools, two Negro clerical workers hired, and that the white and Negro supervising staff had been combined and four Negroes employed as teacher consultants or supervisors. He also said that the board had been studying the possibility of more extensive faculty desegregation by developing some approach for assigning teachers on the basis of qualifications. This, he said, might involve the use of a standardized test devised by the Educational Testing Service.7/ It was agreed that the major issue was teacher employment. The local president of the NAACP said that the school board members had reservations about assigning a white teacher to an all-Negro school or a Negro teacher to an all-white school. The NAACP's position was that the board fears were unfounded. 8/

On January 14,1964, a permanent plan of desegregation was adopted by the board which included the following points: (1) adherence to the neighborhood-school concept, (2) determination of attendance zones by geography and building utilization, not the race of the residents, (3) desegregation of student activities and school facilities, (4) pupil transfer without regard to race, and (5) special school services on the basis of need. 9/

5/ Ibid.

6/ Ibid.

7/ Id. Jan.1964, p.4.

8/ Id. at 5.

9/ Id. Mar.1964, p.15; Apr.1964, p.7.

On February 28,1964, a hearing was held on the permanent plan. The Federal court neither approved nor disapproved the plan but proposed that outside experts be retained to conduct a study to determine what the plan should be. It was brought out at the hearing that at that point in the 1963-64 school year 46 white elementary pupils had been granted transfers out of Negro attendance areas to schools in other areas. The superintendent said the transfers were for valid reasons, not based on race. 10/

On April 1,1964, the board rejected the proposal to have outside experts study the plan for desegregation. 11/ But on April 27, the attorney for the plaintiffs submitted to the court the names of three educators experienced in human relations as possible experts to conduct a study.12/ On May 13, the three were appointed by the court over the objection of the board which argued that the court had no power "to take over the functions of the school board and write a plan of desegregation" and that the function of the court is to apply the law to the plan.13/ The study was expected to take 60 days.14/

Tulsa

The Tulsa Board of Education rescinded its eight-year-old minority-majority transfer policy in July 1963 as a result of a Supreme Court decision.15/ The transfer rule was similar to Oklahoma City's and allowed any student in a school where he was in a racial minority to transfer to the nearest school where his race was in the majority.16/

10/ Id. Mar.1964, p.15.

11/ Id. Apr.1964, p.7.

12/ Id. May 1964, p.4A.

13/ Id. June 1964, p.8.

14/ Ibid.

15/ Goss v. The Board of Education (Knoxville), supra note 3.

16/ See Dowell v. Oklahoma City School Board, supra note 2.

Other Developments

A Department of Defense directive that military families be informed of their right to have their children attend desegregated schools was not expected to create a stir in Oklahoma. In August 1963, military officials pointed out that schools in communities with bases nearby were already desegregated and there had been no difficulty.17/

The closing of the all-Negro school in El Reno because of its small enrollment resulted in the desegregation of the all-white school there. According to the State Superintendent of Public Instruction, this left only 28 Negro high schools in Oklahoma out of 96 operating when the Supreme Court handed down the second Brown decision in 1955.18/

A class action was filed in September 1963 on behalf of 12 Negro pupils to desegregate an elementary school in New Lima.19/ The complaint alleged that the pupils were refused admission to the school because of their race. 20/ At a pre-trial conference on June 15,1964, the Federal district court found that the case was moot as to three of the plaintiffs since they had graduated from elementary school.21/ The court ordered the school board to

---

17/ So. School News, Sept.1963, p.15.

18/ Id. at 11.

19/ Hill v. Board of Education (New Lima), Civ.No.5462, E.D.Okla., filed Sept.10,1963.

20/ So. School News, Nov.1963, p.11.

21/ Hill v. Board of Education (New Lima), Civ.No.5462, E.D.Okla., June 22, 1964.

permit any of the remaining plaintiffs, who made application, to enroll in the white elementary school for the 1964-65 school year. However, the court refused to issue a general desegregation order saying: 22/

> the plaintiffs have no right to proceed for and on behalf of any persons other than themselves and their attempt to prosecute this suit as a class action is denied; that this decree shall not be interpreted as declaratory of the rights of any persons not specifically named as parties; that plaintiffs are entitled to no relief except as herein specifically granted; that there is no need for the court to retain jurisdiction of this cause.

The court stated that the school board could in its discretion formulate rules governing the transfer of pupils from the Negro to the white elementary schools, ". . .provided the rules shall not be based on race or color nor require notice of intention to transfer before March 1 of the calendar year for transfer in the following September." 23/

In February 1964, Negro parents asked that Dunjee, a school for Negro pupils, be shifted from the Choctaw District Board of Education (Oklahoma County) to the Oklahoma City school system because of unequal and inadequate facilities. However, the move was defeated by a test vote of the residents 293 to 89. 24/ Initially, the Negroes threatened to seek enrollment at the schools for white pupils but decided to concentrate on seeking improvement of the Dunjee facilities. 25/ The Choctaw School District announced that in the 1964-65 school year, it would permit free transfer "without regard to race

---

22/ Ibid.

23/ Ibid.

24/ So. School News, Mar.1964, p.15.

25/ Id. Apr. 1964, p.7.

or color between schools as long as facilities will provide." 26/ Dunjee, which is a combined elementary and high school, has an enrollment of 1,100. The total district enrollment is 3,725. 27/

26/ Id. Mar.1964, p.15.

27/ Ibid.

ADDENDUM

Sand Springs

On August 21,1964, five Negro students were refused enrollment in an all-white high school. They met with the United States Attorney to discuss filing a complaint under the Civil Rights Act of 1964. He advised them on the proper method of filing the complaint and said the complaint would be investigated by the Federal Bureau of Investigation. The United States attorney said that if a violation was found, a report would be sent to the Attorney General in Washington, D.C. (N.Y.Times, Aug. 22,1964, p.6.)

South Carolina

General

The Clarendon County Board of Education was one of the original defendants in the School Segregation Cases, 1/ yet the schools in the district remain totally segregated a decade after the decision of the United States Supreme Court. 2/ Charleston School District No. 20 became the State's first school district to desegregate when, on September 3, 1963, 11 Negro pupils began classes in four formerly all-white high schools. 3/ The court-ordered desegregation 4/ took place without actual incident and was marred only by bomb scares at one of the desegregated high schools. 5/ After the desegregation of Charleston School District No. 20, 107 school districts in the State remained segregated. 6/

Charleston

The suit to desegregate School District No. 20 of Charleston was a class action brought on behalf of 13 Negro public school pupils who sought transfers to an all-white school and a plan for complete desegregation of the school system, including teachers and other school personnel. Charleston District No. 20 enrolls three times

---

1/ 347 U.S.483 (1954).

2/ So. School News, May 1964, p.8A.

3/ N.Y. Times, Sept. 4, 1963, p.1. A few days earlier 15 Catholic Negro school pupils enrolled in formerly all-white Catholic schools. See (Columbia, S.C.) The State, Aug. 30, 1963, p.1A.

4/ Brown v. School District No. 20 (Charleston), 226 F.Supp.819 E.D.S.C. 1963, aff'd,328 F.2d 618 (4th Cir.1964), petition for certiorari pending.

5/ (Columbia, S.C.) The State, Sept. 4, 1963, p.1A, Charlotte (N.C.) Observer, Sept. 5, 1963, p.7A.

6/ See appendix, table 1.

as many Negro pupils as white--9,539 Negro and 3,108 white pupils. 7/ The school board's defense was that some of the plaintiffs had not exhausted their administrative remedies under the State Pupil Assignment Law, and that those who had exhausted their remedies were denied transfers for nondiscriminatory reasons. The board admitted that all of the schools of the district were either all-white or all-Negro but stated that the separation of the races was voluntary. The district court rejected this argument on the basis of a previous decision in the Fourth Circuit on similar allegations. 8/ The school board and a group of white parents as intervenors contended that differences and disparities between white and Negro children as ethnic groups provided a rational basis for their separation in the schools. The district court rejected this contention also as not in issue and as a request to override previous decisions of higher Federal courts. 9/

The district court ordered the school board to admit the named plaintiffs in September 1963 to the school which white children residing in the same places would attend and enjoined the school board, beginning with the 1964-65 school year, from refusing to admit, assign or transfer any Negro pupil to a school of his choice on the basis of race. The court stated that this part of the order would be in effect until the school board submitted or adopted some other plan of desegregation that was approved by the court. 10/ The school board was also enjoined from requiring Negro pupils to submit to "futile, burdensome or discriminatory procedure" in securing initial assignment or transfer to a school of their choice. The court refused to rule on the request to desegregate school personnel.

On appeal to the Court of Appeals for the Fourth Circuit, the school board argued that the education of Negro pupils was helped rather than hurt by racially segregated schools. This argument was rejected by the court of appeals and the district court's decision

---

7/ Brown v. School District No. 20 (Charleston), supra note 4, 226 F.Supp. at 820.

8/ Jeffers v. Whitley, 309 F.2d 621 (4th Cir.1962).

9/ Brown v. School District No. 20 (Charleston), supra note 4, 226 F.Supp. at 820.

10/ Brown v. School District No. 20 (Charleston), supra note 4, 226 F.Supp. at 829.

was affirmed on January 27, 1964, three months after the schools had been desegregated in fact. 11/

The decision brought in issue a 1955 South Carolina statute which cut off State appropriations and State aid for any school from or to which any pupil was transferred by court order. 12/ The statute provided further that funds would be restored only when the pupil involved returned to the school to which he had been assigned prior to the court order. 13/ In construing the 1955 cut-off statute together with its 1956 amendment, which provides for administrative review of pupil placement, 14/ the State Attorney General ruled, on September 13, 1963, that Charleston schools were eligible for State financial aid despite desegregation under court order. 15/ The attorney general reasoned that the legislative intent was that the cut-off statute would be applicable only to cases in which resort was had to the courts in the first instance, and where the prescribed administrative procedure had not been followed. The attorney general stated: 16/

> In the Charleston public school case, the principal plaintiffs followed the administrative procedure prescribed by South Carolina through to conclusion before the suit was brought.
>
> That other plaintiffs were included in the decision /who did not exhaust the administrative procedure/ has resulted from the peculiar class action doctrines currently applied by the federal courts.

11/ Brown v. School District No.20 (Charleston), supra note 4, 328 F.2d at 618.

12/ S.C.Code, sec.21-2 (1955).

13/ Ibid.

14/ S.C.Code, sec.21-247 (1962).

15/ So. School News, Oct. 1963, p.13.

16/ Ibid.

This construction left the cut-off statute on the books, yet allowed the State's only desegregated school district to receive State funds.

On April 14, 1964, the Charleston School District No. 20 adopted a desegregation plan as allowed under the district court order. The plan set forth five criteria for assignment of pupils on a nonracial basis. The criteria were: 17/ (1) the preference indicated by the application of the pupil; (2) his ability to meet the educational program of the school to which he seeks assignment; (3) the capacity of school to which admission is sought; (4) the availability of space in schools other than the school from which and to which transfer is sought; and (5) the distance the pupil lives from the school.

Under the plan pupils will be assigned to the schools they attended the preceding school year except for those pupils eligible for promotion to other schools. 18/ In accepting the plan the Federal district court required that a copy of the assignment and transfer plan be given to each school child during the week of May 4, 1964, together with instructions that the information be given to their parents. 19/

On April 19, 1964, Negro plaintiffs in the case petitioned the Federal court to vacate its order approving the plan. They claimed that the plan "only masquerades as one granting freedom of choice" to Negro pupils, contending that: 20-21/

(1) the trustees' plan "does not eliminate the dual system of attendance areas in the assignment of pupils;

(2) it "seeks to shift the burden of accomplishing operation of the school system on a desegregated basis from the school authorities to Negro pupils and their parents;"

17/ (Columbia, S.C.) The State, Apr. 14, 1964, p.1B.

18/ Ibid.

19/ Ibid.

20-21/ Charleston (S.C.) News and Courier, Apr.30,1964, p.1B.

(3) it "grants to Negro pupils only a a right to apply for transfer and does not grant freedom of choice to attend the school of their choice;"

(4) it "omits any provision for the assignment or reassignment of teachers and staff of the schools on a nonracial basis;"

(5) it fails to provide for desegregation of extra-curricular activities, special courses, adult education programs, and related matters; and

(6) the period of time in which to apply for transfer is too short.

The court has handed down no decision on the plaintiffs' objections.

In June 1964 the Charleston School District No. 20 board announced that in September 1964, 77 Negro pupils would be transferred, under the desegregation plan, from all-Negro to formerly white schools. 22/

Desegregation Scheduled for 1964-65

South Carolina's first completely voluntary public school desegregation is scheduled to take place in September 1964. On June 10, 1964, the Cooper River (Charleston County) School District No. 4 announced that four Negro pupils will be assigned to two all-white schools when the 1964-65 session opens. The schools slated to be desegregated are in North Charleston, the largest city in the district. 23/ The school district is adjacent to Charleston, contains several military installations, and is a large recipient of Federal impacted area funds. The parents of the four Negro children involved are military personnel. 24/

22/ So. School News, July 1964, p.6.

23/ Charleston (S.C.) News and Courier, June 11, 1964, p.1A.

24/ Ibid.

In announcing the assignment of the Negro pupils the school board said: 25/

> (1) our Board has followed the city of Charleston school integration litigation with interest because it felt that the results of that litigation would largely control in our situation due to the similarity of the factual and legal issues involved;
>
> (2) furthermore, this district is the school residence of a large number of defense and military families whose children must be educated;
>
> (3) /u/nder the decisions of the U.S. Supreme Court and the Fourth Circuit Court of Appeals, from a legal standpoint, no useful purpose could be served in going to court; and
>
> (4) after full consideration of all facets of the problem and upon advice of counsel, the Board determined to admit these four Negro students, all of whom made timely application.

The Greenville County school district, the largest in South Carolina, has also announced favorable action on applications of Negro pupils to transfer to white schools in September 1964. A Federal district court held a school desegregation suit 26/ in abeyance to permit the board to act administratively. Thereafter, the board submitted and the court approved a pupil assignment and transfer plan. 27/ The plan established five criteria to govern initial assignments to elementary, junior or senior high school and applications for transfer. They are: (1) pupil's preference shown on the application; (2) the educational program of the school to which assignment or transfer is sought; (3) the capacity of such school;

25/ Ibid.

26/ Whittenberg v. Greenville County School Board, Civ.No.4396 W.D.S.C., filed Aug. 19, 1963.

27/ Id. Apr. 27, 1964.

(4) availability of space in other schools; and (5) the distance the pupil lives from the school to which admission or transfer is sought.

The court ordered the school board to admit the named plaintiffs to the school to which each respectively sought transfer for the school year beginning September 1964. 28/ The court also enjoined the school board from refusing any other Negro child entitled to attend the Greenville schools admission, assignment, or transfer on the basis of race. "/T/he right of all pupils or parents or guardians to freely choose to attend a racially nonsegregated school" was emphasized by the court. The board was instructed to notify parents of their rights under the plan and the court retained jurisdiction for further orders as might be necessary and proper, including questions of teachers qualifications and assignments as well as attorney's fees requested by the plaintiffs. 29/ Negro parents expressed dissatisfaction with the criteria for assignment and transfer and subsequently petitioned the Federal court to vacate the order approving the plan. 30/ The Greenville school board reported that 75 applications from Negro pupils for transfer to white schools were received during the time period allowed for making such requests. The board announced that no decision would be made regarding the applications until after its July meeting. 31/

In July 1964 a Federal district court issued a summary judgment in the Darlington County school desegregation case finding that the school system was "completely segregated." 32/ Under the order the Darlington County school board was required to enroll the five Negro plaintiffs in white schools in September 1964. The board was enjoined from denying admission or transfer to any other

---

28/ Ibid.

29/ Ibid.

30/ So. School News, June 1964, p.15.

31/ Charleston (S.C.) News and Courier, June 11, 1964, p.13A.

32/ Stanley v. Darlington County School District No.1, Civ.No.7749, E.D.S.C., July 11, 1964.

students on the basis of race, creed or color beginning in September 1964. The court further enjoined the school board from using "futile, burdensome or discriminatory administrative procedures which are not uniformly applied to assigning all pupils." In making initial assignments and granting transfers the board was ordered to establish procedures which were to include student preference, capacity of school, the educational needs of each student and the distance the student lived from the school. 33/ The court stated that the parties to the legal action could apply to the court for modification to meet administrative obstacles in carrying out the intent and purpose of the order. 34/ The Negro plaintiffs termed the court order vague, indefinite and inadequate, and petitioned the Federal court for an order to amend the "ground rules for integration of the Darlington" schools. 35/ They alleged specifically that the order failed to eliminate the dual attendance zones and shifted the burden of accomplishing desegregation on the Negro pupils and their parents. 36/ At the date of this writing the petition had not been considered by the court.

The Rock Hill (York County) school board announced on July 31, 1964 that 10 Negro pupils had been assigned to formerly white schools for the 1963-65 school year. 37/ The action was voluntary. 38/

The Pickens County school board announced in July 1964 that the applications of two Negro pupils for transfer to white schools would be "processed." 39/ The superintendent reportedly stated that barring any unexpected circumstances, the pupils would be assigned to the school of their choice. 40/

33/ Ibid.

34/ Ibid.

35/ Charlotte (S.C.) News and Courier, July 28, 1964, p.4A.

36/ Ibid.

37/ The State (Charleston, S.C.), Aug. 1, 1964, p.1B.

38/ Charleston (S.C.) News and Courier, Aug. 1, 1964, p.4B.

39/ The State (Charleston, S.C.), July 30, 1964, p.1, sec.11.

40/ Id. July 29, 1964, p.1B.

The Beaufort County School District No. 1 announced that it had assigned three Negro pupils to formerly white schools. In making the assignments school officials stated that "the acceptance of these students for transfer within the district was made in accordance with the criteria set forth by the Beaufort school authorities in 1956." 41/

James Island School District No. 3 was reportedly considering the applications of three Negro pupils for admission to white schools in September 1964. 42/

Pending Litigation

School desegregation suits are pending against other South Carolina school districts--Clarendon County School District No. 1, 43/ Orangeburg County School District No. 5, 44/ and Sumter School District No. 2. 45/ The defense offered by these school districts which have answered the complaints have a marked similarity to those employed by the Charleston school board, namely, that plaintiffs have failed to exhaust their administrative remedies and that no one is being injured by the manner in which the schools are operated in the district. An additional defense offered by the Orangeburg School Board alleged that intelligence and health differences between white and Negro pupils constituted a "rational basis" for "voluntary" segregation. 46/ Although these cases have not been heard on their merits, attorneys for both sides in the Sumter and Orangeburg County cases agree that oral testimony will not be necessary in the trial of the cases. 47/

41/ Charleston (S.C.) News and Courier, July 16, 1964, p.8D.

42/ So. School News, July 1964, p.6.

43/ Brunson v. Board of Trustees (Clarendon County), Civ.No.7210, E.D.S.C.

44/ Adams v. School District No. 5 (Orangeburg County), Civ.No. 8301, E.D.S.C., filed Mar. 20, 1964.

45/ Randall v. Sumter School District No. 2, Civ.No.A-C 1240, E.D.S.C. Action filed Sept. 14, 1963, by Negro military personnel stationed at Shaw Air Force Base on behalf of their children for admission to Sumter schools on a nonracial basis.

46/ Charleston (S.C.) News and Courier, Apr. 17, 1964, p.60.

47/ So. School News, Aug. 14, 1964, p.8.

Impacted area suit

In a letter dated May 11, 1964, the superintendent of Sumter School District No. 2 schools (on behalf of the school board) informed the commander of Shaw Air Force Base that effective July 1, 1964, the district would not provide education for the children of personnel stationed on the base. 48/ The letter stated that the district was willing to lease an elementary school to the Air Force to be operated by the Government at a "reasonable rent." The letter stated further, "should some of the children on the base wish to attend the schools of this district, application might be accepted and considered in light of space available and/or other factors, and with the stipulation that . . . they would attend the school to which assigned by the trustees." 49/ (Emphasis added.)

On July 2, 1964, the Federal Government filed a suit in a Federal court seeking to enjoin the district from carrying out its announced plans. 50/ In its complaint, the Government alleged that the school district action would be in violation of written contracts agreed upon by the school board when it applied for impacted area funds. The Government also listed the amount of Federal funds contributed to the district for school operation and construction between 1950 and 1960; and the amount of Federal funds contributed toward the construction of the school which the district offered to lease.

In July a Federal district court issued a temporary injunction enjoining the school board from refusing to admit the pupils pending

---

48/ (Columbia S.C.) The State, July 8, 1964, p.1.

49/ Ibid.

50/ U.S. v. Sumter School District No. 2, Civ.No.AC1469, E.D.Ga. An earlier suit against the school district by military personnel as individual citizens was pending when the U.S. filed suit. See supra note 45.

trial and final decision of the case. 51/ In granting the Government's request the court said that the school district obtained Federal funds for the "specific purpose of providing the school housing, the brick and mortar, as it were, for Shaw Air Force Base." 52/ The court said further "/t/he application for financial assistance by the School District and the approval of such applications, together with the commitment of Federal Funds by the Commissioner /of Education/ contained all the elements of a contract." 53/ The suit by the Government, as interpreted by the court, was for specific performance, and the court said that the remedies available to the Government for breach of contract were the same as those available to private parties. The court said specifically: 54/

> /N/o one would deny that the children are entitled to an education. Sumter County owes the integrity of its heritage, the performance of its solemn, binding contractural obligations. If Sumter County will not perform as a matter of honor, the Court must enforce as a matter of right.

Private Schools for White Pupils

In 1963 the South Carolina legislature provided for State scholarship grants to students desirous of attending private, non-sectarian elementary and secondary schools. 55/ The law requires local school districts to supplement the grants by the amount each district adds to the State's per pupil allotment. 56/ The legislature allocated $250 thousand to pay the State's share of grants in the 1964-65 school year. This sum will pay for about 1400 individual grants of $175 each - the State expenditures per pupil

---

51/ Id. July 29, 1964.

52/ Ibid.

53/ Ibid.

54/ Ibid.

55/ S.C. Acts 1963, No.297, p.498.

56/ Id. at 499.

last year. 57/ The local school district supplement varies. Orangeburg District No. 5, for example, spent $53 per pupil in addition to the State allotment. 58/

There has been considerable activity in South Carolina since December 1963 in setting up new private schools for white pupils. These moves, not unexpectedly, were in Charleston 59/ where some Negroes were admitted to white schools in September 1963 and in other communities where desegregation is anticipated in September 1964. 60/

57/ (Columbia,S.C.) The State, July 2, 1964, p.1B.

58/ Ibid.

59/ College Preparatory School of the College of Charleston. See Charleston (S.C.) News and Courier, Dec. 13, 1963, p.3B.

60/ Orangeburg, Wade Hampton Academy, Charleston (S.C.) News and Courier, June 26, 1964, July 14, 1964, p.1B; North Charleston, East Cooper Private School Corp., id. July 14, 1964, p.1B, June 20, 1964, p.1B, Apr. 4, 1964, p.1B, Feb. 22, 1964, p.1B; and James Island, James Island Independent School Foundation, id. Apr. 16, 1964.

ADDENDUM

General

South Carolina, which had only one desegregated school district during the 1963-64 school year, opened the 1964-65 session with 15 newly desegregated districts. Four of the districts acted under court order, the other 11 voluntarily granted transfer requests of Negro pupils to attend formerly white schools. One significant incident, a cross burning at the home of three Negro children enrolled in white schools in Oconee County, was reported as the schools opened. (So. School News, Sept. 1964, p.12.)

Chesterfield

On August 8, 1964, a suit was filed against Chesterfield County School District No. 2 by 26 Negro pupils who asked for a permanent injunction enjoining the school district "from continuing the policy, practice, custom and usage of operating a compulsory biracial school system. . . ."

Specifically, the plaintiffs asked the court to enjoin the defendants from: (1) operating a compulsory biracial school system; (2) maintaining a dual scheme or pattern of school attendance zones; (3) assigning teacher and pupils on the basis of race; and (4) approving budgets, employment and construction contracts, policies, curricula and programs designed to perpetuate segregated schools. In the alternative, the plaintiffs asked the court to order the defendant to present a complete plan of desegregation. (Crawford v. Chesterfield County School District No.2 ,Civ. No. 8432 E.D.S.C.)

The district superintendent said that the suit was unnecessary because plans were being made to desegregate the public schools in the 1965-66 school year. He said the Negro students were denied transfers on the basis of a county-wide regulation requiring that such requests be submitted four months in advance. (The State (Columbia, S.C.), Aug. 22, 1964, p.1B.)

Darlington County

On September 1, 1964, the county had Negro children attending formerly white schools for the first time. Thirteen children--five under court order and eight under voluntary board action--were admitted to seven previously white schools in Darlington and Hartsville. There was no trouble. The State(Columbia, S.C.), Sept. 2, 1964, p.1B.)

Orangeburg County

On August 12, 1964, the Federal district court granted plaintiffs' motion for a summary judgment in the Adams case. The court found that the school district was operated on a completely segregated basis, that there were no formal pre-registration proceedings, that the white children registered for white schools and Negro children registered for Negro schools and that the Negro children continued through high school in segregated schools. It was also found that the Negro plaintiffs had made timely application for transfer to white schools but that no final action was taken by the school board. The court noted that the plaintiffs had not exhausted their administrative remedies but found that even if they had done so, their requests for transfer would have been denied.

The court said that the defendants relied heavily on ethnic differences in educational achievement and psychometric intelligence to support their position for maintaining separate schools but that the court could not consider such evidence in connection with the case unless the United States Supreme Court modified its prior desegregation decisions. The court concluded that the defendants were depriving the plaintiffs and others of their class of their constitutional rights under the 14th amendment.

The court ordered the defendants to admit the plaintiffs and six other children who had made timely applications for transfer to white schools to which they would have been entitled to have been admitted if they were white and lived in the same school zone, on condition that the children present themselves at the schools for registration in September 1964. As a result of administrative difficulties the school board was ordered only to admit the plaintiffs and the six children who had made timely application in the fall of 1964-65. Beginning with the 1965-66 school year the defendants were enjoined from refusing admission, assignment or transfer of any Negro child, entitled to attend the schools, on the basis of race, color or creed. Further the court enjoined the defendants from submitting applicants for transfer to any futile, burdensome or discriminatory administrative procedures which are not applied to all equally. The following criteria were approved for consideration of applications for initial assignment or transfer: preference indicated by a pupil's application, whether program of the school to which application was sought meets the needs of pupil, the capacity of school to which admission was sought, the availability of space in schools other than the one from which and to which entry was sought and the distance the pupil lived from such school. (Adams v. Orangeburg School District No.5, Civ.No.8301,E.D.S.C., Aug. 12, 1964.)

The criteria were attacked by attorneys for the plaintiffs. They said that Negro children must "run the hurdle of vague and conflicting geographical, capacity and educational considerations to which white pupils are not subjected." The attorneys also complained that the criteria were assigned no priorities, thus permitting arbitrary and capricious action by the board. Objection was also taken to the fact that the order failed to provide for the nonracial assignment of teachers and staff, and for desegregation of extra curricular activities and adult education. (Charleston (S.C.) News and Courier, Aug. 25, 1964, p.6B.)

On August 28, 1964, public schools of the county opened with 19 Negro children attending formerly white schools. It was the first desegregation in the county. Nine other Negro children were eligible for transfer but decided to remain in the schools they had attended the previous year. (Charleston (S.C.) News and Courier, Aug. 29, 1964, p.6.)

Orangeburg's Wade Hampton Academy, a private school, opened on August 31, 1964 with about 300 white children enrolled. The cost for each child is $260 per year. (The State, (Columbia S.C.) Sept. 1, 1964, p.1B.)

Sumter County

On August 8, 1964, an order was handed down in the Randall case. Plaintiffs were children of military personnel denied admission to white schools. The court found that the defendants were maintaining a dual, biracial system for Negro and white students. The defendants contended that administrative remedies had not been exhausted, to which the court answered that such action would have been useless. The defendants also alleged that ethnic differences justified separate schools. The court answered that the issue was no longer litigable citing Goss v. Board of Education (373 U.S. 683,687). The court concluded that the plaintiffs were entitled to injunctive relief and ordered the plaintiffs to be admitted at the school where a white child, who resided in the same zone, would normally attend. The court further enjoined the defendants from refusing the admission of plaintiffs on the basis of race. Administrative difficulties prevented the court from ordering the defendants to admit others than the plaintiffs in the fall of 1964. However beginning with the 1965-66 school year, the school board was enjoined from refusing admission, assignment or transfer to any other Negro child on the basis of race or color. The defendants were restrained from submitting the Negro children to futile, burdensome or discriminatory administrative procedures. The order spelled out the notice to be

sent to all parents and guardians regarding transfers and prescribed when the notices were to be given to the parents and guardians. The court retained jurisdiction. (Randall v. Sumter School District No.2, Civ.No.1240, E.D.S.C.)

On August 27, 1964, 11 Negro children quietly entered three formerly white schools in Sumter without incident. All the children were dependents of military personnel stationed at Shaw Air Force Base. This was the first desegregation in the county. (The State (Columbia, S.C.), Aug. 28,1964, p.1D.)

Tennessee

General

At the end of the 1963-64 school year, 42 out of 143 school districts in Tennessee having both white and Negro pupils were desegregated in fact, and three additional districts had announced a policy of desegregation but had no Negro and white pupils attending classes together. 1/ The total number, 45, represented an increase of 19 from the preceding school year. 2/ All except one of the 17 which admitted Negro pupils to white schools for the first time acted voluntarily. 3/ The Franklin County board acted under court order. 4/ The districts that announced a desegregation policy also acted voluntarily. 5/ An estimated 4,486 Negro pupils (2.81 percent of the State's total Negro enrollment) 6/ were enrolled in predominantly white schools. Although still of token proportions the increase more than doubled the number in the previous school year. 7/

Initial Desegregation September 1963 and 1964

Madison County and the City of Jackson--A suit was filed to desegregate the public schools of Madison County and the city of Jackson, a separate school district and the county seat. In orders handed down between January and October 1963 the court ordered both boards to submit desegregation plans for their respective school

---

1/ Appendix, table 1. Elizabethton, Humboldt, and Watertown announced policies of desegregation but reportedly no Negro students applied for transfers to white schools.

2/ 1963 Report of the U.S. Commission on Civil Rights 64.

3/ So. School News, Sept.1963, p.16; Id. Oct.1963, p.18.

4/ Hill v. Franklin County Board, Civ.No.668 E.D.Tenn.,filed July 2, 1962. See text at note 42, infra.

5/ Ibid.

6/ Appendix, table 2.

7/ Supra, note 2, at 65.

systems. 8/ On July 19, 1963 the city board submitted its plan 9/ to desegregate grades one through three in September 1963, grades four through six in September 1964, and a grade-a-year thereafter. Under the city plan, attendance zones were to be established for each school without regard to race, and all pupils in a desegregated grade were entitled to attend the school in their residential zone. Pupils entering a grade desegregated for the first time were to be permitted to attend any school they chose with the approval of the superintendent, and any student already enrolled in a school was to be allowed to continue in the same school until graduation, regardless of the new zones. The school superintendent was granted the power to grant or require transfers under specific standards 10/ which excluded race.

On August 12, 1963 the Federal district court approved the city's plan after modifying it to require the board to desegregate two grades-a-year instead of one, beginning in September 1965, so that all grades would be desegregated by 1967-68. The court specified that the board would have administrative discretion in assigning pupils, granting transfers, and establishing attendance zones, provided its actions were not based on racial considerations nor designed to delay desegregation. 11/

The Jackson school system was not completely segregated when the suit was filed; during the 1962-63 school year the school board had voluntarily admitted seven Negroes to white schools. 12/ On

---

8/ Monroe v. Board of Commissioners (Jackson), 221 F.Supp.968 (W.D.Tenn.1963).

9/ Chattanooga (Tenn.) Times, July 20, 1964, p.16.

10/ Monroe v. Board of Commissioners, supra note 8.

11/ Ibid.

12/ Id. at 970; So. Ed. Rep. Service, "Statistical Summary," 1963-64 at 45.

September 3, 1963, about 40 Negro pupils entered biracial classes in Jackson public schools under the desegregation plan. 13/

After the 1963-64 school year started, Negro plaintiffs filed a motion for further relief, protesting the plan approved by the court and a lack of good faith by the city board in its administration of the plan. The plaintiffs contended that the board had gerrymandered the boundary lines of the attendance areas so as to perpetuate segregation and that de facto segregation in the school resulting from the existence of racially segregated housing patterns and the neighborhood school policy, was unconstitutional. The court rejected the claim of gerrymander, saying: 14/

> Certainly this Court would be entering an administrative thicket if it sought to divide the city into zones and should do so only when the need for such action is clear and plain. The Court does not believe, from the evidence adduced at the trial, that establishment of these zones does constitute an abuse of discretion.

On the issue of de facto segregation, the court said that the school board was not under an affirmative duty to bring about integration but only to abolish compulsory racial segregation. 15/

The court, however, did add two specifications to the desegregation plan. First, the court required the school board to allow any Negro pupil who had been admitted to a formerly white school, prior to the 1963-64 school year, to continue in that school regardless of his residence in another attendance area. 16/

13/ So. School News, Oct.1963, p.20.

14/ Monroe v. Board of Commissioners, supra note 8 at 973.

15/ Id. at 973-74.

16/ Id. at 973.

Second, the privilege of any pupil to continue to attend his former school until graduation, even though not a resident of the attendance area, was made conditional upon not depriving other pupils resident in the zone of the right to attend that school. 17/

The plaintiffs appealed the court's decision, but withdrew the appeal on February 1, 1964. The attorney for the plaintiffs said that it had been decided to allow a "little time to see how the board will operate" the plan. 18/

On July 15,1963 19/ the county school board submitted a gradual desegregation plan beginning with grades one through three in September 1963; grades four through six in September 1964, seven and eight in 1965-66; and one grade-a-year thereafter. Under the county plan, pupils in the desegregated grades were to be admitted to the schools of their choice, subject to the right of the board to transfer pupils under nondiscriminatory regulations, such as the distance from home to school and the pupil's scholastic achievement level. 20/

Proceedings in the Madison County case were stayed pending an appeal by a school board member for a jury trial. The request was denied by the Court of Appeals for the Sixth Circuit and review was denied by the Supreme Court on February 17, 1964. 21/ The court of appeals held that the Negro school children sought only equitable relief and not damages; hence the school board member was not entitled to a jury trial. 22/

17/ Id. at 972.

18/ So. School News, Feb.1964, p.5.

19/ Id. Aug.1963, p.8.

20/ Monroe v. Board of Commissioners (Madison County), 229 F.Supp. 580 (W.D.Tenn.1964).

21/ Robinson v. Brown, 320 F.2d 503(6th Cir.1963), cert. denied, 376 U.S.908 (1964).

22/ Ibid.

Hearings began on the county's proposed desegregation plan on May 13, 1964. 23/ On May 21, 1964, the Federal district court rejected the county's plan and ordered the school board to desegregate grades one through eight in the 1964-65 school year, and all high school grades in September 1965, thus reducing the transition period from eight to three years. 24/ A special course at the all-white technical high school was ordered to be made available to all students without regard to race or color in September 1964. Also covered by the nondiscriminatory order were school buses, cafeterias, and athletics. 25/

The plan is a free choice of schools plan; however, in the event of overcrowding, pupils residing nearest to the school will be given priority. The court stated that "/t/he fact that a pupil has heretofore attended a particular school will not give him a prior right to attend that school if to do so would deprive a pupil of another race otherwise entitled under this plan to attend from attending that school." 26/ (Emphasis supplied.)

The court also ordered the school board to eliminate racial considerations from the budgeting, financing, and building program of the schools. 27/ However, at the plaintiffs' request, it reserved ruling on the question of nondiscriminatory assignment of faculty and administrative personnel. 28/

23/ So. School News, June 1964, p.3.

24/ Monroe v. Board of Commissioners, supra note 8. Grades 1-3 were desegregated in Sept.1963.

25/ Id. at 585.

26/ Ibid. The portion of the opinion emphasized appears to be unconstitutional under Goss v. Board of Education (Knoxville) 373 U.S. 683(1963).

27/ Id. at 586.

28/ Ibid.

Both parties to the legal action have filed formal objections to the court order. The school board claimed that the plan would bring about desegregation too rapidly. The Negro parents filed objections to certain features of the plan including the after-harvest opening dates for some schools in predominantly Negro agricultural areas. 29/

On June 19, 94 Negro pupils were enrolled at white schools in Madison County under the court-approved plan. Classes were to begin in late August at the white and desegregated schools and about a month earlier at the Negro schools. The Negro schools were to recess from six to eight weeks during the fall cotton harvest. 30/

Shelby County--The Shelby County school district, which surrounds Memphis, desegregated one public school in September 1963 to mark the first school desegregation in the county. 31/ This action was in response to a request by the U.S. Commissioner of Education. Under a policy adopted by the school board about six Negro pupils who resided at Millington Naval Base, situated in the county, were admitted to a formerly all-white elementary school. 32/ A suit, brought by nonmilitary Negro parents, was pending against the school board for desegregation of the entire school system when this action was taken. 33/

On August 30, 1963, 34/ the Shelby County school board submitted a plan to a Federal district court to desegregate all 12

29/ So. School News, June 1964, p.3.

30/ Id. July 1964, p.11.

31/ Id. Oct.1963, p.18.

32/ Ibid.

33/ Robinson v. Shelby County Board, Civ.No.4916, W.D.Tenn., Mar.17,1964, 9 Race Rel. L. Rep.209(1964).

34/ So. School News, Sept.1963, p.17.

grades of the county school system in September 1964. 35/ Under the plan, any pupil in any grade could apply for a transfer from the school attended to any other school located in the same general school area. Transfer requests had to be approved by the transferee's principal and the county superintendent of schools. 36/ The plan was approved by the Federal district court on March 3, 1964. 37/ The court said that the plan was proposed in good faith and that it was "in full compliance with the letter and spirit of the law." 38/ The court rejected the desegregation plan that the plaintiffs proposed which would have required a ratio of 68 percent white students to 32 percent Negro students in each school. The court termed the proposal nonworkable. 39/ Commenting on the plaintiffs' proposal the court said: 40/

> /T/he Court is of the opinion a plan of this type, which seems to compel racial balance in the schools, is not at all practical or workable. It seems to the Court that many serious and insurmountable problems, including transportation of students, among others, are inherent in this substituted plan.

The superintendent of schools reported that he anticipated no trouble in September 1964 when the county will operate schools on a desegregated basis for the first time. Attorneys for the Negro school pupils did not appeal the district court's decision; they adopted a wait-and-see attitude on the operation of the plan. 41/

35/ Ibid.

36/ In the opinion approving the plan the court mentions "accompanying explanations." This provision, reported in the Nashville (Tenn.) Banner, Mar. 3,1964, p.8, apparently is one.

37/ Robinson v. Shelby County Board, supra note 33 at 210.

38/ Ibid.

39/ Id. at 211. Nashville (Tenn.) Banner, Mar.3,1964, p.8.

40/ Robinson v. Shelby County Board, supra note 33, at 211.

41/ Memphis (Tenn.) Commercial Appeal, July 18,1964, p.17.

Franklin County--Suit was filed on July 2, 1963, to desegregate the Franklin County public schools. 42/ Plaintiffs in the case were four white and four Negro parents, residents of the town of Sewanee. 43/ In answer to the complaint the school board alleged that school segregation in the county was a result of the apparent desire of both white and Negro parents and students, since no Negro parents and students had applied for admission to a white school and no white student had sought to enter a Negro school. 44/ However, on October 31,1963, in response to a court order, the school board submitted to the court a desegregation plan which proposed to desegregate the student body, teaching staff, other personnel and transportation facilities beginning in September 1964. The plan, believed to be the first of its kind for a Tennessee County school district, established a time table for the initiation of desegregation by geographic areas. The county was divided into eight geographical areas, each area to include one or more civil (election) districts. 45/ Under the proposed plan, desegregation will begin in area 8, which includes the towns of Sewanee and Cowan, in September 1964. The plan proposed to desegregate one additional area each year thereafter until the 1969-70 school year when the three remaining areas would be desegregated. The last three areas in the proposed desegregation schedule were the only ones which have schools including grades nine through 12. Thus, in effect, the high school level would not be desegregated in the county until the 1969-70 school year. The proposed plan reserved the right of the school board to assign students within zones or to other zones in order to permit maximum utilization of school facilities, but "not for the purpose of effecting segregation." 46/ The plan also called for the

---

42/ Hill v. Franklin County Board, Civ. No.668, E.D.Tenn.,filed July 2,1963.

43/ So. School News, Oct.1963, p.18.

44/ Ibid.

45/ Id. Nov.1963, p.8.

46/ Ibid. Tennessee State Department of Education, "Directory of Public Schools for 1963-64" at 49-50.

granting of transfers for a "good cause," and the assignment of teachers and other school personnel without regard to their residence. 47/ The plaintiffs filed objections to the plan on the ground that it did not provide for the elimination of the dual, segregated school system "with all deliberate speed." 48/

Before the court ruled on the desegregation plan for the whole county, it ordered Sewanee, the residence of the plaintiffs in the case, to desegregate two elementary schools (one all-Negro and the other all-white) in March 1964, the beginning of the second semester of the 1963-64 school year. 49/ As a result of the order, 13 Negro pupils were transferred to the white school. 50/ However, about 25 Negro applications for transfer were denied, and the plaintiffs filed a motion for further relief. The school superintendent claimed that the applications were denied because of overcrowding at the formerly white school. 51/

On March 3, 1964, the Federal district court ordered the school board to amend its desegregation plan as it related to Sewanee. The court called the transfer provision "very definitely discriminatory and unlawful," and ruled that the amended plan must provide for unitary zoning of all schools in Sewanee and the assignment of pupils to the school in their zone of residence. 52/

In April 1964 the Sewanee Community Chest Committee gave the Franklin County school board $50,000 for the construction of new classrooms at the formerly white school. The superintendent of schools announced that the additional facilities would permit the school board to carry out its plan to close the Negro school in Sewanee and enroll all of the town's elementary school pupils at the formerly white school in September 1964. 53/

47/ So. School News, Nov.1963, p.8.

48/ Id. Dec.1963, p.2.

49/ Id. Jan.1964, p.15.

50/ Id. Mar.1964, p.8.

51/ Ibid.

52/ Ibid.

53/ Id. June 1964, p.3.

In April 1964 the school board filed a revised desegregation plan for the entire county. The new plan called for the desegregation of the last three zones in the 1968-69 school year rather than the 1969-70 as originally planned. The transfer provisions were also eliminated from the new proposal. Under the new proposal any student would be permitted to attend any school in his zone of residence as desegregation reached the zone. Students would be prohibited from transferring from one school to another because of racial factors. 54/

Plaintiffs objected to the revised plan and asked the court to order the complete desegregation in all schools of the county. 55/

In June 1964 the Federal district court approved the revised time-table for desegregation, but modified the plan in other respects. The court specifically required the school board to establish new attendance areas for each school according to its capacity and facilities and to assign and reassign pupils to schools on the basis of residence within these attendance areas. 56/ The court further ordered the school board to include in its desegregation plan a provision that: 57/

> /t/ransportation to and from schools will be furnished all Negro children required to attend segregated institutions during the period of transition set forth in this plan; and provided further that all buses transporting any child to and from a desegregated school will be desegregated for the entire length of its route in so doing.

It is reported that in approving the plan, the court said that the school board had started to solve the problem, and that to require desegregation immediately "would risk a further lowering of educational standards." However, the court criticized the school board for failing to take the initiative in putting a desegregation

---

54/ Ibid.

55/ Ibid.

56/ Hill v. County Board of Education (Franklin), Civ.No.668, E.D.Tenn. June 23,1964.

57/ Ibid.

plan into effect. 58/

On July 15 it was reported that the Franklin County school board planned to appeal the section of the court's ruling which required the establishment of new school attendance areas on the ground that it would compel some white students to attend Negro schools. 59/

Wilson County--On September 24, 1963 a Federal district court ordered the Wilson County Board of Education to transfer 12 Negro students to previously white schools and to submit a new school zoning plan to the court by May 1, 1964. 60/ The school district had originally been ordered to begin desegregation in 1961. In handing down the order the court did not find bad faith on the part of the school board but remarked that the 1961 directive had not been carried out. 61/

On May 1, 1964, the Wilson County school board submitted a new desegregation plan as required by the court. Under the new plan, any pupil would be permitted to enroll initially at a school of his choice; any pupil already enrolled in school wishing to transfer to another school would be required to show "good cause" for making the change. In event of overcrowding, pupils residing nearer any school would be given priority over pupils already enrolled or seeking transfer who lived farther away. The plan was described by the attorney for the plaintiffs as an "open enrollment policy." 62/

58/ Chattanooga (Tenn.) Times, June 26, 1964, p.1.

59/ Id. July 15, 1964, p.2.

60/ Sloan v. Tenth School District (Wilson County) Civ.No.3107, M.D.Tenn., Sept.24,1963, 8 Race Rel. L. Rep. 1440(1963).

61/ Ibid.

62/ So. School News, June 1964, p.3.

Attorneys for the Negro plaintiffs filed objections to the proposed plan on June 1,1964. They contended that both white and Negro parents and pupils would generally choose schools attended and staffed by persons of their own race. The plaintiffs asked the court to require desegregation of teaching staff and other school personnel. The petition of plaintiffs also charged that the plan did not provide adequate notice to parents of their rights under the plan. Under the plan all requests for transfer had to be made no later than July 15. 63/ On July 31, 1964, the Federal district court upheld the proposed desegregation plan as it related to the assignment and transfer of pupils but ruled that the Wilson County school board must hire all teachers and other school personnel on a nonracial basis beginning in the 1965-66 school year. 64/ This is reported to be the first time that a Tennessee school district has been ordered to take such action. 65/

Extension of Desegregation

Knoxville--Knoxville desegregated its schools in 1960 under court order; 66/ however, the school board's plan of desegregation approved by the district court at that time, was objected to by Negro plaintiffs 67/ and the case has been in the court ever since. In February 1964, while the case was on appeal to the Court of Appeals for the Sixth Circuit, the Knoxville school board announced

---

63/ Ibid. Nashville Tennessean, June 2,1964, p.26.

64/ Nashville (Tenn.) Banner, July 31,1964, p.6.

65/ Nashville Tennessean, Aug. 1, 1964, p.1.

66/ Goss v. Board of Education (Knoxville) 186 F.Supp.559 (W.D.Tenn.1960).

67/ 1961 Report of the U.S. Commission on Civil Rights, 2 Education 52.

that all 12 grades would be desegregated in September 1964. 68/ The court of appeals did not hear arguments in the case but, by agreement of the parties, directed the school board to present a new plan to the district court. 69/

In May 1964, the school board submitted its plan calling for desegregation of all 12 grades, including extra-curricular activities. The plan called for rezoning and assignment of pupils to the school of the zone of residence, "subject to variations due to overcrowding and other transfers for cause." 70/ Transfers were to be granted to any student to enroll in any city-sponsored vocational and technical school, subject to the requirements related to age, physical condition, ability, aptitude, and previous training of the applicant, and employment opportunities. 71/

In June 1964 the Negro plaintiffs filed objections to the desegregation plan on the ground that it did not provide for the assignment of "teachers, principals, and other staff personnel" on a nonracial basis. 72/ They also contended that the plan did not provide for school construction and budgeting on a nondiscriminatory basis. 73/ Plaintiffs alleged further that the plan did not exhibit the map with the proposed nonracial zoning, and that the district court could not determine whether the zones were properly drawn without such a map. In addition, they claimed that the transfer provisions were vague and ambiguous; that the plan did not provide adequate notice to parents of their rights; and that the provisions for transfer and enrollment in vocational school failed to meet constitutional requirements in that denial could be based on

---

68/ Knoxville (Tenn.) News-Sentinel, Feb.21,1964, p.5.

69/ So. School News, Mar.1964, p.8.

70/ Knoxville(Tenn.) News-Sentinel, May 12,1964, p.5; So. School News, Apr.1964, p.6.

71/ Ibid.

72/ Id. June 12, 1964, p.11.

73/ Ibid.

employment opportunities which by custom and practice were limited for Negroes in Knoxville because of racial discrimination. 74/ No action had been taken on the plan or plaintiffs objections at this writing.

The Knox County school board has announced plans to desegregate all 12 grades in September 1964. Knox County (wherein Knoxville is located) has kept pace with the city in its rate of desegregation. 75/

Nashville--Nashville, with about 800 Negro pupils (out of over 15 thousand) enrolled in predominantly-white schools, had proportionately more desegregation than any other school district in Tennessee. Its grade-a-year desegregation plan, which began in September 1957, had reached the 7th grade level in 1963-64. 76/ Davidson County, which surrounds Nashville, also began desegregation on the 7th grade level in September 1963 with a substantial number of Negro students in formerly all-white schools. 77/ In December 1963, the white and Negro teachers in Nashville and Davidson County voted by a 16 to one majority to merge their four separate associations into one organization. 78/

Memphis--The Memphis plan of gradual desegregation reached the fourth grade level in September 1963. The schools opened with Negro pupils picketing the city's five Negro high schools in protest of the "extended day program" in operation at the five schools. The

---

74/ Ibid.

75/ So. School News, Apr.1964, p.6.

76/ Id. Oct. 1963, p.18.

77/ Ibid.

78/ Id. Jan.1964, p.15.

schools were operated on two shifts, one starting at 7:30 a.m. and ending at 3 or 4 p.m., and the other starting at 9:30 a.m. and ending at 4 or 5 p.m. 79/

The Negro pupils protested that there were vacant seats in white high schools, and that the overcrowding at the Negro schools should be remedied by sending Negroes to the less crowded white schools. 80/ Under the board's grade-a-year desegregation plan the first senior high school grade was not scheduled to be desegregated until 1969. Protest led the school board to revise class schedules at two Negro schools so that all classes would end by 4 o'clock. 81/

The Memphis plan of desegregation was approved by the Federal district court in May 1963; 82/ however, it was appealed by the Negro plaintiffs as not meeting constitutional requirements. The plaintiffs contended that the rate of desegregation was too slow and that the school board had gerrymandered the boundary lines of school zones to maintain de facto segregation. 83/ They also attacked the transfer provision and the district court's refusal to order desegregation of the teaching staff. Under the transfer provision parents of a pupil zoned into a desegregated school had a right to apply for transfer to any other "open school,"regardless of the race of the pupil seeking transfer or the racial composition of the school to which transfer was sought. 84/

On June 12, 1964, the Court of Appeals for the Sixth Circuit upheld plaintiffs contentions and ordered the district court to require the Memphis school board to desegregate all junior high grades in

---

79/ Id. Sept. 1963, p.16; Memphis (Tenn.) Commercial Appeal, Aug. 31, 1963, p.13.

80/ Memphis (Tenn.) Commercial Appeal, July 17, 1963, p.19.

81/ Id. Sept. 18, 1963, p.1.

82/ Northcross v. Board of Education (Memphis), Civ.No.3931, W.D. Tenn., Mar. 29 and July 5, 1963, 8 Race Rel.L.Rep.1021 (1963).

83/ Ibid.

84/ Ibid.

1965 and all senior high grades the following year. 85/ (The board of its own volition had accelerated its plan to include grades 1-6, instead of 1-4, in September 1964.) The court of appeals also held that: 86/

(1) the rezoning plan for the Memphis schools should be sent back to the district court for further consideration;

(2) assignment of teachers on a desegregated basis was a proper question in the litigation and that "/w/ithin his discretion, the District Judge may determine when, if at all, it becomes necessary to give /it/ consideration. . .;" and

(3) the provision for transferring pupils to "open schools" was invalid.

On the issue of gerrymander of boundary lines of school zones, the appellate court found the evidence insufficient to determine on a school-by-school basis that the zoning was arbitrary. However, the court found the evidence sufficient to require the board to prove that it had used acceptable criteria. 87/

The appellate court also said that the evidence showed that the purpose of the "open school" transfer rule was to permit pupils in the minority in a school to transfer to a school in which their race predominated and "in practice this is the way it is used." 88/ The school board introduced testimony as to the bad psychological effect of minority status in a school on children, which the court of appeals found to be an unwarranted generalization. The transfer provision was held unconstitutional. 89/

85/ Northcross v. Board of Education (Memphis), 333 F.2d 661 (6th Cir. 1964).

86/ Ibid.

87/ Ibid.

88/ Ibid.

89/ Ibid.

The attorney for the Memphis school board thereafter stated that the court of appeal's decision would not be appealed to the Supreme Court. 90/

Chattanooga--Although Nashville had the largest number of Negro students in predominantly white schools, the largest increase in the number of Negroes in predominantly white classes in 1963-64 was in Chattanooga. 91/ This city's desegregation plan reached the 4th grade level in September 1963 with over 500 Negro students in formerly white schools as compared to 50 for the previous school year. 92/ In addition, 18 white students were enrolled in classes with some 1,200 Negro students, marking the first time in Tennessee that white students have been required to attend schools where their race was in the minority. 93/

In the long-pending Chattanooga school desegregation case, a court-ordered plan to desegregate the Chattanooga Technical Institute was approved on November 26, 1963, to become effective on December 9. The school provides vocational training for adults. However, the same Federal court refused to require that the school board admit Negro students to the white technical high school for the second semester of the 1963-64 school year. 94/ The court said that "sound educational reasons unrelated to race" made it "undesirable and unwise" to desegregate the school before September 1964. 95/

Cookeville--Five Negro teachers were assigned to teach in desegregated, predominantly white schools in Cookeville. This is believed to be the first time that a county school system in Tennessee

---

90/ Memphis (Tenn.) Commercial Appeal, June 27, 1964, p.1.

91/ So. School News, Oct. 1963, p.18.

92/ Ibid.

93/ So. School News, Dec. 1963, p.2. This would appear to be the result of the invalidation of the minority transfer rule in Goss v. Board of Education (Knoxville), 373 U.S.683 (1963).

94/ Mapp v. Board of Education (Chattanooga), Civ.No.3564, E.D.Tenn., Sept. 9, Nov. 26, and Dec. 31, 1963, 8 Race Rel.L. Rep.1434 (1963).

95/ Ibid.

voluntarily assigned Negro teachers to predominantly white schools. The five Negro teachers previously taught at a Negro school that was destroyed by fire in January 1963. 96/

Additional Desegregation Plans Announced for 1964-65 School Year

On April 1, 1964, the Williamson County school board announced a voluntary, three-year plan to desegregate its schools beginning in September 1964, when grades 1, 2, 3 and 9 will be desegregated. 97/ Grades 4, 5, 6, and 10 will be desegregated in the 1965-66 school year and the remaining grades in September 1966. Under the plan, pupils may be granted transfer from one school to another school located on the same bus route. If a pupil desires to attend a school other than the one served by an existing route, he may be granted a transfer only if he furnishes his own transportation. 98/ A Negro organization issued a statement after the board's action accepting the desegregation plan but objecting to the maintenance of the existing bus schedule. The organization stated: 99/

> The present school bus system transports all children to the nearest school, except Negroes. Negroes will still be furnished special bus transportation to Natchez High School, but white children get no special bus service. In effect, it transports white children to an area and transports Negroes out of an area.

New Desegregation Litigation

Suit was filed on July 30, 1964, on behalf of 19 Negro school children to desegregate the schools at Madisonville (Monroe County). 100/ The plaintiff alleged that Negro high school students were transported from Madisonville to Sweetwater (24 miles

---

96/ N.Y.Times, Aug. 27, 1963, p.23.

97/ So. School News, Apr.1964, p.6.

98/ Ibid.

99/ Ibid.

100/ Knoxville (Tenn.) News-Sentinel, July 30, 1964, p.2.

round-trip daily) to attend an all-Negro school. They also contended that part of the Negro elementary school pupils were transported to a Negro school in Sweetwater and others must pass a white school in Madisonville to get to the Negro elementary school in Madisonville. 101/

101/ Ibid.

ADDENDUM

General

The Tennessee commissioner of education notified all of the school systems that the State would not make up any Federal funds lost by a system for failure to comply with the Civil Rights Act of 1964. It was reported that the State received more than $23 million in Federal funds a year for the operation of schools. (Nashville, Tennessean, Aug. 14, 1964, p.31.)

No incidents were reported as 14 school districts in Tennessee enrolled white and Negro pupils in classes together for the first time when the 1964-65 school year opened. Preliminary reports indicated that other school districts might join the list of desegregated districts. Only two (Madison and Monroe Counties) of the 14 newly desegregated districts acted under court order. (So. School News, Sept. 1964, p.6.)

Madison County

Acting under court order, the Madison County school board enrolled 68 Negro elementary school pupils in formerly white schools on August 4, 1964. The superintendent reported that there were no incidents. (So. School News, Sept. 1964, p.6.)

Monroe County

At a hearing on the school desegregation case in August 1964, the school board admitted that the school system was operated on a segregated basis. The school board agreed to confer with attorneys for the plaintiffs and to formulate a desegregation plan. The court stated that it would not hand down a desegregation order if the parties could reach an agreement. (Knoxville (Tenn.) News - Sentinel, Aug. 11, 1964, p.4.)

On September 1, 1964, 35 Negro pupils enrolled in formerly white schools in Madisonville at all levels. This included all of the named plaintiffs in the legal action and other Negro high school students in the Madisonville area who had previously had to attend a Negro high school in Sweetwater. (Chattanooga Times, Sept. 1, 1964, p.2.)

On the same date the Monroe County school board filed a desegregation plan with the Federal court. Under the plan, desegregation would be completed in four steps. Step one provided for the admission of Negro high school students living in the Madisonville area to Madison High School and of the named plaintiffs in other

grades to the Madisonville Elementary School, which as reported above, was carried out at the opening of school in 1964. Integrated transportation of elementary school pupils also was specified.

Step two of the plan provided for complete integration of the county high schools at the beginning of the 1965-66 school year. The Negro high school at Sweetwater was to be abolished under this step and Negro students admitted to the nearest high school.

Step three called for the admission of Negro seventh and eighth grade pupils living in the Madisonville area to the white junior high school in Madisonville at the beginning of the 1966-67 school year.

Step four provided for the admission of Negro first and second grade pupils living in the Madisonville area to the white elementary school in Madisonville beginning with the 1967-68 school year. The remaining grades (3 through 6) were to be desegregated at the rate of two grades a year. Thus the desegregation process would be completed in the fall of 1969. (Carson v. Board of Education (Monroe County), Civ.No.5069, E.D.Tenn., plan filed Sept. 1, 1964.)

On September 8, 1964, the school board filed an amendment to the desegregation plan which would initiate step 2 in September 1964 rather than 1965. Under the amendment the Negro high school was to be abolished on September 8, 1964 and Negro students attend the high school nearest their homes. Negro teachers at the school were to be "integrated into the system as positions become available." (Carson v. Board of Education, Civ.No.5069, E.D.Tenn., amendment filed Sept. 8, 1964.)

Shelby County

Fourteen Negro students were enrolled in formerly white schools in Shelby County when the 1964-65 school year began as the county initiated its one-step desegregation plan. No incidents were reported. (So. School News, Sept. 1964, p.6.)

Texas

General

In the 1963-64 school year there were 2,045,499 white and an estimated 326,409 Negro students enrolled in Texas public schools. Of the 899 school districts enrolling both white and Negro students, 264 were desegregated entirely or partially. 1/

In these biracial districts, which enrolled an estimated 200,000 Negro students and 1,300,000 white students, 2/about 18,000 Negroes attend classes with white students. 3/ Sixteen districts were reported to have admitted Negro pupils to white schools for the first time at the opening of school in September 1963. 4/ Five more districts were reported to have desegregated later in September. 5/ In March 1964, an official report of the Texas Education Agency added 41 districts to the list of desegregated districts. 6/

Beaumont and Fannett

Legal actions against these two school districts situated in Jefferson County were consolidated by agreement of the parties. Beaumont Independent School District voluntarily adopted a grade-a-year desegregation plan beginning in the first grade in September 1963, and Hamshire-Fannett Independent School District adopted a similar plan to become effective in September 1964. Negro plaintiffs in both cases sought complete and immediate desegregation of all grades in the school system.

1/ Appendix, table 1.

2/ So. School News, May 1964, p.1A.

3/ Supra note 1.

4/ For a list of the school districts see So. School News, Sept. 1963, p.7.

5/ Id. Oct. 1963, p.7.

6/ Id. Apr. 1964, p.7.

The court required Hamshire-Fannett to modify its plan to provide for desegregation of grades one and two in September 1964, and otherwise approved both plans as meeting the requirements of deliberate speed. 7/ The court relied specifically upon the decision of the Court of Appeals for the Fifth Circuit in Miller v. Barnes 8/ in reaching the decision that a grade-a-year progression was still permissible.

Dallas

The Dallas school superintendent was reported to have said that the Supreme Court decision 9/ directing the district court to reexamine Atlanta's desegregation plan had no effect on the Dallas grade-a-year plan. But a NAACP leader was said to have replied that there was impatience over the grade-a-year progression of desegregation in Dallas. He said that only 131 Negro pupils, out of 9,400 enrolled in the first three elementary grades, actually attended classes with white pupils in the 1963-64 school year. He claimed that the NAACP was ready "to represent Negro parents who wish to challenge the Dallas plan." 10/ On April 22, 1964, members of the Dallas Coordinating Committee on Civil Rights (DCCCR) picketed the school board "in hopes of broadening and accelerating desegregation within city schools." 11/ The DCCCR chairman said the board had refused to hear their case. 12/

Negro parents will be permitted to register their children in desegregated classes, grades 1-4, for the 1964-65 school year from August 6-29, 1964. 13/

7/ Brown v. Hendrix, Civ.No.4656, E.D.Tex., and Richard v. Christ, Civ.No.4657, E.D.Tex., Apr. 24, 1964.

8/ Infra note 15.

9/ Calhoun v. Latimer (Atlanta), 377 U.S. 263 (1964).

10/ So. School News, June 1964, p.16.

11/ Dallas (Tex.) Morning News, Apr. 28, 1964, sec.2, p.9.

12/ Ibid.

13/ Id. June 29, 1964, sec.1, p.9.

Denison

A Federal district court rejected a request for complete and immediate desegregation of the Denison public schools. 14/ The trustees of the school district had adopted a grade-a-year desegregation plan on June 24, 1963 under which each first grade pupil had the right to choose the school, within his attendance area, he wished to attend. 15/ In September 1963, 10 Negro pupils enrolled in formerly white schools. 16/

In addition to accelerating the pace of desegregation, plaintiffs sought an injunction against the following practices: 17/ (1) assignment of teachers, principals and other professional personnel on the basis of race, (2) approval of employment contracts and budgets, and disbursal of funds on the basis of race, (3) construction of new schools designed to perpetuate segregation, and (4) programming of extra-curricular activities on a racial basis.

The court denied the relief sought in (2), (3) and (4) on the ground that there was no evidence that the school board was doing any of the things of which plaintiffs complained. As to (1), the court denied relief because "the minor plaintiffs and the class they represent have no Constitutional right to be taught by a teacher of any particular race."

As to the grade-a-year plan, although the court acknowledged that the school board had not acted until nine years after the Supreme Court's decision, the fact that the school district was located in a section of the country where school segregation had existed for almost a century prior to that decision made the school

---

14/ Price v. Denison Independent School District, Civ.No.Sh.1565, E.D.Tex., Apr. 23, 1964.

15/ Ibid.

16/ So. School News, May 1964, p. 5-A.

17/ Price v. Denison Independent School District, supra note 14.

board's voluntary action in 1963 a prompt and reasonable start toward full compliance in the court's view. The court further found that the decision of the board to desegregate at the rate of one grade per year was a good faith exercise of its sound discretion with which the court should not interfere. 18/

The court assessed all costs against the plaintiffs and retained jurisdiction of the case until the desegregation of the school system was complete. The plaintiffs have filed an appeal.19/

Georgetown

Suit was filed on behalf of Negro children against the Georgetown Independent School District for an order to require school desegregation. The school officials did not contest plaintiffs' allegations that the schools were operated on a racially-segregated basis. During the course of the trial the school board voluntarily submitted a plan for grade-a-year desegregation to begin in September 1964. The Federal district court enjoined the school board from requiring racial segregation in the schools and ordered the board to proceed with its proposed plan of desegregation, specifying that as each grade came under the plan, each student entering that grade would be able to attend the formerly white or formerly Negro school within the geographic boundaries in which he resided. 20/ The Negro plaintiffs appealed the decision to the Court of Appeals for the Fifth Circuit which affirmed the lower court's ruling. 21/ The appeals court held that gradual desegregation was still permissible under the decisions of the United States Supreme Court, and that approving desegregation at the rate of one grade a year was a permissible exercise of the discretion of the trial court in its consideration of local problems and conditions. The court of appeals accepted the plaintiffs' allegation that the Negro school in the district was presently inferior in physical plant and academic programs to the two white schools in the district, and conceded that these particular plaintiffs might never attend integrated classes under the approved desegregation plan. However,

---

18/ Ibid.

19/ Noted by clerk of the U.S. District Court, E.D.Texas on copy of order in the case entered April 23, 1964.

20/ Miller v. Barnes, Civ.No.1311,W.D.Tex., June 26, 1963, 8 Race Rel. L. Rep. 1035 (1963).

21/ Miller v. Barnes, 328 F.2d 810 (5th Cir. 1964).

the court of appeals refused to modify the order on the grounds that it would be contrary to the guidelines established by the United States Supreme Court in the second Brown decision. The lower court's order was, nevertheless, modified to require the desegregation of two grades rather than one in September 1964. 22/

Houston

In Houston the Negro public school population is increasing more rapidly than the white school population. In the 1963-64 school year the number of Negro students increased by six percent and the white students by two percent over the 1962-63 school year. There were 162,612 white students and 60,299 Negro students in the Houston school district in the 1963-64 year.23/ A Houston Negro newspaper noted that fewer than 200 of the city's Negro students were attending classes with white pupils, 24/ after four years of grade-a-year, court-ordered desegregation. 25/

In December a Federal district court refused to modify its order 26/ of grade-a-year desegregation of Houston public schools which began in September 1960 and reached the 4th grade in 1963-64. Plaintiff sought a court order to admit his five-year-old daughter to an all-white kindergarten located a block and a half from their home, rather than have her travel a mile and a half to a kindergarten for Negroes. The court said that the plaintiff in effect was asking that the orderly desegregation plans be set aside for immediate integration. The court also said that the Houston school board had wanted to desegregate the kindergarten first, but that Negro patrons had wanted the first grade to be the desegregated grade, 27/ which was done.

22/ Ibid.

23/ So. School News, Mar. 1964, p.5.

24/ Id. June 1964, p.16.

25/ Ross v. Houston Independent School Districts 282 F.2d 95 (5th Cir. 1960).

26/ Ross v. Peterson, Civ.No.10444,S.D.Tex., Aug. 3, and Aug. 12, 1960, 5 Race Rel. L. Rep. 709 (1960).

27/ So. School News, Jan. 1964, p.7.

On June 30, the Houston school board decided to desegregate kindergarten in September 1964, eight years ahead of the court-ordered schedule. In making this action a board member commented that a recent decision by a Federal court of appeals had "set forth some broad concepts as to what it considered controlling criteria for school boards and district courts to follow in future handling of desegregation cases." 28/

On April 25, 75 college students from Rice University, Texas Southern University and the University of Houston demonstrated against the Houston school board's racial policies and "deliberate speed" in desegregation of schools. They picketed the headquarters of the 24th annual convention of the National School Boards Association for five hours during rain and high wind. 29/ Some of the young pickets passed out mimeographed lists of "grievances". Complaints included lack of Negro participation in extra-curricular activities such as the all-city orchestra, athletics, and dramatics; segregation in distributive education and teachers' meetings; and segregated special education schools.

The only Negro school board member commented that the picketing "to say the least is embarrassing because the allegations made are true." 30/

Other Developments

On July 29, 1963, a suit was filed in the U.S. District Court to desegregate public schools at LaMarque. 31/ The district has about 3,550 white and 1,850 Negro students. 32/

28/ Dallas (Tex.) Morning News, July 1, 1964, sec.1, p.18.

29/ Houston (Tex.) Chronicle, Apr. 26, 1964, sec.1, p.12.

30/ Houston (Tex.) Post, Apr. 26, 1964, sec.1, p.10.

31/ Marshall v. Kolb, Civ.No.63-G-51, S.D.Tex. LaMarque is located in Galveston County.

32/ So. School News, Sept. 1963, p.7.

In San Marcos, the school board voted to complete desegregation in September 1964, after being informed in an accreditation report that a Negro elementary school was in "very bad condition." 33/

The West Oso Independent School District voted to incorporate its 10 Negro teachers among formerly all-white faculties. Schools were desegregated several years ago. 34/

Prospects for 1964-65

Five school districts, in addition to Hamshire-Fannett and Georgetown discussed above, have announced plans to desegregate in September 1964: Orange, McKinney, Taylor, Lewisville, 35/ and Huntsville. 36/

33/ Id. June 1964, p.16.

34/ Ibid.

35/ So. School News, Sept. 1963, p.7.

36/ Id. Jan. 1964, p.7.

ADDENDUM

Initial Desegregation

When schools opened for the 1964-65 school year about 30 school districts in the central and eastern parts of Texas opened the doors of their formerly white schools to Negroes for the first time. A few acted under court order but for the most part the change resulted from action by the local school board.

In Harris County, in which Houston is located, six school districts were reported to have admitted Negro pupils to a formerly white school for the first time. Aldine, Goose Creek-Baytown, La Porte, Northeast Houston, Spring. (Dallas Morning News, Sept. 2, 1964, p.4, Sec.1; Houston Post, Sept. 3, 1964, p.3. sec. 1; id. Sept. 5, 1964, p.3, sec.1.)

In the case of Goose Creek-Baytown the 32 Negroes admitted to white schools were the first so enrolled for a regular term but a few Negroes had attended white schools during summer session in 1964. (Id. Dallas Morning News.) Northeast Houston Independent School District, the only one of the seven known to have acted under court order, was technically desegregated at the first grade level last year but no Negro pupils applied for transfer. (Id. Houston Post, Sept. 3, 1964.)

Other school districts in the Houston area which initiated desegregation in September 1964 include Richards, Grimes County; South Park, Jefferson County; Richmond, Fort Bend County; Orange, Orange County; Huntsville, Walker County. (Id. Dallas Morning News)

La Marque and Dickinson in Galveston County also admitted Negro pupils to their formerly white schools at the opening of the 1964-65 school year. (Houston Post, Sept. 2, 1964, p.6, sec.2; id. Sept. 3, 1964, p.1, sec.1.)

In the Dallas area, a start in desegregation was announced by the Lewisville, Mesquite, and McKinney school districts. (Dallas Morning News, Sept. 6, 1964, p.10, sec.1)

In Central Texas, Blanco, Georgetown, Granger, Lockhart, Marlin, Smithville, Thorndale, and Taylor made at least a start on a desegregation program. Georgetown, acting under court order, admitted 13 Negro pupils to the first and second grades. Granger and Taylor received no applications for transfer from Negro pupils. Thorndale, which acted voluntarily in admitting 80 Negroes to its previously white schools, announced that three Negroes were on its football squad. Blanco Independent School District received special mention

from the press because it is near Johnson City, also in Blanco County. (Dallas Morning News, Sept. 2, 1964, p.4, sec.1.)

Other Texas school districts reported to have begun the desegregation process in September 1964 were Wharton, Brazosport and Marshall, the latter located in deep East Texas. (Houston Chronicle, Sept. 2, 1964, p.4., sec.1; id. Sept. 2, 1964, p.4, sec.1.) Brazosport enrolled eight Negro pupils in kindergarten and grade one but no Negro pupil applied for transfer from its Negro school. The policy adopted permits transfer at any grade subject to the agreement of the teacher that the pupil requesting transfer can maintain the academic pace at the white school. The Negro school was assigned a white principal and several white teachers for the first time effective with the beginning of the 1964-65 school year. (Id. Houston Chronicle, Sept. 3, 1964.)

A desegregation program on a voluntary transfer basis beginning in September 1964 was announced by the Richards Independent and the Lamar Consolidated School Districts in August. (Houston Chronicle, Aug. 13, 1964, p.6, sec.4; Houston Post, Aug. 15, 1964, p.11.) No report on these districts since the opening of school has been noted.

Extension of Earlier Desegregation

Dallas - In the summer of 1964, attorneys for 10 Negro school children filed a motion for further relief in the Dallas school desegregation suit, originally filed in 1955 and before the Federal courts almost continuously since that time. The motion asked that the grade-a-year plan, put into effect in September 1961 and scheduled to be effective through the fourth grade in September 1964, be set aside and all grades be open to Negroes in the fall of 1964. (Dallas Morning News, Aug. 12, 1964, p.1.)

The Dallas Committee for Full Citizenship supported the attempt to accelerate the plan. Its president declared that school board action designating two biracial schools as Negro schools had placed 110 of the 182 Negro pupils enrolled in biracial schools at the opening of the 1963-64 school year back in segregated schools. The committee, he said, would not continue its efforts to get Negro parents to apply for transfer which had increased Negro enrollment in formerly white schools from 28 in 1962-63 to 182 in the fall of 1963 since their efforts could and had been made futile by an administrative order. (Dallas Times-Herald, Aug. 23, 1964, p.27A.)

The motion for acceleration of desegregation was heard by Judge T. Whitfield Davidson, an 87-year-old jurist who has served as trial judge in the case since May 1959. (Ibid; id. Aug 26, 1964,

p.1.) A hearing was held on August 24 and 25. At the close of the hearing on the second day, the court handed down an eight-page memorandum denying the petition to enjoin the school board from continuing segregation or requiring it to alter its grade-a-year program previously approved by the court. It did however order the board to apply the same rules and practices of transferring students from one school to another to both white and Negro children seeking such transfers. (Bell v. Folsom, Civ.No.6165, N.D. Tex.,Aug. 25, 1964.)

The court seems to have held that its 1961 order (sub. nom. Boson v. Rippy, 195 F.Supp.731), was a final order not subject to modification after a lapse of years. This being so, the court said, "then there is nothing left for us to further consider at this time and place." The court explained to the parties that if the decree were not final another situation would confront the court:

> The Brown decision held that the refusal to allow the colored child to sit in the school with the white child would have the effect of creating an inferiority complex on the part of the colored child and that its /his/ progress would be retarded thereby and its /his/ educational advantages perhaps permanently injured. The law of the land traditionally through the years from the incipiency of our government is that every citizen is entitled to every right to an equal and exact degree as that accorded every other citizen. Therefore, every right conferred upon the child of one race is automatically conferred upon the child of another race, each being recognized in all things as citizens of the land.

This reasoning led the court to conclude that a white child forced to attend a colored school was damaged psychologically in the same way as a Negro child denied access to a white school. The court declared:

> Therefore, the parents of any white child will be entitled to have such child transferred to a white school if it should be made to appear to the School Board, in its managerial and not police powers, that the best educational interest and progress of

> the particular child requires such transfer, and this will apply equally to both white and black, not because of their color merely, but because of the effect the presence of one may have upon the other, which may not apply generally but only to individual cases.

The court recognized that the transfer right could cause white schools to become black and black schools to become white, thus defeating the end of integration. (Ibid.)

The attorney for the Negro plaintiffs immediately announced that an appeal would be taken. (Dallas Times-Herald, Aug. 26, 1964, p.1.)

The superintendent of schools announced prior to the opening of schools on September 9 that 236 Negro pupils would be eligible to attend schools in which 7,547 white pupils were enrolled. (Dallas Times-Herald, Sept. 4, 1964, p.1A.)

Fort Worth

The second year of a grade-a-year desegregation plan, started in the first grade in September 1963, was scheduled for 1964-65. Prior to the opening of schools, the superintendent announced that Negro students would be admitted to the white Technical High School for courses not offered at the Negro technical school, photography, IBM, and diesel engineering. A petition to speed-up the grade-a-year desegregation plan was reported to be pending in a Federal court. (Dallas Morning News, Aug. 29, 1964, p.2., sec.4.)

When schools opened on September 1st only one Negro enrolled in the white Technical High School. He had the distinction not only of breaking the former color barrier in the school but also of its football team. (Dallas Morning News, Sept. 2, 1964, p.4, sec.2.)

Galveston

Prior to the opening of the 1964-65 school year the superintendent of schools announced that racial barriers would be dropped in grades 4 through 12 instead of grade 4 only in September. The Galveston school district initiated a grade-a-year desegregation plan in the first grade in 1961. Under the school board's policy Negro pupils living within the attendance area of a white school may elect to attend it. The superintendent said that the acceleration of desegregation would make about 131 Negro pupils eligible

to attend formerly white schools. (Houston Post, Aug. 20, 1964, p.6, sec.5.)

Houston

The fifth grade of Houston's grade-a-year plan, started in the fall of 1960, was reached in the fall of 1964. By action of the school board, segregation at the kindergarten level, not scheduled for abandonment until 1973, was abolished effective in September 1964. As schools opened it was reported that 799 Negro pupils were enrolled in schools attended primarily by white children, an increase of 597 over 1963-64. (Houston Post, Sept. 3, 1964, p.1, sec.1; Houston Chronicle, Sept. 3, 1964, p.16, sec.5.)

San Marcos

This central Texas school system which initiated desegregation almost 10 years ago completed the process effective with the opening of the school year 1964-65 by closing its separate Negro elementary school. (Dallas (Tex.) Morning News, Sept. 6, 1964, p.10, sec.1.)

Virginia

General

In September 1963, 23 school districts 1/ in Virginia were reportedly operating one or more desegregated schools for the first time. This made the total number of desegregated school districts in the State 55 out of the total of 128 which have both white and Negro pupils. Nine of the 12 Negro pupils enrolled in formerly white schools in Hopewell 2/ were admitted under a Federal court order. Prince George County also acted under court order. 3/ Although in the remaining 21 districts Negro pupils were transferred to white schools by order of the State Pupil Placement Board, school desegregation lawsuits were pending against some of them. It was estimated that 3,721 Negro pupils were enrolled in previously white schools throughout the State. 4/ However, this figure represents less than two percent of the State's total Negro public school population. 5/

1/ Counties: Albermarle, Charles City, Culpeper, Dinwiddie, Fauquier, Frederick, Greene, Hanover, Henrico, King and Queen, Middlesex, Powhatan, Prince George, Spotsylvania, Surry. Cities: Chesapeake, Danville, Hopewell, Martinsville, Norton, Petersburg, Radford, Staunton. So. School News, Aug. 1963, p.15.

2/ Gilliam v. Hopewell School Board, Civ.No.3554, E.D.Va., July 11, 1963, 8 Race Rel. L. Rep. 1469 (1963).

3/ U.S. v. County School Board (Prince George Co.) 221 F.Supp. 93, 105 (E.D. Va. 1963).

4/ Appendix, table 2.

5/ Ibid.

Included among the newly desegregated districts was Danville, scene of mass racial demonstrations and arrests in June and July 1963. Seven Negro pupils were enrolled in four formerly white schools in this city, without incident, on August 26, 1963. 6/

During the 1963-64 school year the long litigated Prince Edward County school desegregation case was again heard by the United States Supreme Court. 7/ School desegregation lawsuits involving desegregation plans, school closings and tuition grants were in the courts throughout the State.

Arlington County

On October 31, 1963, the Court of Appeals for the Fourth Circuit ordered reinstatement of an antidiscrimination injunction against the Arlington County school board. 8/ The injunction was originally issued in 1956; 9/ school desegregation actually began in the county in February 1959, 10/ and the ban was lifted by a Federal district court in 1962. 11/ However, the Negro plaintiffs contended that

---

6/ So. School News, Sept. 1963, p.18.

7/ Griffin v. County School Board (Prince Edward), 377 U.S. 391 (1964). The Prince Edward case was one of the consolidated cases decided by the Supreme Court in the School Segregation Cases, 347 U.S. 483 (1954).

8/ Brooks v. County School Board (Arlington), 324 F.2d 303 (4th Cir. 1963).

9/ Thompson v. County School Board (Arlington), 144 F.Supp. 239 (E.D. Va. 1956).

10/ See account of desegregation in 1959 Report of the United States Commission on Civil Rights 229.

11/ Thompson v. County School Board (Arlington), 204 F.Supp. 620 (E.D. Va. 1962).

segregation policies continued in effect in the county and asked that the injunction be reimposed. The court of appeals said that, in view of the fact that there had not been a long period of sustained obedience to the court order to desegregate and the lack of any showing of specific hardship on the defendants if the injunction were reimposed, there was no reason not to reinstate it. 12/ The court of appeals commended the county school officials on its resolution that racial considerations were to be precluded in all personnel action. However, the court said there had been no experience under the new policy. 13/

Fairfax County

The county experienced school desegregation for the first time in 1960; however, its desegregation plan, then pending, has been in the courts ever since. 14/ On June 23, 1964, by a per curiam decision, the Court of Appeals for the Fourth Circuit reversed a district court finding that transfers and assignments in the county were not made on a racially discriminatory basis. 15/ The court

---

12/ Brooks v. County School Board (Arlington), supra note 8.

13/ Id. at 306.

14/ See discussion in 1961 Report of the U.S. Commission on Civil Rights 2, Education 57.

15/ Blakeney v. Fairfax County School Board, 226 F.Supp. 713 (E.D. Va. 1964). On March 19, 1963 the school board adopted a resolution governing pupil placement. The district court stated that the resolution was racially discriminatory because it applied only to Negro pupils and referred to segregated and desegregated schools, implying a dual system. The lower court ordered the school board to correct that defect by making the resolution applicable to all pupils and schools, but refused to grant an injunction because all of the plaintiffs had already been admitted to a desegregated school. The question of segregated teaching and administrative staff was held not covered by the pleadings.

of appeals stated, "/w/e are of the view that the injunction to prohibit a system of segregated schools. . .should have been granted." 16/ The court of appeals order seems to have been based upon the different treatment accorded white and Negro pupils in school assignment. 17/

After the decision of the court of appeals, on June 24, 1964, the school board assigned 50 Negro students to formerly white schools for the 1964-65 school year. 18/

Frederick County

Suit was filed on behalf of Negro school children against the Frederick County school board. The plaintiffs sought an order: (1) admitting them to a specified all-white school, (2) prohibiting the operation of a dual school system, and (3) an award

---

16/ Blakeney v. Fairfax County School Board, 334 F.2d 239 (4th Cir. 1964). The appeals court refused to permit 49 additional students to intervene at the appellate level but instructed them to file their request in the district court. The appellate court said, "/T/he /district/ court will grant the same and will cooperate with the parties by holding a hearing within 15 days thereafter, and decide the case within 10 days after the hearing."

17/ Ibid.

18/ Washington (D.C.) Post, June 25, 1964, p.3B.

of counsel fees. The Federal district court denied the request for an injunction, 19/ and dismissed the action of the plaintiffs, having been advised that the State Pupil Placement Board had assigned all plaintiffs to the school of their choice. 20/ The court ordered the case stricken from the docket subject to reinstatement or intervention. 21/ Plaintiffs appealed and the Court of Appeals for the Fourth Circuit remanded with instructions to the district court to consider the plaintiffs' requests for an injunction and counsel fees. The school board admitted that abandonment of the dual zones for elementary schools, and the assignment of Negro high school students to schools within the district (there is no Negro high school in the district) in September 1964 presented no serious administrative problem. 22/

On remand, on March 11, 1964, the court reinstated the case for further proceedings consistent with the orders of the court of appeals. Plaintiffs were allowed fees to cover only the cost of the appeal. 23/

In an opinion and order in the case handed down on June 17, 1964, the court said that the evidence disclosed that the school board was "still making initial assignments on a racial basis though transfers have been freely granted upon request."24/ The court pointed out that the resolution of the school board made no provision for a termination of that policy, which had been declared to be unconstitutional by the Court of Appeals for the Fourth Circuit in another case. 25/ The court issued an "injunction

---

19/ Brown v. County School Board (Frederick), Civ.No.642, W.D. Va., Oct. 2, 1962, 9 Race Rel. L. Rep. 224 (1964).

20/ Id. July 22, 1963, 9 Race Rel. L. Rep. 224 (1964).

21/ Ibid.

22/ Brown v. County School Board (Frederick), 327 F.2d 655 (4th Cir. 1964).

23/ Brown v. County School Board (Frederick), Civ.No.642, W.D. Va., Mar. 11, 1964, 9 Race Rel. L. Rep. 225 (1964).

24/ Brown v. County School Board (Frederick), Civ.No.642, W.D. Va., June 17, 1964.

25/ Ibid.

against any racial discrimination whatsoever on the part of the defendants in this case." 26/

The court refused again to grant plaintiffs' request for attorney fees even though it had been ordered to give consideration to this issue by the court of appeals. The district court distinguished this case from one in which such fees had been granted on the ground that "/t/here is here no 'long continued pattern of evasion and obstruction' 27/ nor a refusal to take the initiative." 28/

Hopewell

The first public school desegregation in this school district took place in June 1963, when two Negro pupils, assigned by the State Pupil Placement Board, enrolled in a formerly white school for the summer session. 29/ A school desegregation suit was pending against school officials when the action took place. On July 11, 1963, a Federal district court ordered the school board to admit nine Negro pupils to white schools when the 1963-64 session began. 30/ The court also enjoined the board from "further use of racially discriminatory criterion including the use of the present attendance areas in the assignment of pupils to public schools . . . /for/ the 1963-64 school year." 31/ The school board was given 90 days within which to file a desegregation plan

---

26/ Ibid.

27/ Bell v. School Board (Powhatan County), 321 F.2d 494 (4th Cir. 1963).

28/ Brown v. County School Board, supra note 24.

29/ Richmond (Va.) News Leader, June 14, 1963, p.25.

30/ Gilliam v. Hopewell School Board, supra note 2, at 1470.

31/ Ibid.

which would provide for "immediate steps to terminate discriminatory practices." 32/ The court said that if the desegregation plan was acceptable the injunction would be lifted. However, the court refused to allow attorney fees, distinguishing the case from one in which the Court of Appeals for the Fourth Circuit, the previous week, had directed that attorney fees be granted. 33/ The school board petitioned the court of appeals for a stay of the order pending appeal. The petition was denied by the appellate court on September 17, 1963. 34/

When the schools opened in September 1963 there were 12 Negro pupils attending formerly white schools in Hopewell, nine by court order, and three by assignment of the State Pupil Placement Board. 35/ For the first time in its history, the Virginia Pupil Placement Board assigned white children to Negro schools. The five white children, who were assigned to the Negro high school in Hopewell, on the basis of proximity, refused to attend the Negro school. 36/ On September 13, 1963, the Federal district court ordered the board to admit 15 more Negro pupils to white schools. The board had denied the applications of these pupils on the grounds that their applications were received after the deadline or they lived closer to the Negro school. 37/ The school board appealed this order. The court of appeals subsequently dismissed the appeal on the ground that it was moot. 38/

32/ Ibid.

33/ Bell v. Powhatan County School Board, 321 F.2d 494 (4th Cir. 1963).

34/ Gilliam v. Hopewell School Board, supra note 2, at 1477.

35/ Richmond (Va.) News Leader, Sept. 6, 1963, p.25.

36/ Id. Sept. 10, 1963, p.1.

37/ Gilliam v. Hopewell School Board, Civ.No.3554, E.D. Va., Sept. 13, 1963, 8 Race Rel. L. Rep. 1472 (1963).

38/ Gilliam v. Hopewell School Board, 332 F.2d 460 (4th Cir. 1964).

In October 1963 the school board submitted its desegregation plan to the court. The plan called for rezoning of the city's six elementary schools on the basis of "natural boundaries," and school capacity, present and anticipated. Under the plan, assignment to the two high schools (one all-Negro and one predominantly white) was to be "strictly in accordance with residence." 39/ Special transfers were to be made available for specific reasons. As a part of its plan the school board included a provision which states, in part: 40/

> /s/hould the parents of any colored child, assigned by reason of residence to a school in which he is in the racial minority, be of opinion that such assignment is detrimental to the health, welfare or educational opportunity of such child application for transfer may be made. . .

The board made this provision "severable," and stated that if it was unconstitutional, "its elimination shall not affect the operations of the remainder of the plan." 41/

On April 6, 1964, the Federal district court rejected the plan on the grounds that the boundary lines did not follow true neighborhood patterns, and that the plan did not fully utilize facilities. (The predominantly white high school was overcrowded, whereas the Negro school was underutilized). 42/ The court noted that some

---

39/ The desegregation plan is printed in full in 8 Race Rel. L. Rep. 1477 (1963).

40/ Id. at 1478.

41/ Ibid.

42/ Washington (D.C.) Post, Apr. 7, 1964, p.4B.

white pupils who lived closer to a Negro school were zoned into a white school, even though they crossed the so-called natural boundaries to reach it. 43/

In July 1964 the school board submitted another desegregation plan, to be effective in September 1964, for court approval. Under the plan, the schools have been rezoned, and initial assignment will be made to the school in the zone of residence. 44/ Any student may apply for transfer to another school closer to his residence. The plan was approved by the court. 45/

King George County

In the spring of 1963, 32 Negro high school students and six Negro elementary school pupils sought assignment to predominantly white schools in King George County. 46/ The requests for assignment were denied and the pupils brought suit against the county school board, the county superintendent and the State Pupil Placement Board. The suit requested that the individual plaintiffs be admitted to the white schools and that the defendants be enjoined from operating racially segregated schools or in the alternative be required to submit a desegregation plan. 47/ The school board and superintendent answered that they did not have the legal right to assign pupils to the public school since that authority was vested in the State Pupil Placement Board. The Pupil Placement Board answered that the pupils had not exhausted their administrative remedies. 48/

43/ Ibid.

44/ Richmond (Va.) News Leader, July 3, 1964, p.4.

45/ Ibid.

46/ Richmond (Va.) News Leader, June 27, 1963, p.1.

47/ Belton v. County School Board (King George County), Civ.No. 3579, E.D. Va., June 25 and Sept. 23, 1963, 8 Race Rel. L. Rep. 1443 (1963).

48/ Id. at 1444.

On June 25, 1963 the district court found that the school board practiced discrimination in that it routinely assigned white students to white schools, but that when a Negro student sought to attend a white school he was required to apply to the State Pupil Placement Board and satisfy academic and residential requirements. The court said that residential and scholastic tests may be used in the placement of students, but that these criteria must be applied on a nondiscriminatory basis. The placement board said that the plaintiffs' request for transfers were denied because of lack of academic qualifications or because of the distance of the applicant's residence from school. Under the circumstances, the court said, failure to exhaust administrative remedies was not a defense to the action. A number of plaintiffs who had exhausted their administrative remedies were subjected to discriminatory action. It was not shown that plaintiffs who had failed to exhaust such remedies would have fared any differently. 49/

The court in its order directed that the individual plaintiffs be admitted to the schools to which they had applied, generally enjoined defendants from further discrimination in pupil assignments, and said that if a desegregation plan was submitted within 90 days and approved by the court, the general injunction would be suspended and that Negro pupils could be assigned according to such plan. Plaintiffs' motion for counsel fees was denied. 50/

On September 23, 1963, the board submitted the following plan: 51/

(1) parents of children who seek initial admission to or transfer to a particular school must apply to the superintendent or the principal of the particular school by June 1;

(2) applications must be individually made, on the prescribed form in writing, reasons for preference of the particular school given, and the need for transportation indicated;

49/ Id. at 1444-45.

50/ Id. at 1445.

51/ Ibid.

(3) only the parents and guardians of children may obtain the prescribed form from the superintendent or principal;

(4) all applications will be treated equally on their respective individual merits and there will be no discrimination based on race, color or creed;

(5) newcomers to the county who desire enrollment in a particular school must make application within 15 days after arrival;

(6) for the present, no specific zones, districts or areas will be created but distance from the student's home to the school, when the school is overcrowded, and accessibility to school bus routes, when transportation is needed, will be factors considered; and

(7) if no application for initial enrollment or transfer is made, it will be assumed that none is desired and applications for admission shall be processed as in the past.

The plan was rejected by the district court on the ground that the feeder plan appeared to be assignment by race. Under the feeder plan pupils graduating from elementary schools were assigned automatically to high schools serving members of their race, unless they specifically requested transfer. 52/ The State Pupil Placement Board and the King George County school board agreed to revise the rejected plan. 53/

52/ Richmond (Va.) News Leader, Mar. 24, 1964, p.9.

53/ Washington (D.C.) Post, Mar. 25, 1964, p.B14.

King and Queen County

Initial desegregation of schools occurred in this county in September 1963 when 38 Negro pupils were assigned to formerly white schools by order of the State Pupil Placement Board. 54/ Thirty (28 elementary and two high school students) were assigned to Pleasant Hill School at Shanghai. Eight elementary pupils were assigned to Marriott at St. Stephens Church in the upper part of the county. 55/

By September 25 the Pleasant Hill elementary enrollment, which was about 165 pupils in the 1962-63 school year, had dropped to 52, of which 26 were Negro pupils. The King and Queen County officials approved 149 tuition grants; 141 were for pupils attending York Academy, a private school organized in the face of school desegregation. 56/ The Pleasant Hill School ended the 1963-64 school year with 56 elementary pupils and 130 high school students. 57/

During the 1963-64 school year the school board was plagued with financial problems. 58/ A group of Negroes complained of overcrowding at a Negro elementary school. 59/ In December 1963 plans to provide transportation grants to pupils attending private schools were deferred because of the lack of funds to finance the public schools for the remainder of the year. 60/

54/ Richmond (Va.) News Leader, Aug. 13, 1963, p.1.

55/ Id. July 24, 1963, p.25; Sept. 4, 1963, p.13.

56/ Id. Sept. 5, 1963, p.17; Sept. 25, 1963, p.10.

57/ Id. July 24, 1964, p.6.

58/ Id. Sept. 27, 1963, p.25.

59/ Id. Oct.23, 1963, p.25.

60/ Id. Dec. 5, 1963, p.19.

On July 28, 1964, the county school board decided, because of low registration, to convert Pleasant Hill School to a predominantly Negro elementary school for the 1964-65 school year. Seventy-five white high school students and 125 white elementary pupils had registered to attend York Academy. Another 40 white pupils had been accepted at a school in West Point, in an adjacent county, and placed there by the State Pupil Placement Board. Other King and Queen County white pupils reportedly had applied for admittance to schools in other nearby counties. 61/

Lynchburg

On January 5, 1962 a Federal district court ruled that the assignment procedure used by the Lynchburg school board was racially discriminatory 62/ and enjoined such action. The board was ordered to submit a desegregation plan for court approval. A plan was submitted providing for desegregation of at least one grade a year and approved by the district court. 63/ The plaintiffs took an appeal and on June 29,1963 the Court of Appeals for the Fourth Circuit reversed the district court's approval of the plan and sent the case back to the district court with instructions that the grade-a-year feature of the plan was too slow; the minority transfer provision was unconstitutional under the Supreme Court decision in Goss v. Board of Education (Knoxville);64/and that consideration should be given to the issue of desegregation of teaching and administrative staff and other questions raised by the Negro appellants. 65/

61/ Id. July 24,1964, p.6; Roanoke (Va.) Times, July 29,1964, p.1B.

62/ Jackson v. School Board (Lynchburg), 201 F.Supp.620 (W.D.Va. 1962).

63/ Id. 203 F.Supp. 701(W.D.Va.1962).

64/ 373 U.S. 683 (1963).

65/ Jackson v. School Board (Lynchburg), 321 F. 2d 230(4th Cir. 1963).

On May 1, 1964, the Federal district court rejected a revised desegregation plan offered by the board, but indicated that with certain changes it would be approved. 66/ On July 17, 1964 the court approved the plan as further amended. 67/ As approved by the court, all grades of regular classes would be desegregated in 1966-67, instead of in 1974-75, as originally proposed. Progression was to be at the rate of three grades a year, instead of one. Essentially, a free choice of schools plan as to the desegregated grades, provision was made for notice to parents of the time for registration, the assignment made by the superintendent, and rights to appeal to the school board. The plan provided that the superintendent, insofar as practicable, should assign or place pupils in accordance with the wishes of parents expressed on the registration forms. The practical limitations on the parents' choice were the location and capacity of schools, shifts in population, and "practical attendance problems" (presumably traffic hazards and transportation, if required). Specific provision was made that summer school classes in all grades and vocational, technical and adult programs should be open to all applicants without regard to race.

As to integration of the school system's staff, the plan reported a limited beginning in the school year 1963-64. A plan for further integration of the staff was ordered filed with the court not later than November 1,1964.

Norfolk

A decision handed down by a Federal district court on July 30, 1964 was concerned with the constitutionality of a new plan for the opeartion of Norfolk public schools which had been put into effect at the beginning of the 1963-64 school year. 68/

66/ Jackson v. School Board (Lynchburg), Civ. No.534, W.D.Va.

67/ Id. June 17,1964.

68/ Beckett v. School Board (Norfolk)Civ.No.2214, E.D.Va.,July 30, 1964.

At the time of the hearing, the public school system consisted of four senior high schools, 10 junior high schools, and 55 elementary schools. 69/ The plan is called a freedom of choice although the choice in no case is more than between one of two schools and at the junior high and elementary levels there are exceptions where there is no choice at all.

Three of the four senior high schools, prior to initial desegregation in February 1959, had been attended solely by white pupils; the fourth was the Negro senior high school. The court says that under the plan every white and Negro pupil had a choice of attending a predominantly white or Negro senior high school. The court did not so state but it would appear that the plan must have established attendance areas for the three predominantly white schools and left the Negro school unzoned.

In 1964-65, the second year under the free choice plan, 192 Negroes elected to attend Maury, 104 Norview, and 24 Granby, the three predominantly white schools. 70/ The number attending the Negro high school is not reported. The court does state, however, that out of a total of 13,348 Negro pupils enrolled at all levels in attendance areas served by more than one school, 1251 selected predominantly white schools in the spring of 1964. 71/ This is in contrast with 347 enrolled in biracial schools in 1963-64. 72/

The court did not so state but four of the 10 junior high schools in Norfolk were formerly Negro schools. 73/ Under the plan,

---

69/ Ibid.

70/ Ibid.

71/ Ibid.

72/ So. Ed. Reporting Service, Statistical Summary 1963-64, p.53.

73/ U.S. Commission on Civil Rights, Civil Rights U.S.A.: Public Schools Southern States 1962, 175.

with two exceptions,both white and Negro pupils have a choice of attending one of two schools, one predominantly white and one predominantly Negro. In the case of two schools, both white and Negro pupils living in the respective attendance areas must attend that school. 74/ Thus, although the court does not expressly so state, it seems probable that the city is zoned into six junior high attendance areas, four zones having both a formerly white and a formerly Negro school and two having only a formerly white school.

At the elementary school level, the choice was more restricted. Thirty-seven of the 55 elementary schools had fixed attendance areas; all elementary children living within the attendance area of these 37 schools were required to attend it. The court said that "/t/here are 18 areas where children of proper grade residing in a particular school area have a choice of attending one of two schools. The choice, in such event, is a matter of selecting a contiguous school area." Some of the 18 must include formerly Negro schools because the court said "/i/f a Negro of the appropriate age lives in Coronado, which is now predominantly Negro, he may elect to attend Norview which is now predominantly white. If he lives nearer Norview, he may elect to attend Coronado. The same applies to a white child." 75/ The choice in these 18 areas is not entirely clear. The court continues: "/w/hile there are 18 overlapping areas, many interchanges such as Coronado and Norview, Smallwood and Stuart, Chesterfield Heights and Liberty Park, etc.,"thereby reducing the overall effect of the freedom of choice plan. 76/

In 1962 there were 19 all-Negro elementary schools in Norfolk. 77/ It would seem, therefore, that some of the 37 schools

---

74/ Beckett v. School Board, supra note 68.

75/ Ibid.

76/ Ibid.

77/ U.S. Commission on Civil Rights, supra note 73.

with fixed attendance areas were Negro schools if among the 18 there was a choice at least in some instances of a predominantly white or Negro school.

The school board's guiding principles for the administration of the plan were quoted at length by the court. Notable among these were:(1) the right of a child attending school outside of the new residential zones at the close of the 1963-64 school year to elect to continue in that school until graduation; (2) rules governing the exercise of the choices granted; (3) the right of the school administration, guided by the cumulative record of each child, to determine his grade placement; and (4) the right of the school administration to make such administrative transfers of classes or individual children as might be necessary for the orderly operation of the schools. 78/

Plaintiffs attacked the plan as falling short of eliminating racial segregation in the school system. The court, however, held that the plan met constitutional requirements. It found no evidence of gerrymander of school zone boundaries and held that the fact that Negro children could elect to attend a predominantly or all-Negro school did not affect the plan's validity since white children in the same area had the same choice. The court said: 79/

> If they /Negro children/reside in a school attendance area attended /served/by more than one school, they have the choice of attending a predominantly white school or a predominantly Negro school. If they reside in one area ... school category, they are, of course restricted to that one school - but so are the white children. This is the principle of the neighborhood school which has received at least tacit approval of the United States Supreme Court when certiorari was denied in Bell v. School City of Gary...."

78/ Beckett v. School Board, supra note 68.

79/ Ibid.

Plaintiffs also contended that any plan approved had to provide for an integration of the faculties of the public school system. The court states that the practice of the Norfolk school board was to assign Negro principals and teaching personnel to schools attended predominantly by Negroes, and white principals and teachers to predominantly white schools. The court notes that no principal or teacher had complained, testified or in any manner sought relief from this practice, nor had any child, parent or guardian. The court admitted that decisions of the Court of Appeals for the Fifth Circuit supported plaintiffs position but stated that it knew of no express ruling by the Fourth Circuit on the issue.

Observing that the Supreme Court had not yet made integration for the sake of integrating mandatory the court asked rhetorically "/i/f it is not incumbent upon a school board to 'force' integration among pupils, why is it required that a school board 'force' integration upon school faculties?" 80/

The court denied the request to enlarge the injunction to include nonracial assignment of principals and teachers on the ground that the question was one for the school administration. 81/

Powhatan County

White citizens were reported to have considered closing the public schools in Powhatan County when the State Pupil Placement Board assigned 56 Negro pupils to the county's only white school. 82/ However, on August 29, 1963, the school opened on a desegregated basis with about 55 Negro and 355 white students in attendance. 83/

80/ Ibid.

81/ Ibid.

82/ Richmond (Va.) News Leader, July 1,1963, p.1A.

83/ Id. Sept. 4,1963, p.13.

The white enrollment represented about one-half the number of white students who had attended the school the previous year. The other half of the county's white students were enrolled in the newly-organized, private, segregated Huguenot Academy, located in the county. 84/

Suits were pending against the Powhatan County school board in both Federal and State courts when the State Pupil Placement Board assigned the Negro pupils to the formerly white school. 85/ In an unusual decision on October 29, 1963, a Federal district court ordered the county school board to pay $2,100 in fees to two lawyers who represented the Negro children in the Federal action. 86/ This decision was a mandate from the Court of Appeals for the Fourth Circuit, which held that the county should pay the plaintiffs attorney's fees because of its "long-continued pattern of evasion and obstruction" which extended the litigation. 87/ In remanding this question to the district court, the court of appeals said: 88/

> Here we must take into account the long continued pattern of evasion and obstruction which included not only the defendants' unyielding refusal to take any initiative, thus casting a heavy burden on the children and their parents, but their interposing /of/ a variety of administrative obstacles to thwart the valid wishes. . . for a desegregated education. To put it plainly, such tactics would in any other context be instantly recognized as discreditable. The equitable remedy would be far from complete, and justice would not be attained, if reasonable counsel fees were not awarded in a case so extreme.

84/ Id. Sept. 6,1963, p.15.

85/ Bell v. Powhatan County School Board, supra note 33, Powhatan County School Board v. Pupil Placement Board, Ch.Cause No. B-2903, Cir. Ct. Richmond, Va., May 16 and 24,1963, 8 Race Rel. Rep. 1037 (1963).

86/ Richmond (Va.) News Leader, Oct. 29,1963, p.4.

87/ Bell v. Powhatan County School Board, supra note 33 at 500.

88/ Ibid.

Powhatan County is reportedly in financial straits because of its position in maintaining public schools as well as contributing the local share of tuition grants for students at private segregated schools. 89/ County officials increased taxes. 90/

Prince Edward County

As in 12 previous school years Prince Edward County opened and closed the school year 1963-64 with litigation about the operation of its public schools pending. 91/ The school year 1963-64 was also the fifth school year in which the public schools were closed and the county's white children attended a private school for white pupils only. 92/ During the period 1959-64 the county is reported to have spent about $400 thousand on legal and other fees. 93/

Free Schools--The year 1963-64 brought something new in spite of the repetition of the events mentioned above. At the urging of the late President Kennedy, a special assistant to the United States Attorney General arranged for private schooling for any child in the county who wanted to attend. The program was planned with the cooperation and support of Virginia's Governor, Albertis S. Harrison,

---

89/ Richmond (Va.) News Leader, June 30,1964, p.1B.

90/ Ibid.

91/ Davis v. County School Board (Prince Edward), 103 F.Supp.337 (E.D.Va.1952), filed on May 23,1951, rev'd. sub nom. Brown v. Board of Education, 347 U.S. 485(1954) has been before the courts continuously since that date. The title of the case has changed twice as the original plaintiffs were succeeded by others, first to Allen v. County School Board and later to Griffin v. County School Board.

92/ See Report of the U.S. Commission on Civil Rights 1959 232, 1961 Report of the U.S. Commission on Civil Rights 2, Education 91-92, U.S. Commission on Civil Rights, 1963 Staff Report Public Education 42.

93/ N.Y. Times, Mar. 30,1964, p.15.

and distinguished citizens of that State who served as the board of trustees of the association which operated the schools. 94/

The Prince Edward Free School Association, as it was called, provided formal schooling for about 1,500 of Prince Edward's Negro children 95/ for the first time since the 1958-59 school year when the public schools were closed. Almost one million dollars was raised during its eleventh-month, trimester operation 96/ from many philanthropic foundations, 97/ teachers throughout the land, 98/ and school children in many cities 99/ in the most concentrated

---

94/ So. School News, Sept.1963, p.18. The board of Trustees included former Governor and former University of Virginia President, Colgate W. Darden, Jr., chairman; Dr. Thomas H. Henderson, President of Virginia Union University, vice-chairman; and former dean of the law school of the University of Virginia, F.D.G. Ribble, secretary-treasurer. Washington (D.C.) Post, Aug. 17,1963, p.A4.

95/ N.Y. Times, Sept. 21,1963, p.9.

96/ The chairman of the board of trustees announced the goal of $1 million for operation of three terms totalling 225 teaching days (instead of the usual 180 days) on Aug. 16,1963. N.Y. Times, Aug. 17,1963, p.9.

97/ Ford Foundation, $250,000; Field Foundation, Inc., $100,000; Danforth Foundation, $50,000; Mary Reynolds Babcock Foundation, $50,000. N.Y. Times, Oct. 20,1963, p.85. Alfred P. Sloan Foundation, $50,000, Atlanta (Ga.) Daily World, Nov. 16,1963, p.4.

98/ States of Washington, $30,000; Minnesota, $20,000; Southern California, $15,000; Cleveland, $20,000. N.Y. Times, Oct. 20, 1963, p.85. District of Columbia Teachers, $6,000; New Jersey Teachers, $4,000. Richmond (Va.) News Leader, Dec. 12,1963, p.1; Dade County (Fla.) Classroom Teachers Ass'n. $500, Miami (Fla.) Herald, Dec. 13,1963, p.42A.

99/ The contribution from Cleveland public and parochial school children finally totaled $10,000. Richmond (Va.) News Leader, Dec. 12,1963, p.1.

voluntary effort the Nation ever witnessed to provide a rich, thorough and accelerated education for disadvantaged children. Prince Edward's Negro children who had had no formal schooling for four years clearly were disadvantaged. In addition to cash contributions, business organizations gave books and equipment, 100/ school children sent books, 101/ groups sent clothing for children who could not otherwise go to school. 102/ Teachers at a personal sacrifice volunteered for duty. 103/

Classes were held in three Negro and one white school buildings leased by the Free School Association from the county school

---

100/ Corporations, including major industries in Virginia which chose to remain anonymous, gave a total of $125,000. The Institute of Textbook Publishers arranged for a gift of 40,000 textbooks. A national manufacturer contributed 30 specially equipped educational television receivers. N.Y. Times, Oct. 20, 1963, p.85.

101/ Montclair, N.J. junior high pupils sent 1,700 books and over 6,000 more were received from "everywhere. . . even /as far as/ Seattle, Washington." A nationally-known moving company delivered the books as a public service. Roanoke (Va.) Times, Dec. 4, 1963, p.15.

102/ In Dec. a half-ton of clothing was received from school children in a New York suburb so that Negro children whose families could not buy clothing might attend school. Richmond (Va.) News Leader, Dec. 12, 1963, p.1. Later the Superintendent said that the donated warm clothing and hot lunches helped to keep up attendance in the winter months. Twenty-nine percent of the children received free lunches and the rest a hot lunch for 15 cents. So. School News, Mar. 1964, p.13.

103/ One of the trustees of the Free School Association, Dr. Thomas P. Henderson, said that some teachers were getting as much as $3,000 a year less than their normal salaries. Richmond (Va.) News Leader, Sept. 16, 1963, p.1. Applications were received from 342 teachers, "Some from as far away as Italy and Venezuela." N.Y. Times, Sept. 15, 1963, p.57.

board. 104/ The staff of about 100 teachers included some 25 white teachers, one Japanese and the rest Negroes. 105/ When schools opened in September 1963 four white children and some 1,500 Negro children registered. 106/ In the second semester four more white children enrolled, making a total of eight. 107/ Approximately 1,250 white children continued to attend the private, segregated Prince Edward Academy as they had since the fall of 1959. 108/

Through skilled use of ungraded classes, team teaching, visual aids, and teaching machines, the children had every chance that modern teaching could provide to make up for the four-year void, and many responded. 109/

The superintendent of the Free School reported that the first quarterly examinations showed many children to be making a "fast come back." This he credited to team teaching and the ungraded

---

104/ Richmond (Va.) News Leader, Sept. 6, 1963, p.25. The association paid the school board $2,800 a month rent for the four school buildings and 20 school buses.

105/ Kentucky School Journal, Feb.1964, p.34.

106/ N.Y. Times, Sept. 21, 1963, p.9. Some 11-year olds had never before attended school. Louisville (Ky.) Courier-Journal, Sept. 20, 1963, p.12. There were estimated to be 2,000 Negro children in the county between the ages of 6 and 22 who were eligible for free schooling. Richmond (Va.) News Leader, Sept. 21, 1963, p.9.

107/ Richmond (Va.) News Leader, Jan. 15, 1964, p.10. Children aged 10, 12, 13 and 14, all of one family, had not attended formal classes since the county's public schools closed in 1959.

108/ Richmond (Va.) Times-Dispatch, Oct. 27, 1963, p.2B.

109/ See: N.Y. Times, Sept. 1, 1963, p.44; Richmond (Va.) Times-Dispatch, Oct. 6, 1963, p.5B; Richmond (Va.) News Leader, Dec. 12, 1963, p.1.

system which enabled the school to pinpoint and help cure more individual problems than the normal educational system. 110/

At the close of the regular academic year the supervisor of the elementary schools said that the free schools had provided knowledge for educators and techniques to be used elsewhere. "Educators are dragging their feet with this idea of one grade a year." She reported that with only one year of schooling she had nine-year-olds who were ready for the third grade. 111/ In September 1964 they will do so, but this time in public schools provided by the county. All that will remain of the unusual educational opportunity they had in 1963-64 is $250 thousand worth of equipment donated to the school system by the Free School Association and perhaps some of the teachers. 112/

In June 1964, 23 students received high school diplomas. About half of the graduates planned to attend college, business or nursing school in the fall. The chairman of the free school's board of trustees announced that any funds left over at the close of summer school would be used for scholarships for the graduates going to college. 113/

School Litigation--Since May 1951, when the Prince Edward County school desegregation suit was filed in the United States District Court for the Eastern District of Virginia, 114/ the district court has issued nine opinions or orders, 115/ three of

---

110/ Richmond (Va.) News Leader, Dec. 12, 1963, p.1.

111/ Norfolk Virginian-Pilot, June 27, 1964, p.1B.

112/ Richmond (Va.) News Leader, Mar. 25, 1964, p.1.

113/ Richmond (Va.) News Leader, June 16, 1964, p.19.

114/ Supra note 91.

115/ Davis v. County School Board (Prince Edward), Civ.No.1333, E.D. Va., July 18, 1955, 1 Race Rel.L.Rep.82 (1956); sub. nom. Allen v. County School Board (Prince Edward), Civ.No. 1333, E.D. Va., Apr. 22, 1960, 5 Race Rel.L.Rep.412 (1960); id. 198 F.Supp.497 (E.D. Va. 1961); sub. nom. Griffin v. County School Board, Civ.No.1333, E.D. Va., June 17, and July 9, 1964; and cases cited supra note 91 and infra note 116.

which were reversed by the Court of Appeals for the Fourth Circuit. 116/ Twice the United States Supreme Court has held that the actions of the county school board denied the Negro children of the county equal protection of the laws. 117/ The Virginia Supreme Court of Appeals in two separate but related suits has passed upon the county school board's and the board of supervisors' obligations under Virginia law. 118/ The end of litigation is not in sight. An appeal from the most recent district court decision to the court of appeals 119/ is in process, and a separate suit by white citizens challenging the validity of the county supervisors tax increase is expected. 120/ The persistence of the Negro plaintiffs and the resistance of county officials is unmatched in school desegregation history. For this record the Negroes are indebted to the unswerving leadership of the local NAACP president, the Reverend L. Francis Griffin. The spokesman for the resistant white community through the years has been J. Barrye Wall, editor of the Farmville Herald, who continually admonished readers editorially "Stand steady Prince Edward." 121/

116/ Allen v. County School Board, 249 F.2d 462 (4th Cir.1957), rev'ing.149 F.Supp.431 (E.D. Va.1957); id. 266 F.2d 507 (4th Cir.1959), rev'ing.164 F.Supp.786 (E.D. Va.1958); sub. nom. Griffin v. Board of Supervisors, 322 F.2d 332 (4th Cir.1963), rev'ing.207 F.Supp.349 (E.D. Va.1962).

117/ Sub. nom. Brown v. Board of Education, 347 U.S.483 (1954), and 349 U.S.294 (1955), rev'ing.103 F.Supp.337 (E.D. Va. 1952); sub. nom. Griffin v. County School Board, 12 L.ed.256 (1964), rev'ing.322 F.2d 332 (4th Cir.1963).

118/ County School Board v. Griffin, 133 S.E.2d 565 (Va.1963); Griffin v. Board of Supervisors, 124 S.E.2d 227 (Va.1962).

119/ N.Y. Times, July 12, 1964, p.52.

120/ Norfolk (Va.) Virginian Pilot, June 25, 1964, p.1; Richmond (Va.) News Leader, June 26, 1964, p.4.

121/ E.g., The Farmville (Va.) Herald, Oct. 4, and Nov. 1, 1963.

During the school year 1962-63, the Federal district court, having refused to do so the previous year, 122/ held that "the public schools of Prince Edward County may not be closed to avoid the effect of the law of the land as interpreted by the Supreme Court, while the Commonwealth of Virginia permits other public schools to remain open at the expense of the taxpayers." 123/

Thereafter, the County Board of Supervisors and County school board brought suit in the State courts seeking a declaratory judgment as to Virginia law upon the issue, 124/ and asked the Federal district court to abstain from further proceedings until the suit in the State courts was concluded. This the district court refused to do and, reaffirming its previous decision, ordered the schools reopened. However, the court did postpone the effectiveness of its order while an appeal was taken. The court of appeals, shortly before the usual time for school to open in the fall of 1963, vacated the judgments of the district court and remanded the case with instructions to the court to abstain from further proceeds until the case in the State courts, then pending before the Virginia Supreme Court of Appeals, was decided. 125/

On September 30, 1963, Mr. Justice Brennan stayed the order of the court of appeals pending timely filing and disposition of a

---

122/ Allen v. County School Board (Prince Edward), 198 F.Supp.497 (E.D. Va.1961). The court, however, at this time enjoined the payment of tuition grants and the allowance of tax credits so long as the public schools were closed.

123/ Id. 207 F.Supp. at 355. By supplemental pleadings the County Board of Supervisors, State Board of Education and Superintendent had been added as parties defendant.

124/ The Supreme Court of Appeals of Virginia earlier in a mandamus proceeding had held that the State constitution and laws did not impose a mandatory duty upon the County Board of Supervisors to levy taxes and appropriate funds to support free public schools. Griffin v. Board of Supervisors (Prince Edward), 124 S.E.2d 227 (Va.1962).

125/ Griffin v. Board of Supervisors, 322 F.2d 332 (4th Cir.1963).

petition for writ of certiorari in the United States Supreme Court, which petition was granted on January 6, 1964. 126/

In the meantime, on December 2, 1963, the Virginia Supreme Court of Appeals held that the constitution and laws of Virginia did not make it the mandatory duty of the State or the county to establish, maintain and operate free public schools in the county or to appropriate funds therefor. 127/ It also held that each county had "an option to operate or not to operate public schools." 128/

The United States filed a memorandum with the Supreme Court in support of the petition for certiorari and, after it was granted, a brief on the issues as friend of the court. The interest of the United States was said to be "/t/he effective implementation of this Court's decision in Brown v. Board of Education. . .which. . . is a matter of continuing national concern." Further, the government stated, "/t/he instant case is of general significance in that it is the first to involve. . .the constitutional propriety of closing all the public schools of a county to avoid desegregation." 129/

The United States summarized the basic question before the Court and the position of the Negro appellants and the school authorities in its brief: 130/

> The fundamental question presented by this case is whether the Equal Protection Clause of the Fourteenth Amendment tolerates the result revealed here: the complete abandonment of public education in one county (while the State maintains a comprehensive system of free public schools elsewhere), combined with substantial contribution of public funds to

---

126/ Griffin v. Prince Edward County School Board, 375 U.S. 391 (1964).

127/ County School Board v. Griffin, 133 S.E. 2d 565 (Va. 1963).

128/ Id. at 580.

129/ Brief for the United States as Amicus Curiae, p.3. Griffin v. Prince Edward County School Board, 377 U.S. 218 (1964).

130/ Id. at 16.

> nominally private schools which practice racial discrimination. So stated, the question seems to answer itself. Yet, no one disputes the factual premise. Rather, respondents' arguments begin with disclaimers of responsibility and end by erecting obstacles to effective relief. In brief, the suggestion is that the State itself closed no schools; that the county authorities practiced no discrimination within their limited jurisdiction; and that the policy of the schools now operating in Prince Edward County is their own private affair.

The Court held that the court of appeals was in error in finding the case one for absention without regard to the fact that between the date of its decision (Aug. 12, 1963) and the Supreme Court's decision (May 25, 1964) the highest State court passed upon State law with respect to all of the issues. The court said: 131/

> The case has been delayed since 1951 by resistance at the state and county level, by legislation, and by lawsuits. The original plaintiffs have doubtless all passed high school age. There has been entirely too much deliberation and not enough speed in enforcing the constitutional rights which we held in Brown v. Board of Education, supra, had been denied Prince Edward County Negro children. We accordingly reverse the Court of Appeals' judgment remanding the case to the District Court to abstain, and we proceed to the merits.

The Court accepted the decision of the Virginia Supreme Court of Appeals as a binding interpretation of Virginia law but not as to the question of whether under the circumstances of the case the Negro school children were denied equal protection of the laws under

---

131/ Griffin v. Prince Edward County School Board, 377 U.S. 218 (1964).

the 14th amendment. With regard to the contention that Virginia law granted each county an option to operate or not to operate public schools, the Court recognized that "there is no rule that counties as counties must be treated alike; the Equal Protection Clause relates to equal protection of the laws 'between persons as such rather than between areas.'" 132/ The Court found, however, that: 133/

> Virginia law, as here applied, unquestionably treats the school children of Prince Edward differently from the way it treats the school children of all other Virginia counties. Prince Edward children must go to a private school or none at all; all other Virginia children can go to public schools. Closing Prince Edward's schools bears more heavily on Negro children in Prince Edward County since white children there have accredited private schools which they can attend, while colored children until very recently have had no available private schools, and even the school they now attend is a temporary expedient. Apart from this expedient, the result is that Prince Edward County school children, if they go to school in their own county, must go to racially segregated schools which, although designated as private, are beneficiaries of county and state support.

The Court declared that the reason a State treats one county differently from another must be a constitutional one and the reasons in this case, "race and opposition to desegregation do not qualify as constitutional." 134/

The Court noted its affirmance of a three-judge district court decision in Hall v. St. Helena Parish School Board 135/

132/ Ibid.

133/ Id. at 265.

134/ Ibid.

135/ 197 F. Supp. 649 (E.D. La. 1961), aff'd, 368 U.S. 515 (1962).

which invalidated a Louisiana statute providing a means for changing a public school under desegregation orders into a private school to preserve racial segregation. The Court said: 136/

> While the Louisiana plan and the Virginia plan worked in different ways, it is plain that both were created to accomplish the same thing: the perpetuation of racial segregation by closing public schools and operating only segregated schools supported directly or indirectly by state or county funds. See Cooper v. Aaron, 358 U.S.1, 17; 3 L.ed.2d 5,16; 78 S.Ct. 1401 (1958). Either plan works to deny colored students equal protection of the laws. Accordingly, we agree with the District Court that closing the Prince Edward schools and meanwhile contributing to the support of the private segregated white schools that took their place denied petitioners the equal protection of the laws.

The kind of decree needed to end the discrimination against the Negro children of Prince Edward under the authority of Virginia law was considered in detail. The Court said: "/t/hat relief needs to be quick and effective" 137/ and noted that all of the county and State officials who had been joined as parties had duties relating directly or indirectly to the financing, supervision, or operation of the schools. 138/ The injunction issued by the district court against the payment of tuition grants and tax credits while the public schools were closed was approved as appropriate and necessary. 139/ (It should be noted that the constitutionality of such payment when public schools are operating was not before the Court; the schools were closed.)

136/ Griffin v. Prince Edward County School Board, supra note 131 at 265.

137/ Id. at 266.

138/ Ibid.

139/ Ibid.

The Court noted that on remand the district court might find it necessary to enter an order requiring the opening of public schools which it had considered but not done in 1962. The Court said "/a/n order of this kind is within the court's power if required to assure these petitioners that their constitutional rights will no longer be denied them." 140/

The Court further declared that "the District Court may, if necessary to prevent further racial discrimination, require the /County Board of/ Supervisors to exercise the power that is theirs to levy taxes to raise funds to reopen, operate, and maintain without racial discrimination a public school system in Prince Edward County like that operated in other counties in Virginia."141/

Mr. Justice Clark and Mr. Justice Harlan dissented from the view that Federal courts are empowered to order reopening of the public schools but otherwise joined in the Court's opinion. 142/

On June 5, 1964 the district court directed the appropriate State and county officials to advise the court as to their intentions with regard to reopening the public schools in the fall of 1964. The State Board of Education and the State Superintendent of Public Instruction notified the court of their intention to cooperate in every way and to make available State funds provided for public school purposes. The county school board and superintendent also notified the court that they had made tentative preparations for opening the schools on a nondiscriminatory basis, which plans would be made final when they were advised that the necessary funds were available. The county board of supervisors, however, failed to notify the court whether it had appropriated or intended to appropriate such funds as were reasonably necessary to open and operate schools for the year 1964-65. Counsel for the board of supervisors advised the court that no funds had been appropriated and that the board did not intend to do so prior to the

---

140/ Ibid.

141/ Ibid.

142/ Id. at 267.

court hearing scheduled for June 17. Counsel for the board of supervisors, at the request of its members, inquired what penalties its members might expect to suffer if they failed to comply with the court's order. The court then found that all State and county officials intended to comply with the mandate of the Supreme Court except the board of supervisors. 143/

The district court, therefore, entered an order directing the board of supervisors to appropriate the funds reasonably necessary for the opening and maintenance of the public schools on or before June 25, 1964, and if necessary, to levy the taxes required to operate a public school system in the county like those operating in other Virginia counties. 144/

The court also extended its earlier orders prohibiting the payment of tuition grants and the allowance of tax credits so long as the public schools remained closed. 145/

The court denied the request for an order restraining the school board from discriminatory employment of teachers and other school personnel as beyond the scope of the pleadings. 146/ It also refused to order the State school officials to withhold funds from other school districts in the State until Prince Edward's schools were open because of the assurances received by the court from school officials. The court, however, made it clear that the latter order was merely deferred "until such time as the Court is satisfied. . ./it is/ necessary to guarantee the reopening of the public schools in Prince Edward County." 147/

On June 23, 1964, two days before the deadline set by the court, the Board of Supervisors of Prince Edward County voted to increase the tax levy by $1.50 for each $100 assessed valuation

---

143/ Allen v. County School Board (Prince Edward), Civ.No.1333, E.D. Va., June 17, 1964.

144/ Id. pp. 2, 4 (Order on mandate in typescript).

145/ Id. p.4.

146/ Ibid.

147/ Id. at 5.

and appropriated $189 thousand to reopen, operate, and maintain public schools. The vote of the board members on this action was divided 4 to 2. The motion adopted increased the tax levy from $1.00 to $2.50 as compared with $3.60 for 1958-59, the last year public schools were open. At the same meeting the board appropriated $375 thousand as the county's share of tuition-grant payments. 148/

The appropriation for the public schools adopted by the board of supervisors was based upon the alternative budget submitted by the school board for 1,600 pupils--the number of Negro school children only. 149/ The amount of State funds for this number of children was $222,200, 150/ making a total of about $411 thousand. The school superintendent said that the minimum for 1,600 pupils was $590,500 in State and local funds. 151/ Nevertheless, the director of finance for the State Department of Education reported that the Prince Edward local appropriation of $116 per pupil compared favorably with surrounding school systems: Cumberland County $68; Buckingham $83; Charlotte $84; Amelia $92; Lunenburg $83; Nottoway $104; and Appomattox $121. 152/

After the appropriation of funds to operate schools in 1964-65, the State Board of Education, in a special session on July 1, 1964, voted to extend the deadline for approval of the State's share of tuition grants for Prince Edward children for the 1963-64 school year to July 10, 1964. 153/ This action was taken after the State Attorney General had ruled that the injunction against payment of grants had been lifted automatically as a result of the decision

---

148/ N.Y. Times, June 24, 1964, p.1. For an account of the relationship between the tax rate and the operation of public schools or payment of tuition grants and transportation, see 2 1961 U.S. Commission on Civil Rights Report, Education 91-92.

149/ Washington (D.C.) Post, June 24, 1964, p.1A.

150/ Norfolk Virginian Pilot, June 25, 1964, p.1.

151/ Supra note 149.

152/ Supra note 150.

153/ Washington (D.C.) Post, July 4, 1964, p.1B.

to reopen schools. The money would benefit the parents of 1,250 white children who had attended private schools in 1963-64. 154/

On July 3, 1964, Judge J. Spencer Bell, a member of the Court of Appeals for the Fourth Circuit, enjoined both State and county officials from paying the retroactive grants until July 9 when the matter would be heard by the district court. 155/ On that date, the district court entered an order permanently enjoining State and county officials "from processing, approving or paying any county or State tuition grants to any person residing in Prince Edward County, Virginia, for the 1963-64 school year." 156/

Counsel for the Negro plaintiffs, however, were unsuccessful in four other matters. In addition to barring payment of tuition grants for 1963-64 when the public schools were closed, the attorneys for the plaintiffs asked the court to: (1) enjoin permanently the payment of tuition grants to pupils attending segregated private schools; (2) require the board of supervisors to appropriate not less than $392,594 for public schools for 1964-65; (3) require the school board to operate schools sufficient for all children residing in the county; and (4) bar the assignment of teachers and other personnel by race. 157/ All of these motions were denied by the court. 158/

The first was denied without prejudice to the plaintiffs filing an appropriate suit. As to the next two, the denials were without prejudice to the plaintiffs' right to renew them after the opening of school. The court found "/t/he duty of opening and maintaining the public schools. . .including the admission of all eligible pupils on a nondiscriminatory basis, rests with the State and county school officials. The education offered should be substantially

---

154/ Ibid.

155/ Ibid.

156/ Allen v. Prince Edward County School Board, Civ.No.1333, E.D. Va., July 9, 1964, p.3 (Order in typescript).

157/ Id. pp. 2-3. See also Washington (D.C.) Post, June 30, 1964, p.6A.

158/ Allen v. County School Board, supra note 156.

equal to that offered by public schools in other parts of Virginia." The court was unwilling to prejudge these issues. 159/ The fourth motion, concerning nondiscrimination in assignment of teachers, had been denied by the court on June 17 as beyond the scope of the pleadings. 160/ It again was denied without prejudice to instituting an appropriate suit. 161/

Prospects for Reopening Schools -Attorneys for the Negro plaintiffs have appealed the district court's decision refusing to order the board of supervisors to appropriate more funds to operate the schools in 1964-65 and also its failure to cut off tuition grants to attend private segregated schools. 162/ Even if unsuccessful before school is scheduled to open on September 9, the opening of public schools for the Negro children of the county does not appear to be jeopardized thereby.

A taxpayer's suit also was predicted challenging the increase in the tax levy by the board of supervisors on the ground that the action was taken without a legal advertisement thereof and a public hearing as required by State law. 163/ The latter, if it materializes, might affect the reopening of the public schools. In the meantime, advanced registration was begun and some teachers had been hired, including three or four white teachers. About 1,700 pupils, almost all Negroes, were expected to enroll. 164/

Prince George County

In September 1963 several Negro pupils, children of military personnel stationed at Fort Lee, Virginia, enrolled in previously

---

159/ Id. pp. 3-4.

160/ See text at note 148, supra.

161/ Supra note 158.

162/ N.Y. Times, July 12, 1964, p.1; Richmond (Va.) News Leader, July 23, 1964, p.6A.

163/ Norfolk (Va.) Pilot, June 25, 1964, p.1; Richmond (Va.) News Leader, June 26, 1964, p.4.

164/ Richmond (Va.) News Leader, July 21, 1964, p.11.

all-white schools in Prince George County 165/ as a result of a school desegregation suit brought by the Federal Government. 166/ In October 1963 Negro residents of the county filed a desegregation suit in which they contended that segregation was still the general practice in the county. 167/

On July 28, 1964, the Federal district court enjoined the county school officials from using racial criteria in assigning Negro pupils to schools. However, the court stated that if the school board submitted a desegregation plan which was approved by the court the injunction would be dissolved. 168/

Richmond

On July 29, 1963, the Richmond school board submitted a school desegregation plan to a Federal district court in the form of a board resolution. 169/ The plan provided for the initial assignment of first grade and other new pupils and of first year junior and senior high school students on the basis of: 170/

> /T/he distance the pupils live from such schools; the capacity of such school, availability of space in other schools; whether the program of the pupil can be met by such school; the school preference as shown on the pupil placement application form; and what is deemed to be in the best interest of such pupil.

165/ Richmond (Va.) News Leader, Sept. 3, 1963, p.15.

166/ U.S. v. School Board (Prince George County), 221 F.Supp.93 (E.D. Va.1963).

167/ Richmond (Va.) News Leader, Nov. 1, 1963, p.9.

168/ Hill v. County School Board (Prince George), Civ.No.3822, E.D. Va.

169/ Raleigh (N.C.) News and Observer, Aug. 29, 1963, p.29.

170/ The plan is given in Bradley v. School Board (Richmond), Civ.No.3353, E.D.Va., Mar.16, 1964, 9 Race Rel.L.Rep.219, 221 (1964).

Under the proposed plans other pupils would be assigned to the schools previously attended with the right to apply for transfer. All requests for transfer for the following fall would be required to be submitted to the board before June 1 of each year. 171/

On October 1, 1963, the school board submitted to the district court a broad statement on the plan which contended that its school desegregation policy was a "freedom of choice" system in which parents might choose whether or not their children would attend a school with members of the other race. 172/ The board stated that pupils were to be routinely assigned to the same schools unless their parents requested a transfer by June 1. When a pupil moved from elementary to junior high and from junior high to senior high school, the parents would be asked to indicate which school they wished the child to attend. The requests would be granted as long as the school had the capacity and the program to accept the child. 173/ The extent of desegregation would depend on the parents and the school administration had "no duty to produce 'desegregation' to the point of nullifying the effect of a freedom of choice plan." The only restriction was the cut-off date which applied both to Negro and white parents. 174/

The board statement also said that "teachers and staff were not the subject of litigation and any faculty desegregation policy would be made by the school board." The statement concluded that the board was following the city's Fair Employment Practices Ordinance, and that special classes would come under the desegregation plan. 175/

The plaintiffs objected to the plan, claiming that it failed to satisfy the requirements of the Court of Appeals for the Fourth Circuit which directed that the school board must: 176/

171/ Ibid.

172/ Richmond (Va.) News Leader, Oct. 1, 1963, p.1.

173/ Ibid.

174/ Ibid.

175/ Ibid.

176/ Bradley v. School Board (Richmond), 317 F.2d 429 (4th Cir. 1963).

(1) eliminate the dual system of attendance areas in the initial assignment of pupils,

(2) end the feeder system of assigning pupils to junior and senior high schools,

(3) refrain from conditioning the grant of a transfer request on burdensome or discriminatory criteria.

The plaintiffs also contended that part of the plan was vague and indefinite, that it was inadequate to protect the constitutional rights of Negro school children, and that the plan conferred unlimited discretion on the board in the assignment of pupils. 177/

On March 16, 1964, the district court made the following findings with respect to the plan: 178/

(1) each first grade pupil and each pupil going into the first grade of junior or senior high school has an unqualified right to attend any school of his choice subject to capacity which presently is not a restrictive factor;

(2) both attendance areas and the feeder system have been abolished;

(3) requests for transfer for the following school year have to be submitted by June 1 on forms provided; principals are required to give pupils information as to their rights;

(4) the actual assignment is made by the State Pupil Placement Board upon recommendation of the city board;

(5) all public schools are encompassed by the plan;

177/ Bradley v. School Board, supra note 170 at 221.

178/ Id. at 222.

(6) criteria pertaining to "distance the pupils live from such schools," "whether the program of the pupil could be met by such school" and "what is deemed to be in the best interest of each pupil" have not yet been applied to deny any pupil admission to a school; and

(7) the plan makes no reference to faculty or employees.

The plan as administered was found to be a freedom of choice plan. Although it held the plan presently valid, the court said the board must not vary its interpretation or administration of the plan without court approval of amendments clarifying the following criteria: 179/ (1) the "best interest of such pupil" and (2) the residential and programs requirements.

As to programs, the court said that if "program" meant "courses," there would be little difficulty. "Experience has shown, however, that evaluation of a pupil's 'program' through academic achievement tests presents serious obstacles."180/ The court added that provision for nondiscriminatory assignment of faculty, although "a suitable element for inclusion in a school board's plan," was not essential to approval of a plan for the assignment of pupils. 181/

On June 30, 1964, the case was argued on appeal to the Court of Appeals for the Fourth Circuit. Plaintiffs asked the appellate court to require the city to submit another plan and to end faculty desegregation. They said segregation was perpetuated by a segregated faculty and the absence of a formal plan for the nondiscriminatory assignment of pupils. 182/ No decision has been reported by the appellate court at the date of writing.

179/ Id. at 223.

180/ Ibid.

181/ Ibid.

182/ Washington (D.C.) Post, June 30, 1964, p.3B.

During the 1962-63 school year, 138 Negro students attended predominantly white schools in Richmond. The 1963-64 school year opened with 369 Negroes assigned to ten predominantly white schools. Six schools had been desegregated in the past. 183/

Surry County

This southeastern Virginia county (one of the smallest in the State) closed its only white public school in September 1963 after seven Negro pupils were assigned to it by the State Pupil Placement Board. 184/ The local school board justified its action by the lack of sufficient enrollment. 185/ Almost all of the county's white pupils enrolled at the newly-established, private, segregated, Surry County Educational Foundation school. 186/ The foundation school was formed shortly after the action by the State Pupil Placement Board, and tuition grants of State and local funds were provided for pupils to attend the school. 187/ After the white public school was closed, the Negro pupils who had been assigned to the white school applied for and were denied admission to the foundation school. 188/

Thereafter, a suit was filed in a Federal district court on behalf of the seven Negro pupils who asked for an interlocutory injunction to require the school board to:(1) reopen the white school, (2) cease payment of public funds for tuition grants, and (3) enjoin the board from refusing to appropriate funds sufficient for the operation of all county schools. 189/ The court noted the similarity between the issues in the case and the issues in the

---

183/ Id. Sept. 6, 1963, p.1.

184/ See Pettaway v. County School Board (Surry), Civ.No.3766, E.D.Va., Sept. 30, 1963, 8 Race Rel.L.Rep.1478, 1479 (1963).

185/ Ibid.

186/ Ibid.

187/ Id. at 1479-80.

188/ Id. at 1479.

189/ Ibid.

Prince Edward County cases, and denied plaintiffs' requests pending a decision by the Virginia Supreme Court of Appeals in the Prince Edward County case. 190/ The plaintiffs appealed the district court's denial of an interlocutory injunction to the Court of Appeals for the Fourth Circuit. The court of appeals affirmed the decision of the district court. However, the appellate court instructed the district court to consider the case on its merits promptly. 191/

On June 18, 1964 (after the Supreme Court's decision in the Prince Edward case) the Federal district court issued an order to cease granting State and local funds (tuition grants) for pupils to attend the private segregated school, as well as any other school which practiced racial discrimination. 192/ The court also issued an order requiring the reopening of the white public school. 193/ The court stated that State and county funds in the form of tuition grants were used to perpetuate racial segregation in the schools. The court said further, that the funds subsidized the segregated foundation school which was in fact a substitute for the county's public school to which the seven Negro pupils had been assigned. The court held the subsidy sufficient to constitute "State action" in violation of the equal protection of the laws of the 14th amendment. 194/ The district court also enjoined the county school board from making initial assignments, placement, transfer, and enrollment of pupils on basis of race. The plaintiffs' petition with respect to the appropriation of more funds for the operation of schools was denied, as was their request for assignment of teachers and other school personnel on a nonracial basis. The court stated that plaintiffs were entitled to counsel fees, the amount to be determined at a later hearing. 195/

190/ Id. at 1480.

191/ Pettaway v. County School Board (Surry), 332 F.2d 457 (4th Cir.1964).

192/ Pettaway v. County School Board (Surry), 230 F.Supp.480, 486 (E.D.Va.1964).

193/ Ibid.

194/ Ibid.

195/ Id. at 486-87.

In reaching its decision the court pointed out that the "relief which has been fashioned is responsive only to the issue in this case. The court does not decide whether similar relief would be appropriate with respect to a county or city where no racial discrimination was found in the operation of the public school system."196/ The school board petitioned the court to modify its ruling with respect to tuition grants and the reopening of schools.

On July 22, 1964, the Federal district court refused to modify its June ruling. The court also denied a petition of white parents to intervene in the case. The court termed their action too late, and suggested that they could file an amicus brief if and when the case was appealed. 197/

Private Schools

Amelia, Brunswick and King and Queen Counties were planning to open private schools in September 1964. Two areas, Nottoway County and Williamsburg-James City(County),are making plans to open private schools some time in the future. Huguenot Academy in Powhatan County expected an increase in enrollment in September 1964 and in two other counties, Warren and Chesterfield, the private schools were having internal troubles. 198/

In Amelia County there were reports that about 90 percent of the white children in public school had agreed to enroll in a private school scheduled to open in the fall of 1964. The county public school faced its first desegregation at that time. The public school enrollment for the 1963-64 school year was 2,200, of whom an estimated 1,250 were Negroes. 199/

196/ Id. at 487.

197/ Norfolk Virginian Pilot, July 23, 1964, p.6A.

198/ Tidewater Academy at Norfolk, the Robert E. Lee Elementary School and Rock Hill and Robert E. Lee Academies at Charlottesville, the John S. Mosby Academy in Warren County, and the Prince Edward School Foundation were established when public schools were closed in these communities in 1958 and 1959. See 2 1961 Report of the U.S. Commission on Civil Rights, Education 90-91.

199/ Richmond (Va.) News Leader, July 13, 1964, p.1H.

A group of Nottoway County citizens have purchased a $14,200 building for possible use as a white, private school. No applications to attend white public schools were received from Negro students for the 1964-65 school year. 200/

In Brunswick County residents are exploring the possibility of setting up white, private schools for the fall of 1964. The interest in private schools was generated by the belief that the State Pupil Placement Board would assign Negro students to white schools in the fall of 1964. 201/

King and Queen County began preliminary work for the construction of a private high school which school officials hope ultimately may draw pupils from seven counties. 202/ The school is an expansion of York Academy which has been operating a private elementary school at Little Plymouth. The school was expected to be open by September 1, 1964. Maximum capacity is about 300 pupils. Tuition is $325 a year for elementary students and $350 for high school students--$75 more per pupil than the State tuition grants. 203/ The private school officials anticipated enrollment of at least 100 students from the Pleasant Hill (public) High School which had an approximate enrollment of 125 or 130 in the 1963-64 school year. 204/

The 1963-64 enrollment of Huguenot Academy in Powhatan County was 570 pupils, some of whom were from outside of the county. The enrollment was expected to increase in the fall of 1964. Powhatan School (public) had an enrollment of 428 pupils, 60 of them Negro. Twenty-three more Negroes were expected to enroll in September 1964. 205/

The former chairman of the James City-County School Board stated that he intended to help establish a private school. The Williamsburg-James City-County school system was expected to be

---

200/ Id. July 23, 1964, p.3A.

201/ Id. July 1, 1964, p.1.

202/ Id. May 6, 1964, p.4.

203/ Ibid.

204/ Id. Apr. 23, 1964, p.19.

205/ Id. June 19, 1964, p.1.

desegregated in the fall of 1964. The county and the city of Williamsburg operate their schools jointly and their two school boards meet together. 206/

Two established private schools were having trouble. In February 1964 the Chesterfield County private academy had "quite a setback in their programming" because of a change of officers. The difficulty according to the school's attorney was of a personal nature not to be released to the public. 207/

In Warren County there were internal complications in the private school system. The Warren County Educational Foundation, Inc., operates a high school in a building owned by the Front Royal Academy, Inc., and an elementary school in a building owned by Mosby Academy, Inc. "The three firms, with partially interlocking directorates, have had a series of arguments over financial accounts. Casual transfers of money, unrecorded as loans, have generated mutual distrust." 208/ This has been compounded by the forming of a fourth corporation, Lee Academy, Inc. The Mosby Academy repeatedly demanded that the $16,500 yearly rental for its building be paid early. The Warren County Foundation moved all of the elementary pupils to the high school building and suits were filed by both sides. The school continued to operate with 1,162 pupils during the 1963-64 school year. The $312,719 received from Virginia's tuition grant program took care of operating costs. A $19,000 grant helped cover transportation costs. Advocates of school desegregation were reportedly happy over the bitter struggle within the segregationist ranks. 209/

Prospects for the 1964-65 School Year

Nearly 6,000 Negro pupils were expected to attend predominantly white public schools in Virginia in the fall of 1964, bringing desegregation to at least 75 of the State's 128 biracial school

---

206/ Id. June 25, 1964, p.8A.

207/ Id. Mar. 6, 1964, p.25.

208/ Washington (D.C.) Evening Star, Jan. 16, 1964, p.4B.

209/ Ibid.

districts. Although approval of transfers by the State Pupil Placement Board involved less than two percent of the State's projected Negro enrollment, "it will mean changes for about 2,000 more Negro pupils" than in 1963-64. 210/

The State Pupil Placement Board, originally created to resist school desegregation, has had its policies so curtailed by court action "that it now virtually is a funnel for the admission of Negroes." 211/ The present policy of the board is to approve any transfer request so long as the pupil lives within the area served by the school he seeks to attend and the school is not overcrowded. 212/

Initial public school desegregation was scheduled to take place in at least 21 counties 213/ and six cities 214/ at the beginning of the 1964-65 school year. The State Pupil Placement Board has approved the transfer of at least 227 Negro pupils to previously all-white schools in areas which will be desegregated for the first time. 215/

Giles and Shenandoah counties were scheduled to completely integrate their schools at the beginning of the 1964-65 school year. 216/ The Negro schools in both counties were to be closed and the Negro pupils transferred to previously white schools.

210/ Washington (D.C.) Post, July 12, 1964, p.1B.

211/ Ibid.

212/ Ibid.

213/ Accomack, Amelia, Bath, Brunswick, Campbell, Carrol, Covington, Cumberland, Giles, Gloucester, Halifax, Madison, Mecklenberg, Northhampton, Page, Pittsylvania, Prince Edward, Rappahannock, Rockbridge, Rockingham, and Wythe. Roanoke (Va.) Times, June 17, 1964, p.1A; Washington (D.C.) Post, July 12, 1964, p.1B; So.School News, Aug. 1964, p.1.

214/ Bristol, Harrisonburg, Lawrenceville, Norton, Suffolk, and Williamsburg. Ibid.

215/ Ibid.

216/ Richmond (Va.) News Leader, July 7, 1964, p.10A.

There are 197 Negro pupils involved--131 in Giles County. 217/ Giles County, unlike Shenandoah County, had no previous desegregation. 218/

The contracts of the seven teachers and the principals of the Negro school scheduled to be closed in Giles County were not renewed for the 1964-65 school year. These persons, all Negroes, filed suit in a Federal district court on July 29, 1964 to enjoin the school board from using race as a factor in the assignment of teachers. The plaintiffs, in effect, seek to require the school board to assign them to white or desegregated schools in the county. 219/

217/ Ibid. Roanoke (Va.) Times, June 17, 1964, p.1A.

218/ Ibid.

219/ Franklin v. Giles County, Civ.No.64-C-73-5, W.D.Va. Roanoke (Va.) Times, July 30, 1964, p.1B.

ADDENDUM

As public schools opened in Virginia in the fall of 1964, reports on the segregation-desegregation situation in the State were incomplete. Eighteen school districts reported that they were making an initial start on desegregation in the fall term. Six school districts; the cities of Winchester, Norton, Fredericksburg, and Powhatan; King and Queen, King William, and James City (Williamsburg) Counties, said that for the first time they would have no all-white schools at least in the fall term of 1964-65. Prince Edward and Surry Counties said most of their counties' white children would be in private schools.

Twelve private white schools, established since the closing by the Governor of the public schools scheduled for desegregation in 1958, were reported to be in operation or ready to open: Tidewater Academy in Norfolk, Mosby Academy in Front Royal, Prince Edward Academy in Farmville, Rock Hill and Robert E. Lee Academies in Charlottesville, Surry County Educational Foundation, Huguenot Academy in Powhatan County, York Academy in King and Queen County, Bermuda Academy in Hopewell, Tomahawk Academy in Chesterfield, Amelia Academy in Amelia County, Brunswick Academy in Brunswick County, and Jamestown Academy in James City County. The last three were opening for the first time in September 1964.

The total enrollment in the 12 private schools was estimated at 5,700 pupils as compared with about one million in the State's public schools. (Richmond News Leader, Aug. 22, 1964, p.1; id. Sept. 3, 1964, p.1.)

Amelia County

At a special registration in August, 270 white elementary pupils enrolled for public school. The new private school for white children reduced the number of teachers it would hire from 15 to 10. (Richmond News Leader, Aug. 18, 1964, p.13.)

Prince Edward

The County Board of Supervisors moved swiftly to disburse tuition grant payments for the 1964-65 school year before payment could be blocked by Federal court order. Reports said the supervisors met at an unannounced meeting during the night to authorize the payments. Patrons of private schools, allegedly, were informed by telephone to pick up their checks early the next morning, some 500

people were said to have been on the streets by 3 a.m. About $180,000 in tuition grants was said to have been distributed. The NAACP attorney admitted that he was caught flat-footed by the unexpected move. (N.Y. Times, Aug. 6, 1964, p.17C; Evening (D.C.) Star, Aug. 6, 1964; p.1B; Richmond News Leader, Aug. 8, 1964, p.9.)

Negro attorneys, who had already filed an appeal from the district court's denial of an order requiring an appropriation of more funds for the public schools and an injunction prohibiting the payment of tuition grants to white pupils, filed a brief with the Court of Appeals for the Fourth Circuit two days after the surprise move. They asked for a hearing before the scheduled opening of public schools but the court set the hearing for September 21, the opening date of the fall court calendar. (Richmond News Leader, Aug. 8, 1964, p.9; Richmond Times-Dispatch, Aug. 10, 1964, p.1.)

The attorneys for the Negro plaintiffs asked the Federal district court for a contempt citation against the Prince Edward Board of Supervisors for its "midnight raid on the county treasury," and for an order to compel the supervisors to recover from the Prince Edward Educational Foundation any funds it might have received from the allegedly illegal disbursal. (Richmond News Leader, Aug. 14, 1964, p.15.)

On the request of the State and county school officials, the Court of Appeals postponed hearing the Prince Edward tuition grant case until its November term so that it could be heard at the same time as the Surry County appeal. (Norfolk Virginian Pilot, Aug. 20, 1964, p.1.)

The trustees of the Prince Edward Free School Association gave what remained of its donated funds at the close of its 11-month operation, $23 thousand, to the county's public schools to continue the remedial reading program it had started, special education for the retarded, and to pay for a specialist in audio-visual education. A supplementary grant for a free lunch program was included. (Washington (D.C.) Post, Aug. 23, 1964, p.11B.)

Powhatan County

On August 4, the county school board voted 2-1 to consolidate the all-Negro Pocahontas High School with the desegregated but mostly white Powhatan High School. The move would have placed about 180 Negro students in the school with an estimated 170 white students. (In 1963-64 the enrollment at Powhatan High was 365 white and 61 Negro pupils.)

The majority of the school board claimed the decision was an economy move; the dissenting member was said to view the move as one to bolster white support of the private, segregated Huguenot Academy. (Richmond (Va.) News Leader, Aug. 18, 1964, p.1; id. Aug. 28, 1964, p.10.)

Attorneys for the Negro plaintiffs filed a motion in the Federal district court on August 18 asking for an order holding the members of the school board in contempt of the court's order prohibiting the closing of either high school or any classes in the schools. On the same day, the dissenting school board member and the Citizens for Public Education, an organization of which he was temporarily chairman, filed suit in a State court asking that the proposed merger be enjoined. The Federal district court judge in charge of the Powhatan case was on vacation and not scheduled to return until after public schools were to open. The State judge refused to act but told the members of the school board and board of supervisors that he would if the matter was not resolved within a few days. The following day the school board reversed its action. (Richmond (Va.) News Leader, Aug. 18, 1964, p.1; id. Aug. 20, 1964, p.19; id. Aug. 21, 1964, p.19; Richmond (Va.) Times-Dispatch, Aug. 19, 1964, p.25)

Powhatan schools opened late in August. Enrollment at the desegregated high school was 502 pupils the first day of school as compared with 426 the previous year. There were 58 more white pupils and 18 more Negroes. (Richmond (Va.) News Leader, Aug. 28, 1964, p.10.)

Surry County

Both public and private schools opened early in September. The public schools had an all-Negro enrollment, and the Surry Academy had only white pupils. None of the 50 white pupils who had registered for public school appeared for attendance when school opened but at least a dozen white children whose families could not afford the academy's tuition were reported to be remaining at home. (Richmond (Va.) News Leader, Sept. 4, 1964, p.19.)

West Virginia

General

There are 44 biracial school districts in West Virginia containing an estimated 417,595 white and 23,449 Negro pupils. All 44 of the biracial districts were reported to be desegregated at the end of the 1963-64 school year. An estimated 13,659 Negro students (58.2 percent of the State's total) were reported to be attending schools with white pupils. 1/

The State Human Rights Commission reported that there were still 74 all-Negro schools, primarily junior and senior high schools, in the State having a total enrollment of about 9,850 students. 2/ The director of the State commission stated that the segregated schools were centered in six southern counties--Jefferson, McDowell, Mercer, Mingo, Raleigh and Wyoming. 3/ Enrollment in the Negro schools in these counties varied from 47-49 percent of the total county Negro enrollment. 4/ In the six counties with Negro high schools "there is no integration at the high school level and little at the elementary school level." 5/ McDowell County had the largest Negro population and the most Negro schools--23 elementary, one three-year junior and four six-year senior high schools. The dual system means that many students ride 10-15 miles to school when they might walk or have a much shorter ride if the school nearest their homes were desegregated. 6/ On June 11, 1964, the representatives of the counties which were designated as the center of segregation in the State told the State Board of Education that racial integration was being accomplished with difficulty. 7/

1/ Appendix, tables 1 and 2.

2/ West Virginia Human Rights Commission, Special Report, Statistical Data on Negro Enrollment in All-Negro Schools 1,8 (1964).

3/ Id. at 1. 7,955 pupils were in all-Negro schools in 5 counties.

4/ Ibid.

5/ Id. at 3.

6/ Id. at 2-3.

7/ Charleston (W.Va.) Gazette June 12,1964, p.1A.

On July 27,1963, the executive board of the West Virginia NAACP asked all of its local branches to send a delegation to county school boards to ask that: 8/ (1) the teaching staffs be desegregated and more Negro teachers be employed; (2) the school zoning lines be changed to end uniracial schools; (3) Negro history be taught and included in the American history classes. The results of this directive have not yet been reported.

In its annual report on December 7,1963, the West Virginia Human Rights Commission proposed three steps for the State Board of Education to take in dealing with school problems: 9/ (1) set a date of not more than five years hence for eliminating all separate Negro schools within the state; (2) adopt a policy of positive leadership for the integration of faculty and administrative personnel; (3) adopt a policy of promoting human relations in the schools, giving attention to curriculum content and assistance to teachers in dealing with prejudices and handling interracial activities. The commission criticized the State Department of Education and the West Virginia Education Association for providing only minimal leadership in seeking the assignment of Negro principals and teachers on a nonracial basis. Further, the report said, "there is almost complete absence of any positive program for human relations in the schools." The NAACP criticized the additional five-year period for desegregation as much too slow. 10/

The State school superintendent disagreed with the commission's recommendation, saying integration of the State's schools was moving quite rapidly; many of the all-Negro schools were in heavily

---

8/ So. School News, Sept.1963, p.10.

9/ West Virginia Human Rights Commission, Annual Report 27(1963).

10/ Id. April 1964, p.11.

populated Negro areas and were all-Negro by choice, and that a deadline could not be set because it would be forcing on some what they really did not want. He further stated that a policy of positive leadership exists for desegregation of faculty and administrative personnel and that human relations should be taught as a part of the general social studies program, 11/ rather than as a separate course.

In March 1964, representatives of the State Commission on Human Rights urged the State Board of Education "to take a position of moral leadership even if it /the board/lacks authority." 12/ The board appointed a committee to draft a policy statement on desegregation for the April 30 - May 1, 1964 board meeting but on June 11, the board secretary said he did not know when the draft of the policy statement would be received. 13/

In 1955 and 1956 a series of Federal lawsuits were filed against school boards in Raleigh, 14/ Mercer, 15/ Logan, 16/ Cabell, 17/ McDowell, 18/ and Greenbrier 19/ counties, all in southern West Virginia. Only one of these cases--that against

---

11/ Id. Jan.1964, p.14.

12/ Id. Apr.1964, p.11.

13/ Charleston Gazette (W.Va.), June 19,1964, p.1A.

14/ Taylor v. Board of Education (Raleigh County), Civ.No.159, S.D.W.Va.,Jan.10,1956, 1 Race Rel. L. Rep.321(1956).

15/ Anderson v. Board of Education (Mercer County),Civ.No.437, S.D.W.Va.,Dec.29,1955, 1 Race Rel. L. Rep.892(1956).

16/ Shedd v. Board of Education (Logan County), Civ.No.833,S.D. W.Va.,April 11,1956, 1 Race Rel. L. Rep. 521(1956).

17/ Pierce v. Board of Education (Cabell County), Civ.No.838, S.D.W.Va., filed June 8,1956.

18/ Martin v. Board of Education (McDowell County), Civ.No.450, S.D.W.Va., filed Feb.21,1956.

19/ Dunn v. Board of Education (Greenbrier County)Civ.No.1693 S.D.W.Va.,Jan.3,1956, 1 Race Rel. L. Rep.319(1956).

Greenbrier County--reached the hearing stage. After two days of testimony the presiding Federal district judge called the parties together and an agreement was reached to institute a voluntary-gradual desegregation plan. 20/ Soon afterwards similar agreements were reached disposing of the other suits without trial. 21/

Since that time only one other school desegregation suit has been filed in the State. 22/ However, NAACP activity within the State and the interest of Negro parents suggest that new efforts will be made to increase the pace of school desegregation.

Two of the original cases, those against the Raleigh 23/ and Mercer County 24/ school boards, have been reopened by Negro parents who are seeking new plans to increase and speed up desegregation. A Federal district court ordered the Raleigh school board to submit its current desegregation plan and supporting information. 25/ On December 27, 1963 the school board said that a new plan had been submitted to the court for approval. 26/

20/ Ibid.

21/ Account of agreements reported in Report of the U.S. Commission on Civil Rights 1959 at 191-94.

22/ Wilkenson v. Board of Education (Harrison County), Civ.No.510-F, N.D.W.Va., filed Oct. 4,1956.

23/ Petition to reopen filed 1961, case being heard on the merits.

24/ Petition to reopen case filed Nov.1963 by the NAACP. See So. School News, Dec.1963, p.14

25/ So. School News, Dec. 1963,p.14.

26/ Id. Jan.1964, p. 16.

Greenbrier County

The State Human Rights Commission was told on May 20, 1964, that "few new Negro teachers have been hired in the Greenbrier school system since the schools were desegregated." Witnesses testified the mayors and governing councils of Greenbriar county communities pledged their co-operation in working to eliminate discrimination. 27/

Kanawha County

Early in 1964 the president of the Kanawha County Board of Education said in response to a charge of discrimination that the county supported a policy of hiring and promoting teachers without regard to race. The NAACP countered that a "nose count" showed there were 109 Negro teachers as compared to 134 before the schools were desegregated in 1956; it was also stated that there was only one Negro out of 157 clerks and stenographers in the school system. 28/ Subsequently on March 22, 1964, the NAACP charged that: (1) Negroes are excluded from all areas of school administration; (2) the school system had grown during the 1954-63 period, yet the number of Negro teachers had decreased; (3) many Negro pupils in desegregated schools feel alienated, a condition which could be remedied by a vigorous policy of promoting desegregation; (4) school zone boundaries are not drawn to promote maximum desegregation; (5) the school system shows a general disregard for Negro culture and history; and that (6) textbooks do not give a "fair picture of the Negro and his story." 29/

27/ Id. June 1964, p.8.

28/ Id. Mar. 1964, p.12.

29/ Id. Apr. 1964, p.11.

ADDENDUM

Raleigh County

In an opinion in the reopened Raleigh County case, the Federal district court held:

> /t/he maps of the attendance areas as well as the provisions of the policy of the Board of Education, . . . as stated comport with the Federal Constitution under the principles set forth in Brown v. Board of Education. . . . Residence of pupils is recognized as a valid criterion for attendance areas and assignment to public schools . . . . On the record before me it appears that the great majority of the attendance areas in the Raleigh County schools were set up and defined prior to the Brown decision. This being so, there is no affirmative constitutional duty upon the Board to change school attendance areas if they were innocently and reasonably drawn.

Plaintiffs' contention that the court's order in 1956 had placed the responsibility on the board of taking affirmative steps to redefine attendance areas to produce integration in the schools was rejected. The court stated that "/t/he Brown case does not require complete or enforced integration of the public school system. It merely proscribes discrimination in the public schools by reason of race."

The policy statement by the school board provided that a pupil might choose to attend a school closer to his residence rather than the school of his attendance area. It also granted the option to transfer to schools outside their attendance areas if there was room in the grade, they furnished their own transportation and applied for transfer before the beginning of the school year. The court noted that all options were made available without regard to race, and said that on the assumption that the desegregation plan and statement of policy were administered in good faith and without discrimination or compulsion, the plaintiffs' request for an injunction was denied. Jurisdiction was retained by the court to assure the proper implementation of the policy approved. (Taylor v. Board of Education (Raleigh County), Civ.No.159, S.D.W.Va., Sept.8,1964.)

Appendices

TABLE 1--THE REGION

Status of Desegregation in
School Districts, 1963-64 1/

	Total School Districts	Total With White & Negro	School Districts Desegregated	School Districts Segregated
Alabama	114	114	4	110
Arkansas	415	228	13	215
Delaware	85	39	39	0
District of Columbia	1	1	1	0
Florida	67	67	16	51
Georgia	197	181	4	177
Kentucky	204	165	163	2
Louisiana	67	67	2	65
Maryland	24	23	23	0
Mississippi	150	150	0	150
Missouri	1,597	212*	203*	9*
North Carolina	171	171	40	131
Oklahoma	1,160	241	197	44
South Carolina	108	108	1	107
Tennessee	154	143	45	98
Texas	1,421	899	264	635
Virginia	130	128	55	73
West Virginia	55	44	44	0
TOTAL.	6,120	2,981	1,114	1,867
PERCENT			37.4	62.6

1/ Southern Education Reporting Service, Statistical Summary, Nov.1963, revised especially for the Commission on Civil Rights as of Aug.1,1964.

* Estimated.

TABLE 1A--SOUTHERN STATES

Status of Desegregation in School Districts, 1963-64 1/

	Total School Districts	Total With White & Negro	School Districts Desegregated	School Districts Segregated
Alabama	114	114	4	110
Arkansas	415	228	13	215
Florida	67	67	16	51
Georgia	197	181	4	177
Louisiana	67	67	2	65
Mississippi	150	150	0	150
North Carolina	171	171	40	131
South Carolina	108	108	1	107
Tennessee	154	143	45	98
Texas	1,421	899	264	635
Virginia	130	128	55	73
TOTAL.	2,994	2,256	444	1,812
PERCENT			19.7	80.3

1/ Southern Education Reporting Service, Statistical Summary, Nov.1963, revised especially for the Commission on Civil Rights as of Aug.1,1964.

TABLE 1B--BORDER STATES

Status of Desegregation in
School Districts, 1963-64 1/

	Total School Districts	Total with White & Negro	School Districts Desegregated	School Districts Segregated
Delaware	85	39	39	0
District of Columbia	1	1	1	0
Kentucky	204	165	163	2
Maryland	24	23	23	0
Missouri	1,597	212*	203*	9*
Oklahoma	1,160	241	197	44
West Virginia	55	44	44	0
TOTAL	3,126	725	670	55
PERCENT			92.4	7.6

1/ Southern Education Reporting Service, Statistical Summary, Nov. 1963 revised especially for the Commission on Civil Rights as of Aug. 1, 1964.

* Estimated.

TABLE 2--THE REGION

Number and Percent of Negro Pupils
in Desegregated Schools, 1963-64 1/

	Total Enrollment	White	Negro	Negroes enrolled in desegregated schools	Percent of total Negro pupils enrolled in desegregated schools
Alabama	827,410*	539,996*	287,414*	21	.007
Arkansas	440,035**	328,023**	112,012**	366	.327
Delaware	96,796	78,730	18,066	10,209	56.5
District of Columbia	137,718	19,803	117,915	98,813	83.8
Florida	1,202,112*	964,241*	237,871*	3,650	1.53
Georgia	1,026,857	689,323	337,534	177	.052
Kentucky	666,000*	611,126*	54,874*	29,855	54.4
Louisiana	762,022**	460,589**	301,433*	1,814	.602
Maryland	701,613	540,667	160,946	76,906	47.8
Mississippi	596,197**	304,226**	291,971**	0	0
Missouri	888,000*	793,000*	95,000*	40,000*	42.1
North Carolina	1,167,963*	820,900*	347,063*	1,865	.537
Oklahoma	585,000*	541,125*	43,875*	12,289*	28.0
South Carolina	627,451*	368,496*	258,955*	9*	.003
Tennessee	852,842*	687,902*	164,940*	4,486	2.72
Texas	2,371,908*	2,045,499*	326,409*	18,000*	5.52
Virginia	939,127	710,176	228,961	3,721	1.63
West Virginia	441,044*	417,595*	23,449*	13,659*	58.2
TOTAL	14,330,105	10,921,417	3,408,688	315,840	9.3%

1/ Southern Education Reporting Service, Statistical Summary, Nov. 1963, revised especially for the Commission on Civil Rights as of Aug. 1, 1964.

* Estimated.

** 1962-63 Enrollment.

TABLE 2A--SOUTHERN STATES

Number and Percent of Negro Pupils
in Desegregated Schools, 1963-64 1/

	Enrollment			Negroes enrolled in desegregated schools	Percent of total pupils enrolled in desegrated schools
	Total	White	Negro		
Alabama	827,410**	539,996**	287,414*	21	.007
Arkansas	440,035**	328,023**	112,012**	366	.327
Florida	1,202,112*	964,241*	237,871*	3,650	1.53
Georgia	1,026,857	689,323	337,534	177	.052
Louisiana	762,022**	460,589**	301,433*	1,814	.602
Mississippi	596,197**	304,226**	291,971**	0	0
North Carolina	1,167,963*	820,900*	347,063*	1,865	.537
South Carolina	627,451*	368,496*	258,955*	9	.003
Tennessee	852,842*	687,902*	164,940*	4,486	2.72
Texas	2,371,908	2,045,499	326,409*	18,000*	5.52
Virginia	939,127	710,176	228,961	3,721	1.63
TOTAL	10,813,934	7,919,371	2,894,563	34,109	1.18%

1/ Southern Education Reporting Service, Statistical Summary, Nov. 1963, revised especially for the Commission on Civil Rights as of Aug. 1, 1964.

* Estimated.

** 1962-63.

TABLE 2B--BORDER STATES

Number and Percent of Negro Pupils
in Desegregated Schools, 1963-64 1/

	Total	Enrollment White	Enrollment Negro	Negroes enrolled in desegregated schools	Percent of total Negro pupils enrolled in desegregated schools
Delaware	96,796	78,730	18,066	10,209	56.5
District of Columbia	137,718	19,803	117,915	98,813	83.8
Kentucky	666,000*	611,126*	54,874*	29,855	54.4
Maryland	701,613	540,667	160,946	76,906	47.8
Missouri	888,000*	793,000*	95,000*	40,000*	42.1
Oklahoma	585,000*	541,125*	43,875*	12,289*	28.0
West Virginia	441,044*	417,595*	23,449*	13,659*	58.2
TOTAL	3,516,171	3,002,046	514,125	281,731	54.8

1/ Southern Education Reporting Service, Statistical Summary, Nov. 1963, revised especially for the Commission on Civil Rights as of Aug. 1, 1964.

* Estimated.

** 1962-63.

TABLE 3--THE REGION

Preliminary Estimate--Status of Desegregation in School Districts, 1964-65 1/

	Total School Districts	Total with White and Negro	School Districts Desegregated	School Districts Segregated
Alabama	114	114	8	106
Arkansas	415	228	21	207
Delaware 2/	85	39	39	0
District of Columbia	1	1	1	0
Florida	67	67	21	46
Georgia	197	181	10	171
Kentucky	204	165	164	1
Louisiana	67	67	3	64
Maryland	24	23	23	0
Mississippi	150	150	4	146
Missouri	1,597	212	203	9
North Carolina	171	171	61	110
Oklahoma	1,160	241	199	42
South Carolina	108	108	16	92
Tennessee	153	142	58	84
Texas	1,421	899	289	610
Virginia	130	128	80	48
West Virginia	55	44	44	0
TOTAL.	6,119	2,980	1,244	1,736
PERCENT.			41.7	58.1

1/ Southern School News, Sept. 1964, p.11.

2/ Same as for 1963-64 school year.

List of Cases

☆ U. S. GOVERNMENT PRINTING OFFICE : 1964 O - 752-504(72)