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REFERENCE

C O P Y

CHARLES B. BOOKER, et al., Appellants,	:	
vs.	:	DECISION OF THE
THE BOARD OF EDUCATION OF THE CITY OF PLAINFIELD, UNION COUNTY,	:	STATE BOARD OF EDUCATION
Respondent.	:	

DATED: February 5, 1964

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CHARLES B. BOCKER, et al., Appellants, vs. THE BOARD OF EDUCATION OF THE CITY OF PLAINFIELD, UNION COUNTY, Respondent.	DECISION OF THE STATE BOARD OF EDUCATION

ROBERT L. CARTER, ESQ. Argued the Cause for Appellants.

GEORGE G. MUTNICK, ESQ. Argued the Cause for Amicus Curiae, Plainfield Council for Educational Progress.

VICTOR KING, ESQ. Argued the Cause for Respondent.

This is an appeal from a decision of the Commissioner of Education rendered on June 26, 1963. It is brought on behalf of the appellants in the name of 54 elementary school children in the schools of the City of Plainfield, and involves the question of alleged racial "imbalance" in said schools. This Board granted leave to the Plainfield Council for Educational Progress to intervene as Amicus Curiae, to file a brief and participate in oral argument. Briefs were filed and oral argument was had before this Board on November 15, 1963.

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In his decision, the Commissioner made the following findings:

1. That the enrollment in the Washington School in the City of Plainfield is comprised almost exclusively of pupils of the Negro race;

2. That such an extreme concentration of Negro pupils in a school, enforced by compulsory assignment, engenders feelings and attitudes which tend to interfere with successful learning;

3. That reasonable and practicable means consistent with sound educational and administrative practice do exist to eliminate the extreme concentration of Negro pupils in the Washington School;

4. That, where means exist to prevent it, the extreme racial concentration in the Washington School constitutes a deprivation of educational opportunity under New Jersey law for the pupils compelled to attend it; and

5. That either Plan 1 or Plan 2 of the Wolff report urged by petitioners, or the Sixth Grade plan advanced by respondent, will effectively reduce the racial homogeneity of the Washington School enrollment; that all three plans appear to be educationally sound, reasonable and practicable; and that the Commissioner will approve whichever one of the three plans the Board of Education decides to put into operation.

The Commissioner directed the respondent Board:

1. To decide which of the three plans submitted is best suited to the needs of the Plainfield School system;

2. To take such steps as are necessary to insure the implementation of the chosen plan for the 1963-64 school year; and

3. To notify the Commissioner of Education as soon as is reasonably possible of its choice of plans and the action to be taken to put it into effect.

It will be seen that the decision below ordered the respondent Board to decide which of the 3 plans submitted was best suited to the needs of the School System. Subsequent to the decision, and on June 27, 1963, the respondent Board adopted the

so-called "Sixth Grade Plan" to become effective in September, 1963. In essence, this Plan provided for the transfer of students from the Washington School (which had had a percentage of 96.2 of Negro students) to other elementary schools in Plainfield, except for Emerson, Bryant, Clinton and Stillman Schools, and all "sixth grade students" in all of the elementary schools were to be transferred to Washington School. The following table shows the percentage of Negro pupils in each school (a) as of April, 1963 before the adoption of the "Sixth Grade Plan" and (b) after the adoption of said Plan:

SCHOOL	PERCENTAGE OF NEGRO, APRIL 1963	PERCENTAGE OF NEGRO, OCTOBER 1963 (AFTER ADOPTION OF "SIXTH GRADE PLAN"
Washington	96.2%	36.6%
Emerson	72.1%	76.4%
Stillman	67.6%	65.2%
Bryant	65.9%	67.1%
Clinton	58.9%	66.1%
Jefferson	44.9%	52.1%
Barlow	30.8%	40.8%
Woodland	18.8%	39.8%
Evergreen	8.8%	26.5%
Cedarbrook	3.8%	17.7%
Cook	0.8%	23.4%
Lincoln	63.0%	63.3%

It will thus be seen that the extreme concentration of Negro pupils in the Washington School was greatly reduced and the the 5 highest percentages of Negroes were found in the following schools: Emerson, 76.4%, Bryant, 67.1%, Clinton, 66.1%, Stillman, 65.2%, and Jefferson, 52.1%.

Since the change in percentages occurred after the decision of the Commissioner, but before the decision of this Board, the parties have stipulated that this Board will decide the case on the facts as they existed after the adoption of the "Sixth Grade Plan."

Appellants complain that the resulting percentages after the adoption of the "Sixth Grade Plan" did not eliminate what is variously called "racial imbalance" and "segregation", and the complaint is that the Commissioner failed to order the reduction of "racially imbalanced schools other than the Washington School". It is further the contention of the appellants that either the so-called "sister-school plan" or, in the alternative, the "re-zoning plan" suggested by respondent's consultant, Dr. Wolff, should have been adopted rather than the "sixth grade plan". The claim as made by Amicus Curiae is that the local board of education had a legal duty to eliminate "segregation" and achieve "racial balance" in the schools.

The Commissioner in his decision made the observation that there is no claim here that there existed any intentional or deliberate segregation of elementary school pupils. Indeed the parties so stipulated. He noted the awareness of the local board as to the problem existing in the school system, the various and conscientious studies made by the board in an effort to resolve the problem. He held, in essence, that, while the school district is not, by reason of the fact that the concentration of Negro pupils is unintentional, relieved of its responsibility "to take whatever reasonable and practicable steps are available to it to eliminate, or at least mitigate, conditions which have an adverse effect upon its pupils", it does have the responsibility and prerogative to determine which proposals are best suited to the needs of the school system provided the proposals are "reasonable, practicable and consistent with sound educational practice." After giving careful consideration to each of the 3 plans under consideration by the local board, the Commissioner held that each of them was "reasonable, practical and consistent with sound educational practice" while recognizing that each of them has certain advan-

tages, but that the favorable aspects of each does not so far outweigh the unfavorable in any one so as to make one alone the plan of choice. Having thus passed upon the reasonableness of the 3 proposals, the Commissioner left it to the local board to decide which was best suited to the needs of the Plainfield Public School System.

The Board having adopted the "Sixth Grade Plan" with the results above set forth, this Board is now called upon to weigh the attack upon the "Sixth Grade Plan" as argued by the appellants and by the Amicus Curiae. It is argued that the Commissioner departed from the principles established by him in his previous decision in the case of Fisher, et al. v. The Board of Education of the City of Orange, decided May 15, 1963. It is said by appellants that while the Commissioner recognized the existence of "completely or almost exclusively" Negro schools, he failed "to order the reduction of racially imbalanced schools other than the Washington School and has sanctioned the adoption of the Sixth Grade Plan which does not effectuate a solution to the problem." The Commissioner did not hold in Fisher, et al. v. The Board of Education of the City of Orange that any and all imbalance (if by "imbalance" is meant any percentage of Negro pupils in excess of 50%) constitutes the deprivation of equal educational opportunity which he condemned in Fisher and other decisions. In Fisher he held invidious an enrollment which was "completely or almost exclusively" Negro and in that case the effect was that the percentage of Negro children in the schools reached 99%. The same criticism was properly leveled against the concentration of Negro pupils in the Washington School prior to the Commissioner's decision, namely, 96.2%. This the Commissioner struck down by his decision here appealed from. To extend the same criticism to the result obtained by the adoption of the "Sixth Grade Plan" here, i. e., that the concentration of Negro pupils in the Emerson School (76.4%), Bryant (67.1%), Clinton (66.1%), Stillman (65.2%) or Jefferson (52.1%) simply is not tenable. Such percentages did not result in a school "completely or almost exclusively Negro". The Commissioner, with his experience in the field of education, has held that such percentages do

not in fact result in deprivation of equal educational opportunities. This is the crucial question -- not mere mathematical "imbalance". We respect that judgment and concur in it. We further hold that there is no fine line which can be drawn in terms of numbers, and that each case must be judged upon its own facts.

Further, while the brief and argument of Amicus Curiae frequently interchanges the phrases "racial imbalance" and "segregation", we hold that racial imbalance (i. e., more than 50% of one race over the other) is not to be equated to invidious segregation as condemned by the Commissioner below and by this Board in Volpe v. The Board of Education of the City of Englewood (Opinion filed September 25, 1963.) The argument of the Amicus Curiae is that the "Sixth Grade Plan" results in "segregation". This begs the question -- What is segregation, in the invidious sense? If a concentration of Negro children of 99% is such, is 90%, 85% or 76% also to be condemned? We repeat that we do not wish to, nor do we feel that we can, draw such a line. As recognized in the case of Brown v. Topeka Board, 347 U.S. 483, 74 Sup. Ct. 686 (1954), 349 U.S. 294, 75 Sup. Ct. 753 (1955):

> "Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles."
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> "To that end, the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems."

In this instance, the local board conducted conscientious studies to solve the very difficult problem confronting it, and has attempted to implement the constitutional principles which are a guiding light, even though this is not an instance of intentional segregation as existing in Brown, and even though it has not been authorita-

tively decided that de facto segregation is "unconstitutional". See Volpe v. The Board of Education of the City of Englewood, supra. We respect the local board's awareness of its own local school problems. To the local board's judgment there is added the expertise of the Commissioner of Education, who does not find that the percentages of Negro pupils which results from the "Sixth Grade Plan" amounts to a deprivation of "equal educational opportunities." We find that there is no showing here that the "imbalance" resulting from the adoption of the "Sixth Grade Plan" does deprive the Negro pupils of equal educational opportunities, the standard by which we are guided. We therefore affirm the Commissioner's decision and also the adoption of the "Sixth Grade Plan" by the local board of education. At the same time we note that the local board represents that it will constantly study the effects of the "Sixth Grade Plan" and, if experience determines that it is detrimental to the educational opportunities of the pupils it will adopt such remedial measures as may be required.

February 5, 1964