

REFERENCE

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CHARLES B. BOOKER, ET AL.,	:	
PETITIONERS,	:	DECISION OF THE
V.	:	COMMISSIONER OF EDUCATION
THE BOARD OF EDUCATION OF	:	
THE CITY OF PLAINFIELD,	:	
UNION COUNTY,	:	
RESPONDENT.	:	

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V. : COMMISSIONER OF EDUCATION
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RESPONDENT. :

For Petitioners: Herbert H. Tate, Esq.
William Wright, Jr., Esq.
Robert L. Carter, Esq.
For Respondent : Victor King, Esq.

This petition of appeal is brought to the Commissioner of Education in the name of 54 elementary school children by their parents. They allege that the respondent Board of Education is maintaining a racially segregated public school system in the City of Plainfield, thus denying equal educational opportunity to pupils of the Negro race. They charge that the Board of Education has failed to take effective action to correct the situation, despite the fact that a study caused to be made by the Board proposed several plans to eliminate the complained of segregation. They appeal to the Commissioner to order the Board to take immediate steps to eliminate all aspects of segregation in the Plainfield public school system. Respondent, in its answer, denies that it is maintaining a school system in which there is racial segregation or discrimination and asserts that it has taken steps and is continuing to study ways and means to reduce any undesirable racial imbalance which may have

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developed in its schools.

This matter is submitted to the Commissioner for his determination, following a series of conferences of counsel, by a Stipulation of Issues and Facts, which is accompanied by some 18 Exhibits.

The appeal herein is directed to the elementary schools and does not include the single high school or the two junior high schools whose racial integration is not questioned. The enrollment of the 12 elementary schools in the City of Plainfield and their racial ratios in April, 1963, was as follows:

School	Enrollment April 1, 1963			Percent Negro April, 1963
	Total	Negro	White or Other	
Washington	586	564	22	96.2
Emerson	535	386	149	72.1
Stillman	361	244	117	67.6
Bryant	200	131	69	65.5
Clinton	457	269	188	58.9
Jefferson	574	258	316	44.9
Barlow	328	101	227	30.8
Woodland	463	87	376	18.8
Evergreen	634	53	581	8.4
Cedarbrook	645	25	620	3.8
Cook	523	3	520	0.6
Lincoln	<u>100</u>	<u>63</u>	<u>37</u>	63.0
Total Elementary	5406	2184	3222	40.4

Prior to petitioners' filing of this appeal, respondent appointed a Lay Advisory Committee in November, 1961 to study the racial composition of the elementary schools and concomitant problems. At the request of the Committee, respondent provided funds for the employment of a consultant and assistants to make the study for the Committee, which functioned independently of respondent and the school staff.

The report of the consultant, containing findings and various proposals, hereinafter referred to as the Wolff report,

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The report of the consultant, containing findings and various proposals, hereinafter referred to as the Wolff report, was presented to the Lay Advisory Committee in June, 1962. The

Lay Advisory Committee approved, in principle, the procedures and findings of fact of the consultant team but could reach no unanimity or even majority opinion with respect to the proposals suggested for the elimination of racial concentrations in various elementary schools. The Committee then made various proposals of its own, including a majority and a minority report, to the Board of Education.

Respondent did not implement the proposals made in the Wolff report nor those advanced by the Lay Advisory Committee to alter the racial composition of the elementary schools. That it gave consideration to them, however, is evident from the series of replies and comments it made to the various recommendations. Instead, in July, 1962, it announced the adoption of an Optional Registration Plan to become effective with the opening of the new school year in September. Under this plan, children above Kindergarten grade, through their parents, could request and would be granted transfer to a school outside their zone of residence as long as acceptable class size in the selected school was not exceeded. Petitioners objected to the plan and on September 4, before it became operative, filed the petition of appeal herein.

Petitioners contend that in the Plainfield school system there are schools which have a preponderantly Negro enrollment; that attendance at such schools has adverse effects upon pupils and their learning; that despite objections, studies and reports which have disclosed that the problem can be eliminated or at least reduced, respondent has taken no action; that the Optional

Pupil Registration Plan does not meet or relieve the problem; and that respondent has an affirmative constitutional duty to institute pupil assignment procedures which will not result in a concentration of Negro pupils to the disadvantage of their educational opportunities.

Respondent contends that its elementary school attendance areas are set up on sound educational principles and that there is no affirmative constitutional or legal duty to alter these areas for the sole purpose of maintaining any particular percentage of pupil distribution by color or race.

The issue to be decided is stated in the Stipulation as follows: Are there any elementary schools operated by the Plainfield Board of Education in which Negro pupils predominate, and if so, should the Plainfield Board of Education reduce the concentration of Negro pupils in such schools? There is no issue raised of intentional or deliberate segregation by race, it being agreed that whatever concentrations of Negro pupils exist result from socio-economic factors and not by purposeful action of the Board of Education.

New Jersey law relevant to this issue is found in the New Jersey Constitution, Article I, section 5.

"No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right, nor be segregated in the militia or in the public schools, because of religious principles, race, color, ancestry or national origin."

and in R.S. 18:11-1:

"Each school district shall provide suitable school facilities and accommodations for all children who reside in the district and desire to attend the public schools therein. Such facilities and accommodations shall include

proper school buildings, together with furniture and equipment, convenience of access thereto, and courses of study suited to the ages and attainments of all pupils between the ages of five and twenty years. * * *

The Commissioner notes that both parties agree that there is no issue of deliberate segregation herein. It is apparent that the cause of whatever concentration of Negro pupils in particular schools there may be, is to be found in patterns of housing resulting from a constellation of socio-economic factors. As the Commissioner observed in a similar case, Fisher, et al. v. Board of Education of the City of Orange, decided May 15, 1963:

"It is clear that the ultimate solution lies in the free choice of residence and in the elimination of segregated housing which lie beyond the control of the board of education or the Commissioner."

But even though the underlying cause and the final answer do not lie with the Board of Education, the school district is in no way thereby 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. As the Commissioner said in Fisher, supra:

" * * * the Commissioner is of the opinion that in the minds of Negro pupils and parents a stigma is attached to attending a school whose enrollment is completely or almost exclusively Negro, and that this sense of stigma and resulting feeling of inferiority have an undesirable effect upon attitudes related to successful learning. Reasoning from this premise and recognizing the right of every child to equal educational opportunity, the Commissioner is convinced that in developing its pupil assignment policies and in planning for new school buildings, a board of education must take into account the continued existence or potential creation of a school populated entirely, or nearly so, by Negro pupils."

The enrollment table indicates that the racial ratio varies from school to school but that in only one, the Washington School, is

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the enrollment almost entirely Negro.

The Commissioner notes also that a number of plans designed to improve the racial balance in the Plainfield elementary schools have been put forward. On the one hand, petitioners, in the Stipulation, urge the approval of either Plan 2 or Plan 1 of the Wolff report. Plan 2, titled the "Sister - School or Paired School Plan," would set up three pairs of schools, combining the attendance areas of each pair of adjacent schools, with all the pupils in grades 1 - 3 attending one school and those in grades 4 - 6 the other. Plan 1, referred to as "Rezoning Plan," would realign the attendance area boundary for each school. On the other hand, respondent, in the Stipulation, urges the approval of a third plan, described as the "Sixth Grade Plan." Under this proposal, the Washington School would house the sixth grade pupils from the entire district, and children now enrolled there for grades K-5 would be distributed among the other elementary schools except that none would be assigned to a school in which already more than half of the pupils are Negro.

The Commissioner has given careful consideration to each of these plans. He notes that although there are variations in the effect which each will have on the racial composition of particular schools, there will be no "all or nearly all Negro" school under any of the three proposals. Each plan also has certain advantages and disadvantages but the favorable aspects do not so far outweigh the unfavorable in any one so as to make it the plan of choice. Finally, the Commissioner is of the opinion that each plan is reasonable, practicable, and consistent with sound educational practice.

The Commissioner believes that it is the responsibility

and the prerogative of the Board of Education to determine which of the proposals is best suited to the needs of the school system which it is called upon to operate. He has confidence in the ability of the Plainfield Board of Education, as advised by its administrative staff, to make the best choice of the proposals in this case. That this confidence is well-founded is evidenced by the manner in which the Board of Education, its administrators and school staff have faced this problem and have attempted to deal with it since it came to the fore more than a year ago.

The Commissioner finds and determines

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 notes that the respondent Board of Education, in its Stipulation, offers to put a plan into effect by Board action prior to July 1, 1963, to be effective in September, 1963.

The Commissioner therefore directs the Plainfield Board of Education

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.

/s/ F. M. Raubinger
COMMISSIONER OF EDUCATION

JUNE 26, 1963