MR 10J

MR 1572 - 1972
10:30 A.M.

C.A. 72-911-G

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Mrs. Tallulah Morgan, Petri Morgan, Kimberly Morgan, and Kirsten Morgan; Mrs. Sandra Purcelle, Dee Anna Purcelle and Michael Purcelle; Richard N. Yarde, Leslie R. Yarde and Richard N. Yarde II; Mrs. Lorraine Wheaton and Teddy Wheaton; Mrs. Joann Reed, Aaron Thomas Reed and Leigh Ann Reed; Mrs. Addell Vaughn, Raymond Joseph Vaughn and Kevin Arthur Vaughn; Arthur Eskew, Kemya Eskew, Tashia Eskew, and Toure Eskew; Mrs. Carrie Phillips, Norman Arthur Phillips, Tyrone Phillips and Robert Phillips; Mrs. Earline Pruitts, Lynnette Pruitts, Betty Jean Pruitts, Valerie Pruitts, Robert Edward Pruitts, James Neal Pruitts, Denise Pruitts and Kevin Pruitts; Mrs. Diane Bassett and Celeste Bassett; Mrs. Fern Burdette, Pamela Burdette and Yvonne Burdette; Mrs. Mary Crockett, Phillipa Crockett, Adrienne Crockett, Arthur Crockett, Cheryl Crockett and Beverly Crockett; Mrs. Mary Murphy, Anthony Murphy, Arnold Murphy and Ricky Murphy; Mrs. Grace Means, Hudis Means, Karen Means, Donna Means, Michael Means, Bryan Means, Kevin Means and Corey Means,

Plaintiffs,

vs.

Civil Action No.

James W. Hennigan, as Chairman and Member, and Paul J. Ellison, John J. Kerrigan, John J. McDonough, and Paul R. Tierney as Members of the Boston School Committee; William H. Ohrenberger as Superintendent of the Boston Public Schools; the School Committee of the City of Boston; the Board of Education of the State of Massachusetts; Mrs. Rae Cecilia Kipp, as Chairman and Member, and Richard L. Banks, Walter N. Borg, Mrs. Ramona L. Corriveau, William P. Densmore, J. Richard Early, Allan R. Finlay, Mrs. David K. Hardenbergh, Joseph Salerno, John S. Sullivan, Miss Janet Tobey and Joseph G. Weisberg as Members of the State Board of Education; and Neil V. Sullivan as Commissioner of Education,

COMPLAINT

Defendants.

1. This is a class action brought by black children attending the Boston public schools and their parents. Injunctive and declaratory

relief are sought against the Boston School Committee and its members, Boston school officials, the State Board of Education and its members, and the Commissioner of Education. This action challenges racially discriminatory policies, practices, acts, customs, and usages by defendants resulting in segregation of the Boston public schools on the basis of race and color, and the denial of equal educational opportunity to plaintiffs.

2. This Court has jurisdiction of this action under 28 U.S.C., Sections 1343 (3) and 1343 (4). The Court is empowered to grant declaratory relief by 28 U.S.C. Sections 2201, 2202. This action arises under 42 U.S.C. Sections 1981, 1983, and 2000d, and the Thirteenth and Fourteenth Amendments to the United States Constitution.

3. The plaintiffs, all of whom are black residents of Boston, Massachusetts, are: Mrs. Tallulah Morgan and her children Petri Morgan, Kimberly Morgan, and Kirsten Morgan; Mrs. Sandra Purcelle and her children Dee Anna Purcelle and Michael Purcelle; Richard N. Yarde and his children Leslie R. Yarde and Richard N. Yarde II; Mrs. Lorraine Wheaton and her child Teddy Wheaton; Mrs. Joann Reed and her children Aaron Thomas Reed and Leigh Ann Reed; Mrs. Addell Vaughn and her children Raymond Joseph Vaughn and Kevin Arthur Vaughn; Arthur Eskew and his children Kemya Eskew, Tashia Eskew, and Toure Eskew; Mrs. Carrie Phillips and her children Norman Arthur Phillips, Tyrone Phillips, and Robert Phillips; Mrs. Earline Pruitts and her children Lynnette Pruitts, Betty Jean Pruitts, Valerie Pruitts, Robert Edward Pruitts, James Neal Pruitts, Denise Pruitts, Kevin Pruitts, and [redacted]; Mrs. Diane Bassett and her child Celeste Bassett; Mrs. Fern Burdette and her children Pamela Burdette and Yvonne Burdette; Mrs. Mary Crockett and her children Phillipa Crockett, Adrienne Crockett, Arthur Crockett, Cheryl Crockett and Beverly Crockett; Mrs. Mary Murphy and her children Anthony Murphy, Arnold Murphy, and Ricky Murphy; Mrs. Grace Means and her children Hudis Means, Karen Means, Donna Means, Michael Means, Bryan Means, Kevin Means, and Corey Means.

All of the minor plaintiffs attend, or are eligible to

attend, schools in the Boston public school system. All of the adult plaintiffs bring this action on behalf of themselves and their children.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, plaintiffs bring this action on their own behalf and on behalf of all persons in the City of Boston similarly situated, to wit: all black children enrolled in the Boston Public School System and their parents. The plaintiffs are so numerous that joinder of all members of the class is impracticable. There are questions of law and fact common to all members of the class. In addition, the claims of the named plaintiffs are typical of the claims of the class and they will fairly and adequately protect the interests of the class. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole. The questions of law and fact common to the members of the class also predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

5. The defendants, all of whom reside in Massachusetts and are sued in their official capacities, are:

(a) The School Committee of the City of Boston which is charged under the laws of the Commonwealth of Massachusetts with operating the public school system in the City of Boston;

(b) James W. Hennigan, Chairman and member, and Paul J. Ellison, John J. Kerrigan, John J. McDonough, and Paul R. Tierney, members of the Boston School Committee;

(c) William H. Ohrenberger, who as Superintendent is charged with supervising the Boston public schools under the general direction of the School Committee;

(d) The State Board of Education which is charged among other duties, with the responsibility to support, serve, and plan general education in the public schools, including those of Boston;

(e) Mrs. Rae Cecilia Kipp, Chairman and member, Richard L. Banks, Walter N. Borg, Mrs. Ramona L. Corriveau, William P. Densmore, J. Richard Early, Allan R. Finlay, Mrs. David K. Hardenbergh, Joseph Salerno, John S. Sullivan, Miss Janet Tobey and Joseph G. Weisberg, members of the State Board of Education;

(f) Neil V. Sullivan, Commissioner of Education of the Commonwealth of Massachusetts, who is the chief state school officer for elementary and secondary education and is responsible for implementing the educational laws and policies of the Commonwealth and the State Board of Education.

6. The defendants and their predecessors have received and disbursed annually more than ten million dollars from federal educational and other monetary grant programs that are subject to the requirements of 42 U.S.C. 2000d. The defendants and their predecessors have tendered to the appropriate federal agencies, including the United States Department of Health, Education and Welfare, assurances of compliance with the requirements of 42 U.S.C. 2000d.

7. In 1971-72, the Boston public school system consists of approximately 197 schools, with a total enrollment of approximately 96,942 students. About 30,562 of these students, or 32 percent of the total public school enrollment, are black. In 1971-72, 48 of the Boston schools have 70 percent or more black students enrolled in each school, while 118 schools have 70 percent or more white students enrolled, making a total of 166 schools with 70 percent or more students of one race. Further, in 1971-72, 30 of the Boston schools have 90 percent or more black students enrolled in each school, while 88 schools have 90 percent or more white students, making a total of 118 schools with 90 percent or more students of one race.

8. Black persons constitute approximately:

(a) 6 percent of the faculty,

(b) 6 percent of the supervisory administrative staff, and

(c) 6 percent of the general administrative staff of the Boston public schools.

9. The defendants named in paragraph 5(a), (b) and (c) (hereafter referred to as Boston defendants), and their predecessors, have effected racial segregation and discrimination in the Boston public schools and have otherwise denied equality of educational opportunity to black children by acts and practices including, but not limited to:

(a) Adopting and maintaining parent-pupil school selection policies and practices, including open enrollment transfers and optional school attendance zones, which have contributed to pupil racial segregation;

(b) establishing and manipulating district lines, attendance areas for schools and classes, assignments within and among attendance areas, and school feeder patterns in ways promoting racial segregation of students;

(c) transporting pupils to schools in ways promoting racial segregation of students;

(d) establishing and manipulating the organization of schools and grade structures in ways promoting racial segregation of pupils;

(e) adopting and maintaining pupil assignment policies and practices which have built upon and reflected residential racial segregation resulting from public and private discrimination in housing;

(f) administering school capacity, enlargement, and construction policies in ways promoting racial segregation of students;

(g) failing and refusing without justification to adopt, implement, or continue policies reasonably available to remedy pupil racial segregation;

(h) adopting and implementing pupil classification practices which discriminate against some children, in their admission to certain schools, classes, and courses of study, on the basis of their race and color, and which deny to such children, on the basis of their race and color, educational opportunities

afforded other children in the system;

(i) denying equal educational opportunities to black children by adopting and maintaining a pattern of lower instructional expenditures, including expenditures for teacher services, in schools attended disproportionately by such children.

10. The Boston defendants and their predecessors have engaged in racial discrimination with respect to the recruitment, hiring, assignment and reassignment of faculty and staff.

11. The Boston defendants and their predecessors have engaged in racial discrimination in the operation of the programs in the public schools, including with respect to curricula, instructional materials, and resources.

12. Policies, acts, and practices of the defendants named in paragraph 5(d), (e) and (f) (State defendants), and their predecessors, have contributed to causing and perpetuating the racial segregation and denials of equal educational opportunity alleged in paragraphs 7, 8, 9, 10, and 11 of this Complaint.

13. The acts and practices of the defendants alleged in this Complaint deny to plaintiffs their right to equality of public educational opportunity without regard to race and their right to be free from racial segregation and discrimination in the operation of the public schools, in violation of rights secured to plaintiffs by the 13th and 14th Amendments to the United States Constitution and 42 U.S.C. 1981, 1983 and 2000d.

14. Unless enjoined by order of this court the defendants will continue to engage in acts and practices violative of plaintiffs' rights as alleged in this Complaint.

WHEREFORE, plaintiffs, on behalf of themselves and those persons similarly situated, pray that this court:

(1) Issue a declaratory judgment that the racially discriminatory policies, practices, customs and usages pursued by defendants their predecessors and employees and described in this complaint are unconstitutional, as they deprive plaintiffs and their class their rights

under the Thirteenth and Fourteenth Amendments to the United States Constitution;

(2) enter a decree permanently enjoining the defendants, their agents, employees, successors and all persons in active concert or participation with them from discriminating on the basis of race or color in the operation of the Boston public school system;

(3) enter a decree requiring the defendants to prepare, adopt, and implement not later than the beginning of the 1972-73 school year a plan for operation of the Boston public school system free of racial discrimination, segregation, and unequal educational opportunity, and conforming, inter alia, to the following principles:

(a) Achievement of the greatest possible degree of actual desegregation;

(b) Inclusion of suburban school systems as appropriate in the plan for desegregation, in order to achieve, now and hereafter, the greatest possible degree of actual desegregation;

(c) Utilization of all necessary methods of integrating schools including rezoning, pairing, grouping, consolidation of schools, use of satellite zones, and transportation;

(d) Desegregation of the faculty and staff of each school in the system;

(e) Inclusion of a specific program for eliminating racial discrimination in the hiring of faculty, staff, and administrative personnel, including methods for overcoming the effects of past discrimination;

(f) Inclusion of a specific program for eliminating discrimination in the allocation of resources in the school system;

(g) Inclusion of specific proposals for providing a racially non-discriminatory educational program;

(h) Inclusion of a specific program for making available on an equal basis the opportunity for all children to participate

in all courses, curricula, and programs within the system;

(4) Award costs and reasonable counsel fees for services rendered and to be rendered by plaintiffs' attorneys in the action, including all out-of-pocket expenses of this action; and

(5) Grant such other additional preliminary and permanent relief as may appear to the court to be just and proper.

Respectfully submitted,

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A. Introductory Findings

1. In 1971-72 the system operated 18 high schools (not counting separately annexes of Charlestown, Dorchester and South Boston). (P.Ex. 21) These schools may be divided into five general categories based upon their treatment in the annual superintendent's circular on high school elections which has established assignment criteria for high schools (and, in part, several junior high schools) (P.Ex. 490):

Admission by examination - Boston Latin (boys), Girls' Latin (girls) and Boston Technical (boys) (3 schools)

Admit students from all parts of the city - Boston Trade High (boys), Trade High for Girls (girls) (2 schools)

Admit students from specified districts and from all parts of the city - Boston English (boys), Girls' High (girls), Jeremiah Burke (girls) (3 schools)

Admit students from specified districts - Brighton, Charlestown, Dorchester, East Boston, Hyde Park, Jamaica Plain, Roslindale, South Boston (8 schools)

Assignment method not covered by Superintendent's Circular - Boston High, Copley Square High (2 schools)

In addition, six district high schools (Brighton, Charlestown, Dorchester, East Boston, Hyde Park and South Boston) and one examination school (Boston Technical) had cooperative-industrial courses open to students from the entire system.

2. In 1971-72, the enrollment in the 18 high schools broke down as follows (P.Ex. 10):

	Black	Other Minority	White	Total
number	5385	960	14,499	20,844
% of total	25.8%	4.6%	69.6%	100%

There was substantial racial segregation of high school students in 1971-72. While only 25.8 percent of high school students were black, six schools enrolled in excess of 50 percent black students (five schools in excess of 66 percent black). Six schools had fewer than 6 percent black students and another had 10.8% black students. The racial make-up of schools by category in 1971-72 was as follows:

	% Black	%OM	% White
examination			
Boston Latin	2.0	4.7	93.3
Girls' Latin	5.4	5.7	88.9
Boston Technical	10.8	4.3	84.9
entire city			
Girls' Trade	74.9	5.1	20.0
Boston Trade	66.5	6.9	26.6
districts plus entire city			
Girls' High	91.7	5.8	2.5
Jeremiah Burke	89.0	10.0	.9
English	66.7	8.5	24.8
districts			
Dorchester	52.2	1.1	46.8
Jamaica Plain	48.7	8.2	43.1
Brighton	23.1	8.8	68.1
Hyde Park	15.3	.7	84.1
Roslindale	5.1	1.6	93.3
East Boston	2.5	.5	97.0
Charlestown	2.0	6.6	91.4
South Boston	0	.7	99.3
not covered by circular			
Boston High	32.0	8.5	59.5
Copley Square	49.7	17.2	33.1

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CITY OF BOSTON AND COUNTY OF SUFFOLK

DEPARTMENTAL COMMUNICATION

FILED IN OPEN COURT

DATE: 7/30/75

DOCKETED

Deputy Clerk

July 30, 1975

	(NAME)	(RATING)	(DEPARTMENT-DIVISION)
TO	Kevin Maloney	Asst. Corp. Counsel	Law Department
FROM	Richard E. Wall	Deputy Director	Administrative Services

SUBJECT: Boston School Department Appropriation For Fiscal Year 1976

FILE REF. NO.

This document describes the fiscal relationship between the City of Boston and the Boston School Department in regard to the School Department's appropriation for Fiscal Year 1976.

On April 4, 1975, the Boston School Committee, under its own statutory appropriating power, appropriated for Fiscal Year 1976, $126,753,554 for General School Purposes and $4,912,055 for Alterations and Repairs. The total School Department appropriation was $131,665,609.

On the same date, the School Committee submitted to the City of Boston an additional appropriation request for General School Purposes for Fiscal 1976 of $33,086,866. The total desired General School Purpose appropriation and estimate of proposed expenditures for Fiscal Year 1976, as submitted by the School Committee, was approximately $159.8 million.

On June 18, 1975, as a result of the School Department's interpretation of its administrative and fiscal requirements to implement the May 10, 1975 Federal Court Order to expand the School Balance Plan, the School Committee requested an additional $8,992,390 for General School Purposes and $3,200,000 for Alterations and Repairs, a total of $12,192,390. This amount was in addition to the $9,700,000 identifiable as related directly to desegregation activites and contained in the School Department's $159.8 million estimate of proposed expeditures submitted on April 4.

The School Committee subsequently requested an additional appropriation for General School Purposes of $1,185,698 to provide for a new salary increase of 6% for certain administrative and non-teaching personnel.

The total additional amount requested of the City of Boston for Fiscal 1976 was, therefore, $43,264,954 for General School Purposes and $3,200,000 for Alterations and Repairs, yielding a total School Committee request of $46,464,954. The total School Budget, if all of these requests were to be granted would, when added to the School Committee's own

appropriation, be $170,018,508 for General School Purposes and $8,112,055 for Alterations and Repairs, or a total School Budget of $178,130,563 for Fiscal Year 1976.

To date, the Mayor, acting under his statutory obligation, has recommended to the City Council the appropriation to General School Purposes in Fiscal Year 1976 of $15,565,180. This will provide a total General School Purposes appropriation of $142,318,734, which together with the Alterations and Repairs budget appropriated by the School Committee of $4,912,055, will yield a total school budget for Fiscal Year 1976 of $147,230,789.

No additional appropriation is being recommended for Alterations and Repairs. At this time, the Mayor believes that the existing appropriation is sufficient to maintain sound buildings for students and to modify Schoool Department facilities to comply with the Court's mandate. If necessary after careful examination and analysis of the situation, a special bond issue for extraordinary repairs may be considered. At this time, the School Department's Department of Planning and Engineering indicates that its appropriation is sufficient to complete work necessary for the opening of school.

The school Committee requested information from the Mayor explaining reductions in the appropriation request. This was furnished to the School Committee by the Mayor on July 18, 1975

From the School Committee's April 4, 1975 General School Purposes request of $33,086,866 the following reductions have been made:

1. From the expansion request of $8,295,975 for special education, eliminate $4,942,013. This leaves $3,353,960 provided by the State for Fiscal 1976 plus the unexpended portion,about $1.2 million,of the advanced payment of $3.4 million made last year by the Commonwealth. Approximately $8.0 million was in last year's School Budget for special education requirement and is repeated in this Budget, providing more than $13.0 million for this purpose.

2. Reduce about $6.5 million by not reappointing provisional teachers. The school population has been declining and approximately 650 provisional, non-tenured teachers need not be rehired.

3. Approximately $3,750,000 can be saved by not replacing about 250 teachers who have retired or resigned or will do so during Fiscal 1976.

4. Eliminate $1,000,000 expansion request for operation of plant. About twenty schools are currently scheduled to close, reducing the number of custodians needed. The budget still includes about $13.8 million for operation of plant.

5. Eliminate $100,000 of funds for toolkeepers, personnel responsible for distributing supplies in certain vocational education classes.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Mrs. Tallulah Morgan, et al.,)
Plaintiffs,)
)
v.) Civil Action No. 72-911-G
)
James W. Hennigan, et al.,)
Defendants.)

PLAINTIFFS' MEMORANDUM ON

DE JURE SEGREGATION

Introduction

Traditionally, "de jure" segregation has referred to that racial separation of pupils which is official and purposeful, and therefore unconstitutional; while "de facto" segregation has described that racial separation which, however lamentable on other grounds, is not illegal because it is wholly fortuitous, i.e., unrelated to the policies and practices of school authorities. In our view, the recent history of school desegregation law confirms that these labels are not more than convenient terms of art applied as conclusions after a judicial inquiry into the factors underlying the racial identifiability of schools.* In any event, this case is well within the settled criteria of de jure segregation.

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*Schools are racially identifiable when the composition of their student bodies or faculties contrasts strikingly with that of the students or teachers in the school district as a whole. The point of striking contrast may be debatable in some school districts, but not, we submit, in a district such as Boston, in which among other indicia about 30 percent of the students are black and approximately 118 schools are more than 90 percent white or black. See, e.g., Keyes v. School District No. 1, Denver, Colorado, 313 F.Supp. 61, 74 (D. Col., 1970); reversed in part, 445 F.2d 990 (10th Cir. 1971); cert. granted, 92 S.CT. 707 (1971)

Of course, no judicial inquiry has been needed in states with racially explicit laws. School segregation elsewhere, however, is no less official -- and unconstitutional -- when judicial inquiry discloses that school authorities' policies and practices have contributed to a pattern of racially identifiable schools. Davis v. School District of City of Pontiac, 309 F.Supp. 734 (E.D. Mich., 1970); affirmed, 443 F.2d 573 (6th Cir. 1971); cert. den., 92 S.CT. 233 (1971). Moreover, when plaintiff has shown the racial identity of schools, and their relationship to the school authorities' policies and practices, he has made a prima facie case. Thereupon defendants must persuade the court that practices whose segregatory effects were probable, foreseeable, and actual were educationally compelled on racially neutral grounds or were the reasonably available option least fraught with discriminatory possibilities. United States v. School District 151, 301 F.Supp. 201, 228-230 (N.D. Ill., 1969); affirmed as modified, 432 F.2d 1147 (7th Cir. 1970); cert. den., 402 U.S. 943 (1971); Turner v. Fouche, 396 U.S. 346, 359-360 (1970); Gomillion v. Lightfoot, 364 U.S. 339, 339, 341-342 (1960); Kelly v. Guinn, 456 F.2d 100 (9th Cir., 1972); cf. Griggs v. Duke Power Co., 401 U.S. 424, 432 (1971). Bradley v. Milliken, 338 F.Supp. 582, 592 (E.D. Mich., 1971); Castro v. Beecher, ___ F.2d___ (1st Cir. April 26, 1972).*

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*We rely herein primarily upon Northern cases, i.e., from states without school segregation laws or, in some instances, such as Illinois and California, with laws explicitly prohibiting such discrimination. Of course, the constitutional principles are no less applicable to the South, and indeed a number of them have been developed and applied there; so where appropriate Southern cases are also relied upon.

I. Relevant Policies and Practices

This portion of our memorandum is intended to apprise this court of the factors that other courts have inquired into in determining whether existing school segregation is official -- and therefore illegal.

1. Faculty and Staff - It is illegal to discriminate on the basis of race in the recruitment, hiring, assignment, reassignment, transfer, promotion, demotion, and dismissal of teachers and administrators. Furthermore, although pupils may seem to be assigned to their schools fortuitously, faculty personnel are placed in schools by central administrative decisions in fact as well as in law. United States v. School District 151, supra, 301 F.Supp. at 228.

Therefore, systems with schools whose faculties tend racially to mirror their student bodies, to a degree that would be statistically improbable if assignments were made upon a racially random basis, bear a heavy burden -- which virtually none have met -- of exonerating themselves. In addition, systems which have assigned teachers on a racial basis do not enjoy the usual presumption of fortuity with respect to schools whose student bodies are racially identifiable. United States v. School District 151, supra, 301 F.Supp. at 228-230, and cases cited there; Davis v. Pontiac School District, supra; Spangler and United States v. Pasadena City Bd. of Ed., 311 F.Supp. 501 (C.D. Calif., 1970).

2. Student Assignment Practices - We have argued above that it is unconstitutional and illegal for school authorities to adopt or permit pupil assignment practices whose segregatory effects are foreseeable and actual.

Bradley v. Milliken, supra, at 592.* And upon a showing of segregation and causality, it is the school district which must justify the options it exercised.

We submit here that the courts have found pupil segregation resulting from the following particular practices to be official (de jure) and unconstitutional.

(a) Parent-pupil School Selection Devices: Just as "freedom of choice" has been found constitutionally inadequate as a remedy for Southern school segregation, so too in the North, devices such as open enrollment and optional choices of schools within (or among) attendance zones have been held illegal where they operate -- more than would an equally available alternative -- to render schools racially identifiable. Taylor v. Board of Education of New Rochelle, 191 (2d Cir. 1961); cert. den., 368 U.S. 940 (1961); Hobson v. Hansen, 269 F.Supp. 401, 499-500 (D.D.C., 1967); affirmed, 408 F.2d 175 (D.C. Cir. 1969); Dowell v. School Board of Oklahoma City, 244 F.Supp. 971, 977 (W.D. Okla., 1965); affirmed, 375 F.2d 158 (10th Cir. 1967); cert. den., 387 U.S. 931 (1967); Bradley v. Milliken, supra, at 593.

In our view, which is apparently shared by the state defendants (see cross-claim), that has been precisely an effect of such Boston policies as open enrollment and options within (and among) attendance areas.

(b) Manipulation of Pupil Assignment Criteria: The designing of school feeder patterns or attendance zone lines within or among school districts in ways that promote

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*As Judge Stephen J. Roth also pointed out in his Bradley opinion (at 592): "In considering the evidence and in applying legal standards it is not necessary that the Court find that the policies and practices, which it has found to be discriminatory, have as their motivating forces any evil intent or motive. Motive, ill will and bad faith have long ago been rejected as a requirement to invoke the protection of the Fourteenth Amendment against racial discrimination." (citations omitted.) And see Keyes v. School District No. 1, Denver, Colo., 303 F.Supp. 279, 286 (D. Col., 1969).

or preserve the racial identity of schools is illegal, Bradley v. Milliken, supra, at 593; Davis v. Pontiac, supra, 443 F2d at 576; Johnson v. San Francisco Unified School District, _____ F.Supp._____ (C.A. No. C-70 1331 SAW, decided April 28, 1971). Here, too it appears that the state defendants agree with the allegations of our Complaint concerning Boston's practices. (See Cross-claim.)

(c) Pupil Transportation: School districts may not constitutionally engage in pupil transportation practices which effect segregation. United States v. School District 151, supra, at 231; Bradley v. Milliken, supra at 593; United States v. Board of School Commissioners of Indianapolis, 332 F.Supp. 655, 669 (S.D. Ind., 1971).

(d) School Organization: Schools can be and are organized in a variety of ways; e.g., K-12, 6-3-3, 8-4 and so on. However, school authorities may not manipulate or maintain grade structures or other organizational forms which effect greater pupil segregation than would obtain with other educationally sound forms. United States v. School District 151, supra, at 231 and cases cited there.

(e) Residential Racial Segregation: Where communities are residentially segregated as the result of public or private discrimination in housing, school authorities have an affirmative obligation -- with respect to such policies as the selection of sites for new schools, adjustment of attendance zone lines, and revision of transportation patterns -- to avoid incorporating the effects of such discrimination in the public institution that they operate -- schools. Brewer v. Norfolk School Board, 397 F.2d 37, 41-42 (4th Civ. 1968); Spangler and United States v. Pasadena City Board of Education; 311 F.Supp. 501, 522 (C.D. Calif.,

1970); United States v. Tulsa Board of Education, 429 F.2d 1253, 1258-59 (10th Civ. 1970); Sloan v. Tenth School District of Wilson County, 433 F.2d 587, 589 (6th Cir. 1970); Bradley v. Milliken, supra. at 593.

(f) School Construction and Related Policies: Policies concerning the selection of sites for new schools, the enlargement of existing ones, and the placement of portable classroom units directly affect the racial composition of schools. And school authorities who achieve segregation through such policies are in violation of the 14th Amendment. Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 20-21 (1971); Kelly v. Brown, ____ F. Supp. ____ (C.A. No. LV-1146, D. Nev. decided December 2, 1970) affirmed as Kelly v. Guinn, above; Booker v. Special School District No. 1, Minneapolis, Minnesota, ___ F.Supp. ____ (C.A. No. 4-71 - Civil 382, D. Minn., decided May 24, 1972, Slip op. pp. 4-5).*

(g) Rescission and Resistance: It is unconstitutional for school districts to avoid and resist educationally sound opportunities and proposals to ameliorate existing segregation (or to reneg upon desegregation plans), for reasons related to community opposition to desegregation, or other non-educational considerations. Oliver v. School District of City of Kalamazoo, ___ F.Supp. ___ (C.A. No. K-88-71, W.D. Mich., decided August 24, 1971); affirmed, 448 F.2d 635 (6th Civ. 1971); Bradley v. Milliken, 433 F.2d 897 (6th Cir. 1970).

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*The May 24, 1972 decision in the Minneapolis case is not yet reported, so we have enclosed copies for the convenience of the Court and counsel. We shall also furnish shortly under separate cover copies of several other unreported decisions cited herein.

(h) Classification of Pupils: Intra-school segregation resulting from practices such as tracking and ability grouping is unconstitutional where less segregatory options are reasonably available to the system. Hobson v. Hansen, supra; Lemon v. Bossier Parish School Board, 444 F.2d 1400 (5th Cir., 1971).

(i) Other Discrimination: It is unconstitutional to deny equality of educational opportunity to minority children through such practices as spending fewer local instructional dollars per pupil at disproportionately minority schools, discriminatory discipline and extra-curricular activity selection patterns, and discriminatory guidance and curriculum eligibility policies. Hobson v. Hansen, 327 F.Supp. 844 (D.D.C., 1971); Smith v. St. Tammany Parish School Board, 316 F. Supp. 1174 (E.D. La., 1970); affirmed, 448 F.2d 414 (5th Cir., 1971).

(j) School District Boundaries: Just as school systems may not manipulate attendance zones for individual schools so as to promote or preserve the racial identifiability of schools, so too, the states, which constitutionally are ultimately responsible for providing equality of opportunity, may not regard school district boundaries -- absent a showing of a compelling non-racial, educational justification -- as opportunities for creating or maintaining racially segregated school districts. Haney v. County Board of Education of Sevier County, 410 F.2d 920 (8th Cir. 1969); same, 429 F.2d 364 (8th Cir., 1970); United States v. Texas, 321 F.Supp. 1043 (E.D. Tex., 1970); affirmed, 447 F.2d 411 (5th Cir., 1971); United States v. Indianapolis School Commrs., supra; Bradley v. Milliken, supra, at 593.

We do not contend that the foregoing items are a definitive catalog of school authorities' policies and practices which other courts have held to comprise de jure segregation. Nor do we contend that the defendants here have engaged in every de jure discriminatory practice found collectively in the decided cases. We do represent, however, that the above principles fairly reflect the decisional law of illegal school segregation; and we expect to prove, as alleged, that the defendants have effected racial segregation and discrimination in the Boston public school by acts and practices the same as or similar to those recited above.

We wish to bring to the Court's attention another aspect of our claim of illegal segregation in this case. In addition to the traditional statutory and constitutional standing doctrines cited in our Complaint, plaintiffs also allege that they are, in effect, third-party beneficiaries to a contract, arising out of 42 U.S.C 2000d, between the defendants and the federal government, which provides for adherence to constitutional and statutory standards of school desegregation as a condition for the receipt of substantial federal monies. We assert that the contract has not been complied with and that we are entitled to specific performance. Bossier Parish School Board v. Lemon, 370 F. 2d 847, 850 (5th Cir. 1967).

II. Extent and Timing of Relief

We wish to invite the Court's attention to two other aspects of the decisional law of de jure segregation, namely, what should be the substance and timing of relief upon a finding of illegal school segregation?

The applicable remedial objective for illegal segregation is that articulated by the United States Supreme Court in its opinion in Swann v. Charlotte-Mecklemburg Board of Education, 402 U.S. 1, 26 (1971): "the greatest possible degree of actual desegregation." That is, each and every school in the relevant system should appear, by the composition of its faculty and student body, representative of the district as a whole, and not a school primarily for white children with some blacks or vice-versa. As the Supreme Court observed in Swann (at page 26), school authorities who are obliged to desegregate their systems bear a heavy burden of justifying the continuation of any racially disproportionate schools.

We submit that the law as to the timing of desegration relief has evolved from "all deliberate speed" to "at once". Brown v. Board of Education, 349 U.S. 294, 301 (1955); Griffin v. County School Board, 377 U.S. 218, 234 (1964); Green v. County School Board, 391 U.S. 430, 438-439 (1968); Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969); Carter v. West Feliciana Parish School Board, 396 U.S. 290 (1970); United States v. School District 151, 286 F. Supp. 786, 789 (N.D. Ill., 1968); affirmed, 404 F.2d 1125 (7th Cir. 1968).

Arguments for desultory desegregation, usually based upon assertions as to administrative convenience and the antiquity of existing arrangements, pale before the magnitude of the harm to all from continued constitutional deprivations.

Respectfully submitted,

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38 Kirkland St.
Cambridge, Mass. 02138

June 2, 1970

Certificate

I hereby certify that I have served the foregoing memorandum of law upon the defendants by mailing copies, postage prepaid, to thier counsel of record on June 2, 1972.

J. Harold Flannery

J. Harold Flannery

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TALLULAH MORGAN, et al
Plaintiffs,

V

JAMES W. HENNIGAN, et al
Defendants.

C. A. No. 72-911-G

MEMORANDUM OF THE DEFENDANT SCHOOL COMMITTEE OF THE CITY OF BOSTON ON DE JURE SEGREGATION

The court asked for a memorandum on "whether the intention to discriminate was an essential element of de jure segregation." This memorandum is directed to answering that question and the narrow issue raised by that question. The answer is in the affirmative. You must find the intention to discriminate.

Initially we point out that this intent can be inferred in various ways. Attention is called to the plaintiffs' memorandum, pages three through seven, which describes the various acts from which the intent to segregate or discriminate can be inferred. Commonly, the existence of segregated faculties and segregated athletic programs in and of themselves will show the necessary intent. Especially when the School Committee has full control over such matters. In such a situation the plaintiffs have established a prima facie case by the mere showing of the segregated program and the School Committee control. Swann v. Charlotte-Mecklenburg Board of Education, 402 U. S. 1, 18 (1971). Some other areas in which the intent can be shown are in the construction policies of the school department, in the assignment policies of the school department and in the policies relating to school boundaries. In this latter group, the plaintiffs must not only show what the policies are but that the policies are motivated by an intent to discriminate.

LAW:

In Booker v. Special School District No. 1, (attached to plaintiffs' memorandum), the court found that the "size and location of Bethune School, . . . were intended to have the effect of continuing the pattern of racially

segregated schools . . ." (finding No. 8); that the addition of certain classrooms "had the intended effect of increasing racial segregation . . . The district offered no alternative justification for its decision." (finding No. 9); that the addition at another school was "racially motivated" and "no reasons or justifications for this course of conduct" were advanced. (finding No. 10). Throughout the Booker case the words "intended" and "racially motivated" were used to describe the actions of the defendant school district. Following these findings of intent the court stated that the existence of segregated schools was caused in part by the actions of the defendant. Therefore, "since the defendant has acted in a manner which was intended to create and/or increase segregation . . . de jure segregation . . . exists." Booker, supra at 16, footnote 2.

The Booker decision is in line with other recent decisions. In Davis v. School District of Pontiac, 309 F.Supp. 734, 741 (E.D. Mich. 1970), the Court found that the defendants "intentionally utilized the power at their disposal to locate new schools and arrange boundaries in such a way as to perpetuate the pattern of segregation." In Spangler v. Pasadena Board of Education, 311 F.Supp. 501, 521 (C. D. Calif, 1970), the Court found that the defendants had "made a series of educational policy decisions which were based wholly or in part on considerations of . . . races . . . which have contributed to increasing racial segregation"; and in United States v. School District 151, 301 F.Supp. 201, 230 (N. D. Ill. 1969), the Court found that the "intended and inevitable effect of the series of policy decisions by the defendants . . . has been to preserve racial segretation of students."

Judge Doyle, in Keyes v. School District No. 1, 313 F.Supp. 61, 73 (D. Col. 1970), set forth what he considered were the essentials of de jure segregation. These were:

> 1. The State, or more specifically the school administration, must have taken some action with a purpose to segregate;
>
> 2. This action must have in fact created or aggravated segregation at the school or schools in question;

3. A current condition of segregation must exist; and

4. There must be a causal connection between the acts of the school administration complained of and the current condition of segregation.

Judge Doyle also pointed out, at page 74, that "the important distinguishing factor between de facto and de jure segregation is the purpose to segregate." He also noted that the segregative purpose can be overt or covert and that the intent to segregate need not be the sole motive but need only be one of several factors.

As the law developed, the courts recognized that it was necessary to find the intent to discriminate or segregate prior to finding the existence of de jure segregation. The United States Supreme Court in Swann, supra, affirmed this policy.

The Swann decision involved a school district that historically had a dual system of education which was imposed by state law. The Court stated that under such a system there would be an affirmative duty to desegregate the schools. Once that duty is performed, if the school district thereafter becomes segregated, a district court could not intervene unless the school authorities or some other State agency deliberately attempted to change the racial composition of the schools. (At 402 U.S., p. 32). This again shows that there must be intentional acts of discrimination prior to a finding of de jure segregation.

In Swann, at page 28, the Court noted that absent a constitutional violation there would be no basis for ordering assignment of students on a racial basis. This violation can only arise if the court can find that the segregation in the public schools has been caused by the defendant school committee or another state agency since the judicial powers may only be exercised on the basis of a constitutional violation. Swann at 16.

There must be more than the existence of segregated schools for a finding of de jure segregation. In Gompers v. Chase, 329 F. Supp. 1192

(N.D. Calif. 1971), the Court said that:

> "In order to find jurisdiction sufficient to warrant the interference by this Court with the activities of a duly elected school board, it is first necessary that the plaintiff establish not only that there is racial imbalance as between the schools of the districts, but also that such segregation has been planned, encouraged, fostered, designed, or in some way created by law or by administrative action under the color of law." At page 1195.

The Court, in Gompers, at 1196, also noted that school boards are permitted to do nothing to cure racial imbalance which is the product of a neighborhood plan.

It seems clear that the distinction between de jure and de facto segregation involves intentional and purposeful state action to cause the segregation. The plaintiffs attempt to blur this distinction. They state at page 2 that "when plaintiff has shown the racial identity of schools, and their relationship to the school authorities' policies and practices, he had made a prima facie case." This statement is deficient. It omits the required "intent to discriminate" which is the basis of the constitutional violation. Therefore, the plaintiffs have the burden of not only showing the racial identity of the schools but that the racial identity is caused by actions of the school committee which are motivated by an intent to segregate. Keyes, supra. Only then will they have sustained their burden of proving de jure segregation.

Respectfully submitted,

DiMENTO & SULLIVAN

Matthew T. Connolly

CERTIFICATE OF SERVICE

Boston, Massachusetts June 12, 1972

I hereby certify that I today mailed a copy of the foregoing Memorandum to the following:

Andrew M. Wolfe, Assistant Attorney General, 373 State House, Boston, Massachusetts 02133;

Collins and Simmons, 111 State Street, Boston, Massachusetts 12109;

Roger I. Abrams, Esquire, Foley, Hoag & Eliot, 10 Post Office Square, Boston, Massachusetts 02109

Eric E. Van Loon, Esquire, Center for Law and Education, Harvard University, 38 Kirland Street, Cambridge, Massachusetts 02138.

Matthew T. Connolly

CURRICULM TOTALS BY SCHOOL, YEAR OF GRADUATION, AND RACE 07/10/72
72-GR 12 74-GR 10 76-GR 08 78-GR 05

SCHOOL	YOG	RACE	CURR.	TOTALS
1100	74	1		3
* TOTAL BY YOG				3
** TOTAL BY CURR.				3
1100		1	10	2
* TOTAL BY YOG				2
1100	10	1	10	1
1100	10	2	10	2
* TOTAL BY YOG				3
1100	72	1	10	48
1100	72	2	10	186
1100	72	3	10	5
1100	72	4	10	2
1100	72	7	10	2
* TOTAL BY YOG				243
1100	73		10	1
1100	73	1	10	57
1100	73	2	10	189
1100	73	3	10	1
* TOTAL BY YOG				248
1100	74		10	2
1100	74	1	10	54
1100	74	2	10	241
1100	74	4	10	2
1100	74	5	10	2
1100	74	7	10	1
* TOTAL BY YOG				302
1100	75	7	10	1
* TOTAL BY YOG				1
** TOTAL BY CURR.				799
1100		1	20	2
* TOTAL BY YOG				2
1100	20	1	20	1
* TOTAL BY YOG				1
1100	72		20	1
1100	72	1	20	39
1100	72	2	20	149
1100	72	5	20	1
* TOTAL BY YOG				190
1100	73		20	1
1100	73	1	20	44
1100	73	2	20	202
1100	73	4	20	1
* TOTAL BY YOG				248

Curr code

10 = college
20 = Bus Ed
22 = Merchandising
35 = Machine
36 = Agriculture
80 = Industrial Arts
90 = General
93 = Home Econ.
98 = Special Class

RACE CODES

1 = Black
2 = White
3 = Oriental
4 = Spanish Black
5 = Spanish White
6 = Amer Indian
7 = Other non-white

School Codes

1100 = Hyde Park
1110 = Jamaica Plain
2070 = Curley
2200 = Thompson

"A"

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TALLULAH MORGAN, ET AL.,
Plaintiffs,

v.

CIVIL ACTION
NO. 72-911-G

DANIEL R. BURKE, ET AL.,
Defendants.

FINAL JUDGMENT[1] AS AMENDED[A]

July 19, 1994

GARRITY, J.

After hearing on May 21, 1990, and consideration of the objections, comments and proposals for modifications filed pursuant to the Court's Order to Show Cause dated April 19, 1990, and confirming oral orders stated in open court at the conclusion of said hearing, and on grounds then stated (except that the grounds for the Court's orders regarding faculty and staff are expanded in the Court's memorandum filed contemporaneously herewith), it is ORDERED and ADJUDGED that the school defendants, viz., members of the Boston School Committee, Superintendent of Schools, their officers, agents, servants, employees, attorneys and all other persons in active concert or participation with them who have

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[1] The Court has under advisement plaintiff's application for an award of attorneys' fees and expenses.

[A] Final Judgment entered May 31, 1990 has previously been amended, in relatively minor respects, thrice by the District Court and once by the Court of Appeals, at points and on dates indicated by the alphabetical footnotes which follow.

actual notice of these orders:

Unified Facilities Plan

(1) shall take all steps reasonably necessary, jointly with the city and state defendants, to whom this paragraph also applies, to complete implementation of Unified Facilities Plan (UFP) dated March 25, 1985 and of the Court's UFP Orders entered on September 3, 1985 approving and modifying said UFP[2] including the obligation of the city and school[B] defendants to appropriate and expend levels of maintenance funds reported to the Court in a memorandum from counsel for the State Board of Education dated May 2, 1988.[3]

Department of Implementation

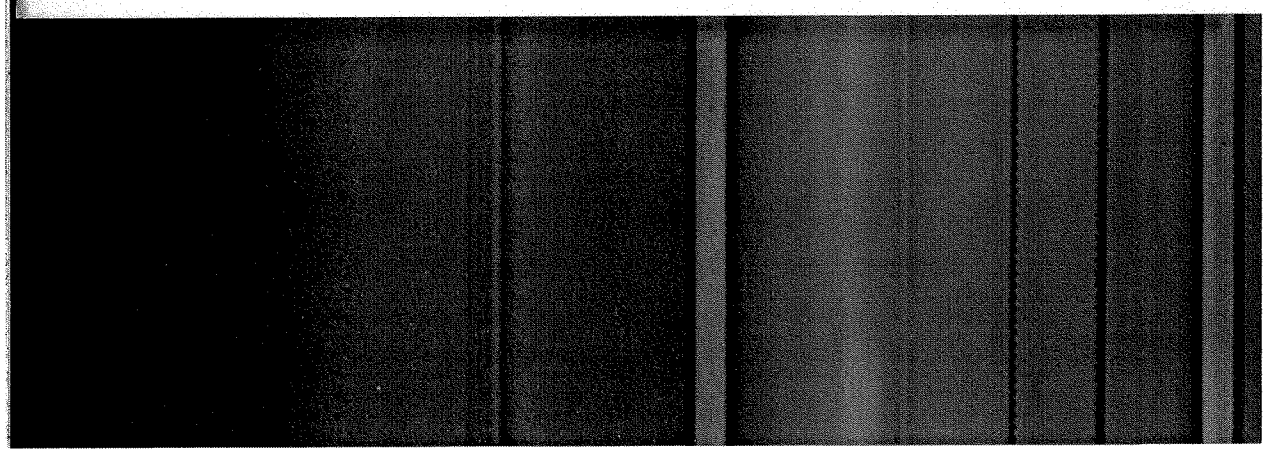
(2) shall maintain the Department of Implementation (DI) at school department headquarters with substantially the same structure, units (Assignment, External Liaison, Record Management and Transportation) and functions which were established by the

---

[2] The Court's Memorandum and Orders explaining the origins and development of the UFP is reported in Morgan et al. v.Nucci et al., D. Mass. 1985, 617 F.Supp. 1316; but the UFP itself is not reported because too lengthy and technical -- only its Table of Contents, at p. 1328, as Appendix A. Note, too, that the word "introduction" in UFP Order 1., at p. 1327, refers to the introduction in the UFP, at the third unnumbered page thereof, and not to the introduction to the Court's Memorandum and Orders at pp. 1317-18.

[B] The words "and school" were added by Amended Final Judgment dated June 21, 1991.

[3] The city defendants' undertaking reported in said memorandum provides for a level of funding of at least $13,500,000 in fiscal year 1991 and all subsequent fiscal years until the UFP has been fully implemented.



Court's Memorandum and Orders dated May 6, 1977, at pp. 32-35, and are still essentially unchanged.[4]

Faculty and Staff

(3) shall achieve and maintain a desegregated faculty and administrative staff (which for purposes of this Order only shall be deemed to include guidance counsellors)[C], and a desegregated faculty at each of the three examination schools, comprised of not less than 25% blacks and 10% other minorities by increasing, if said percentage goals be not achieved or not maintained, the proportions of black faculty and staff at the rate of not less than one-half percent annually and of other minority faculty and staff at the rate of not less than one-quarter percent annually and, notwithstanding applicable collective bargaining agreements, shall additionally[D] conduct any reduction in force (RIF) of either faculty or staff in such a manner as to preserve after such RIF substantially the same racial/ethnic proportions of faculty and staff as existed immediately before it; provided that

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[4] In 1979, in keeping with similar title revisions, the head of the DI became a senior officer instead of an associated superintendent. In 1981 the Student and Personnel Unit was renamed the Assignment Unit and the Facilities and Transportation Unit was renamed the Transportation Unit. Under the Willie-Alves Controlled Choice Plan, some DI staff are assigned as liaison to the new Parent Information Centers, but the DI's central authority over assignments and transportation arrangements is unchanged.

[C] At today's hearing, the parenthetical phrase in line two was stricken and the parenthetical phrase following the words "administrative staff" was inserted.

[D] The word "additionally" was added by Amended Final Judgment dated June 21, 1991.

the orders in this paragraph shall expire when black and other minority faculty and staff shall have attained seniority to such an extent that, were a RIF to occur based upon the seniority provisions of applicable collective bargaining agreements reducing faculty and staff by 3%,[E] the racial/ethnic proportions of faculty and staff after such a RIF would, in the written opinion of the Superintendent of Schools, be substantially the same as those existing before it.[F]

The Superintendent may authorize the targeting of a sufficient number of faculty and administrative positions for black and other minority persons, notwithstanding the transfer and excessing provisions of any collective bargaining agreement, for the purposes of avoiding the substantial resegregation of the faculty (defined for these purposes as a faculty in which the percentage of black teachers is less than half or more than twice the system-wide percentage of black teachers at the relevant grade level) or administrative staff at any school, of satisfying the requirement of this paragraph that the percentage of black and other minority staff be maintained both systemwide and at the examination schools, and to carry out the agreement concerning

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[E] The words "or more" were stricken by order of the Court of Appeals by Judgment dated February 21, 1991. See, Morgan v. Burke, 1st Cir. 1991, 926 F.2d 86, 92, and mandate issued March 15, 1991, as to which the Supreme Court denied certiorari, see, 118 L.Ed.2d 386 on April 20, 1992.

[F] The paragraph which follows was ordered as Part A of Orders Re Desegregation of Faculty and Staff dated July 30, 1993.

retention of minority students at the examination schools presented to the Court on October 2, 1985, including specifically the targeting of a reasonable number of guidance counselling and other student support positions for minority persons at the examination schools. The School Committee shall provide to the Boston Teachers Union ("BTU") the data upon which it intends to base targeting decisions reasonably in advance thereof but in no event later than April 1 of each year and shall offer to confer with the BTU over targeting decisions. For purposes of this Order, "targeting" shall mean the identification of a position as reserved for a black or other minority person notwithstanding the transfer or excessing provisions or in the case of recalls, recall rights lasting more than four years[G] of any applicable collective bargaining agreement. This power shall expire automatically when the orders set forth in this paragraph expire.

Permanent Injunction

(4) be permanently enjoined from discriminating on the basis of race in the operation of the public schools of the City of Boston and from creating, promoting or maintaining racial segregation in any school or other facility in the Boston public school system.

[G] At today's hearing, the words "in the case of recalls, recall rights lasting more than four years" were added after the word "provisions" in the next to last sentence of this paragraph.

Reports on Staffing [H]

(5) shall continue the October and March reports on staffing so long as paragraph (3) is in effect, and shall include in the March report data showing the make-up of the faculties at the three examination schools;

Vacation of Outside Orders [I]

(6) all orders previously entered in this action and not specifically set forth in this Final Judgment are hereby VACATED.

W. Arthur Garrity, Jr.
United States District Judge

[H] This paragraph (5) was added by Amended Final Judgment dated September 19, 1990 allowing a joint motion by plaintiffs and school defendants.

[I] This paragraph (6) was added by Amended Final Judgment dated September 19, 1990 allowing a joint motion by plaintiffs and school defendants.

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

TALLULAH MORGAN ET AL., Plaintiffs,	)	
v.	)	CIVIL ACTION NO. 72-911-G
JAMES W. HENNIGAN ET AL., Defendants.	)	

OPINION

June 21, 1974

GARRITY, J. This is a school desegregation case brought by black parents and their children who attend the Boston public schools. Plaintiffs seek for themselves and on behalf of their class[1] declaratory and injunctive relief against the defendants for a myriad of acts that allegedly violate the constitutional rights of the plaintiff class. Defendants are the Boston School Committee, its individual members, and the Superintendent of the Boston Public Schools (hereinafter collectively "the city defendants"), and the Board of Education of the Commonwealth of Massachusetts, its individual members, and the Commissioner of Education (hereinafter collectively "the state defendants").

Plaintiffs have alleged that the city defendants have intentionally brought about and maintained racial segregation in the Boston public schools by various actions, including

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[1] The court certified the named plaintiffs as proper representatives of a class of "all black children enrolled in the Boston Public School System and their parents." Thereafter Keyes v. School Dist. No. 1, 1973, 413 U.S. 18, 195-198, held that "petitioners are entitled to have schools with a combined predominance of Negroes and Hispanos included in the category of 'segregated' schools." At the trial, the parties did not frame any issues as to discrimination against non-black minority students, who comprise approximately 7% of Boston's public school population; and in this opinion the term "racial segregation" when unqualified will refer to blacks only. However, at future hearings concerning equitable remedies required to convert the Boston schools from a dual to a unitary system, the Keyes holding will of course be observed and consideration given to the treatment of non-whites other than blacks.

under open enrollment or an exception to the controlled transfer policy, whether by a white or black student, increased segregation in the sending school as well as in the receiving school.

Finally, defendants did not "adduce proof sufficient to support a finding that segregative intent was not among the factors that motivated their actions", Id., at 210; nor produce "evidence supporting a finding that a lesser degree of segregated schooling" in any part of the system would not have resulted even if they had not acted as they did, Id., at 211; nor demonstrate that any area of the city "is a separate, identifiable and unrelated section of the school district that should be treated as isolated from the rest of the district", Id., at 213. In many instances defendants' evidence consisted of "allegedly logical, racially neutral explanations for their actions", Id., at 210, which proved to be rationalizations. In view of the plaintiffs' proof of the defendants' pervasive practices which were intentionally segregative and their direct and reciprocal effects, the court concludes that the defendants' actions had a segregative impact far beyond the schools which were the immediate subject of their actions. Indeed plaintiffs' evidence showed, independently of reciprocal effects, that some of defendants' practices had a segregative impact on entire levels of the school system. The court concludes that the defendants have knowingly carried out a systematic program of segregation affecting all of the city's students, teachers and school facilities and have intentionally brought about and maintained a dual school system. Therefore the entire school system of Boston is unconstitutionally segregated. Accordingly, the

court will contemporaneously with this opinion file a partial judgment permanently enjoining the city defendants from discriminating upon the basis of race in the operation of the Boston public schools and ordering that they begin forthwith the formulation and implementation of plans to secure for the plaintiffs their constitutional rights.

Remedial Guidelines

It is time to turn to the future. Henceforth the defendants are under an "affirmative obligation" to reverse the consequences of their unconstitutional conduct. Green v. County School Board, 1968, 391 U.S. 430; Raney v. Board of Education, 1968, 391 U.S. 443. Neutral conduct is no longer constitutionally sufficient. Keyes v. School District No. 1, Denver, Colo., supra, at 200, n. 11. The defendants must eliminate all vestiges of the dual system "root and branch", Green, supra, at 438.

In order to assist the defendants in carrying out their obligations, the court will outline several remedial principles which the Supreme Court has declared to be constitutionally applicable. First, the obligation of the defendants is to proceed now to secure the rights of the plaintiffs. Green, supra, at 439. In ascertaining compliance with this obligation, "a school authority's remedial plan . . . is to be judged by its effectiveness." Swann v. Charlotte-Mecklenburg Board of Education, 1971, 402 U.S. 1, 25. Thus, compliance requires desegregation and the goal is to dismantle the dual system. Id. at 28.

Second, the primary responsibility for desegregation lies with the school committee. Brown v. Board of Education, 1955, 349 U.S. 294, 299 (Brown II). If, in fulfilling this responsibility, policy preferences hinder or obstruct the conversion to a unitary school system, they "must give way [since they would] hinder vindication of federal constitutional guarantees." North Carolina State Board of Education v. Swann, 1971, 402 U.S. 43, 45. This means that a preference not to bus, or for neighborhood schools, or any other policy preference, can be validly maintained only if it will not interfere with the defendants' constitutional duty to desegregate. Also "these constitutional principles cannot be allowed to yield simply because of disagreement with them." Brown II, supra, at 300. No amount of public or parental opposition will excuse avoidance by school officials of constitutionally imposed obligations.

Third, "school authorities are 'clearly charged with the affirmative duty to take whatever steps might be necessary,'" Swann, supra, at 15, quoting Green, supra, at 437. This means that busing, the pairing of schools, redistricting with both contiguous and non-contiguous boundary lines, involuntary student and faculty assignments, and all other means, some of which may be distasteful to both school officials and teachers and parents, must be evaluated; and, if necessary to achieve a unitary school system, they must be implemented. The Supreme Court has recognized that "[t]he remedy for segregation may be administratively awkward, inconvenient, and even bizarre in some situations and may impose burdens on some; but all awkwardness and inconvenience cannot be avoided . . . when remedial adjustments are being made to eliminate the

dual school systems." Swann, supra, at 28. The Supreme Court has also indicated that the non-use of a more effective plan may indicate a "lack of good faith" on the part of the defendants, and any such preference places a heavy burden of justification upon them. Green, supra, at 439. With these principles in mind, the difficulty and duration of future proceedings can be kept to a minimum.

Fourth, the Supreme Court has said, "Awareness of the racial composition of the whole school system is likely to be a useful starting point in shaping a remedy to correct past constitutional violations." Swann, supra, at 25. In Boston the public school population is approximately two-thirds white and one-third black; ideally every school in the system would have the same racial proportions, although as a practical matter there is no prospect of achieving this 2:1 ratio in every school. The Court has also pointed out that with desegregation plans which leave any schools all or predominantly one race, white or black, the defendants must carry the burden that such treatment is genuinely nondiscriminatory. Id. at 26. More specifically, the Court has pointed out that "the nature of the violation determines the scope of the remedy." Id. at 16. Thus, where the defendants have been found to have committed discriminatory acts as to a specific school facility, certainly no plan which ultimately leaves the racial identifiability of that facility untouched will be constitutionally sufficient.

Fifth, such time as the court allows for formulation and implementation of plans to desegregate Boston's schools will

be granted at the cost of continuing th denial of the plaintiffs' rights under the Constitution. For this reason the time allowed for compliance must be only that reasonably necessary to design and evaluate plans to be presented to the court and thereafter only the time reasonably necessary, administratively, to implement the plan which is ultimately approved by the court. The Supreme Court has decreed that "[t]he burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date." Brown II, supra, at 300.

The remedies to be ordered by the court will be affected in this case by the pending, current implementation by the defendants of a racial imbalance plan designed by the state board and forced upon the city defendants by orders of the Supreme Judicial Court entered on January 16, March 22 and April 17, 1974. The state court plan is scheduled to take effect on the opening day of school in September 1974. Our understanding is that this plan will reduce the number of majority black schools from 68 to 44 and the number of black children attending imbalanced schools from approximately 30,000 to approximately 10,000. The state plan relies on two of the traditional methods, redistricting and busing. The plan also removes one of Boston's structural obstacles to integration by converting the entire system, except for McKay junior high in East Boston, to the middle school design, i.e., all students entering the sixth grade will be in a middle school and all students entering the ninth grade will be in a high

school except at McKay. Under the state board plan, Boston's high schools, except for the three examination schools, are given districts for the first time, thus eliminating many discriminatory feeder patterns. Finally, busing will be used to reduce segregation; state officials predict that approximately 6,000 students will be bused for this reason, but city officials estimate that the number will be closer to 20,000. These and other aspects of the state plan will be explored at the hearing scheduled by separate notice for June 27, 1974 in the context of the court's separate partial judgment and interlocutory order, attached hereto as Appendix A.

W. Arthur Garrity, Jr.
United States District Judge

Opening of School

The Commonwealth of Massachusetts

Department of Education

182 Fremont Street

Boston, 02111

BOARD OF EDUCATION

UNITED STATES DISTRICT COURT
DIST. OF MASS.

FILED IN OPEN COURT

DATE: 8/6/75 at 3:00 P.M.

Deputy Clerk

DOCKETED
CA72-911-G

Following careful consultation with educational officials and city, state and federal public safety representatives, the Board unanimously denies the July 11th request for a waiver in the minimum school year requirement in order to provide a ten day delay in the opening of school in Boston for the 1975-76 school year. While supporting the importance of teacher training, the Board accepts the unanimous advice of the law enforcement officials that a delay would not be in the best interests of public safety. The Board offers to assist the Boston School Department in scheduling in-service training opportunities for teachers during the coming school year.

By the Executive Committee, eight members present and voting.

8-6-75

1107

[illegible] 101 MR 1572-1972

10:30 A.M.

IN THE UNITED STATES DISTRICT COURT

C.A. 72-911-G

FOR THE DISTRICT OF MASSACHUSETTS

Mrs. Tallulah Morgan, Petri Morgan, Kimberly Morgan, and Kirsten Morgan; Mrs. Sandra Purcelle, Dee Anna Purcelle and Michael Purcelle; Richard N. Yarde, Leslie R. Yarde and Richard N. Yarde II; Mrs. Lorraine Wheaton and Teddy Wheaton; Mrs. Joann Reed, Aaron Thomas Reed and Leigh Ann Reed; Mrs. Addell Vaughn, Raymond Joseph Vaughn and Kevin Arthur Vaughn; Arthur Eskew, Kemya Eskew, Tashia Eskew, and Toure Eskew; Mrs. Carrie Phillips, Norman Arthur Phillips, Tyrone Phillips and Robert Phillips; Mrs. Earline Pruitts, Lynnette Pruitts, Betty Jean Pruitts, Valerie Pruitts, Robert Edward Pruitts, James Neal Pruitts, Denise Pruitts and Kevin Pruitts; Mrs. Diane Bassett and Celeste Bassett; Mrs. Fern Burdette, Pamela Burdette and Yvonne Burdette; Mrs. Mary Crockett, Phillipa Crockett, Adrienne Crockett, Arthur Crockett, Cheryl Crockett and Beverly Crockett; Mrs. Mary Murphy, Anthony Murphy, Arnold Murphy and Ricky Murphy; Mrs. Grace Means, Hudis Means, Karen Means, Donna Means, Michael Means, Bryan Means, Kevin Means and Corey Means,

Plaintiffs,

vs.

Civil Action No.

James W. Hennigan, as Chairman and Member, and Paul J. Ellison, John J. Kerrigan, John J. McDonough, and Paul R. Tierney as Members of the Boston School Committee; William H. Ohrenberger as Superintendent of the Boston Public Schools; the School Committee of the City of Boston; the Board of Education of the State of Massachusetts; Mrs. Rae Cecilia Kipp, as Chairman and Member, and Richard L. Banks, Walter N. Borg, Mrs. Ramona L. Corriveau, William P. Densmore, J. Richard Early, Allan R. Finlay, Mrs. David K. Hardenbergh, Joseph Salerno, John S. Sullivan, Miss Janet Tobey and Joseph G. Weisberg as Members of the State Board of Education; and Neil V. Sullivan as Commissioner of Education,

COMPLAINT

Defendants.

1. This is a class action brought by black children attending the Boston public schools and their parents. Injunctive and declaratory

Boston Police

154 Berkeley Street
Boston, Massachusetts 02116
617-536-6700 Emergency 911

CONFIDENTIAL

PERSONNEL ASSIGNED TO OPERATION SAFETY

DAY 1 DATE Monday September 8, 1975

BOSTON POLICE	996
M.D.C.	297
STATE POLICE	499
TOTAL	1792

SUPERINTENDENT-IN-CHIEF

1214A

Boston Police

154 Berkeley Street
Boston, Massachusetts 02116
617-536-6700 Emergency 911

JANUARY 8, 1975

MEMO TO: THE POLICE COMMISSIONER

FROM: THE SUPERINTENDENT IN CHIEF

SUBJECT: DEPLOYMENT OF POLICE FOR SOUTH BOSTON

SIR:

LISTED BELOW, PER MEMO REQUEST DATED JANUARY 7, 1975, IS A BREAKDOWN OF POLICE OFFICERS AT SOUTH BOSTON FOR THE SCHOOL DESEGREGATION PROGRAM:

	BOSTON	STATE	MDC
SOUTH BOSTON HIGH SCHOOL (INSIDE)	25	87	5
SOUTH BOSTON AREA	91	215	90
MOTORCYCLES	(30 am) (21 pm) 51		6
MOUNTED	8		
	175	302	101

JOSEPH M. JORDAN
SUPERINTENDENT IN CHIEF
BUREAU OF FIELD SERVICES

RECEIVED: _____ DATE: