11/3/76

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

WILLIAM PITTS, et al.	)	
	)	CIVIL ACTION
vs.	)	
	)	
	)	NO. 11946
JIM CHERRY, et al.	)	

OPINION AND ORDER

In June 1969 this court entered an order in the above-entitled action enjoining the defendants from discriminating on the basis of race in the operation of the DeKalb County school system. The court retained jurisdiction over the case for the purpose of implementing its order. In September 1975 and August 1976[1/] this court held hearings upon the complaints of a group of citizens that the DeKalb County school system was out of compliance with the court's 1969 order. Basically these citizens (movant-plaintiffs) alleged (1) that defendants were violating the order with regard to the majority-to-minority transfer program; (2) that defendants were violating the order with regard to assignment of teachers and administrative personnel to the county's schools; and (3) that changes in attendance zones were effecting resegregation. The court is now prepared to state its findings and conclusions as to these claims.

Before turning to the merits of these charges the court must first address defendants' contentions concerning the procedural posture of the parties to this action. Defendants argue that the instant suit may not be maintained as a class action, and further, that the instant case has become moot. This action was originally

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1/ The delay was occasioned in part by the fact that, due to one tragic accidental death and the removal of two lawyers from the State, the plaintiffs went for several months without local counsel

filed on behalf of two classes: all adult Negro citizens and their minor children who reside in DeKalb County, and all adult white citizens and their minor children residing in DeKalb County. Although the court has repeatedly referred to the plaintiffs herein as a class, no "class" has ever been properly certified by this court within the meaning of Rule 23 of the Federal Rules of Civil Procedure which became effective January 1, 1974. Even though the court held in 1969 that its jurisdiction over the case would continue, defendants claim that inasmuch as the original named plaintiffs are no longer enrolled in the DeKalb school system, this action should now be dismissed as moot. Pasadena City Board of Education v. Spangler, 440 U.S.L.W. 5114, 5115 (June 29, 1976); Indianapolis School Commissioners v. Jacobs, 420 U.S. 128, 130 (1974).

It appears, however, that one of the named plaintiffs is still a student in the DeKalb County schools, and as to this student, the case is still a live controversy. Accordingly, the court will interpret the movant-plaintiffs' petition for relief under the 1969 order as a motion to intervene, joining the original named plaintiff. The Fifth Circuit has held that intervention

> "... is the proper course for parental groups seeking to question current deficiencies in the implementation of desegregation orders. ... The petition for intervention would bring to the attention of the district court the precise issues which the new group sought to represent and the ways in which the goal of a unitary system had allegedly been frustrated. The district court could then determine whether these matters had been previously raised and resolved and/or whether the issues sought to be presented by the new group were currently known to the court and parties in the initial suit. ... If the court felt that the new

group had a significant claim which it could best represent, intervention would be allowed." Hines v. Rapides Parish School Board, 479 F.2d 762, 765 (5th Cir. 1973).

The court finds that the movant-plaintiffs, Monica Rocker, et al., satisfy the requirements for intervention under Hines and therefore ALLOWS the movant-plaintiffs to intervene in the instant action. Rule 24(b), Fed.R.Civ.P.

The court further finds that the named movant-plaintiffs represent a class of unnamed individuals capable of being certified within the meaning of Rule 23, Fed.R.Civ.P., and hereby CERTIFIES the class under Rule 23(b)(2) as consisting of all black citizens and their minor children residing in DeKalb County, cf. Pasadena City Board of Education v. Spangler, supra at 5115. Although the named plaintiffs all reside in the southern part of the county, the court finds that the named plaintiffs and their attorneys have and will adequately represent the interests of the black residents throughout the county.

Factual Background

M-to-M Program

The DeKalb County school system is currently operating a majority-to-minority (M-to-M) transfer program. Under this program any student attending a neighborhood school in which his race is in the majority may transfer to a school where his race is in the minority under the following conditions: the receiving school must have the capacity to hold an additional student, and the M-to-M student may not transfer to a school in which the minority race comprises more than 40% of the student body. Additionally, the student may transfer only to the "next closest

school" in which space is available and in which the minority race is less than 40%.

A parent wishing to have his student transferred under M-to-M must apply for such transfer through the principal of the student's neighborhood school. The parent is then told which school or schools qualify as the "next closest school" to the neighborhood school. The parent may then apply to the principal of one of these next nearest schools for a transfer. The decision as to whether the student may transfer is made by the principal of the proposed receiving school and is based solely on whether the school has the capacity and meets the 40% requirement. No exceptions to these rules are made, for example, to allow members of one family to attend the same receiving school, if to do so would increase the minority population of the school over 40%. If the proposed transfer school does not meet these requirements, the parent is advised of the next nearest school which would satisfy these standards.

At the commencement of each school term, every student is required to register at his neighborhood school. A student who has been attending another school the previous year under M-to-M must still register at his neighborhood school and reapply for an M-to-M transfer to the school he had previously attended. If over the course of the year that receiving school has become overcrowded or has passed the 40% mark, the student will not be allowed to reenter the receiving school but must either return to his neighborhood school or attend the next available nearest school.

Some parents desire to send their children to schools other than the next nearest school under the M-to-M program, claiming that certain schools in the county are better than others. A study of standardized achievement test results in the lower grades

indicates that the average scores are generally higher in those schools which have a high predominance of white students than in those so-called "target" schools which are almost completely black in the southern part of the county. The distribution of reading and math resources, such as specialists and paraprofessionals, indicates that those target schools receive a higher percentage of such resources than certain predominantly white schools, although certain reading resources for advanced readers are not now present in these target schools. These latter resources, however, are capable of being moved among schools as the need for them arises. A comparison of selected aspects of the predominantly black schools in the southern part of the county with selected predominantly white schools in the county shows no apparent trend of superiority among any group of schools. These aspects included number of library books, average number of years of staff education and experience, and pupil expenditures for staff per individual school.

For the 1975-76 school term, 96 students exercised the M-to-M option; two students' requests for M-to-M transfers were rejected. As of August 16, 1976, 27 students had transferred under the M-to-M program, and three requests for such transfers were rejected for the 1976-77 term.

The school system provides bus transportation for all those students who live more than a mile from their neighborhood school and is reimbursed by the state for transportation provided to students living over a mile-and-a-half from their neighborhood school. No transportation is currently provided to students who exercise the M-to-M option and attend a school other than their neighborhood school, nor are M-to-M students reimbursed for expenditures made for self-transportation.

Faculty

Out of the total number of faculty positions in DeKalb County, approximately 15% are held by black teachers in the elementary schools and 13.6% in the high schools for the 1976-77 school year; 32.4% of the newly hired teachers are black in the elementary schools, 33.1% in the high schools. To fill a vacant position in a school that has fewer than the system-line average of black teachers, only black applicants are sent to the school for interviews.

The percentage of black teachers in individual schools in the county ranges from 6.9% to 48.3% in the elementaty schools, and from 9.8% to 25% in the high schools. Those schools with the highest percentage of black teachers generally also have the greatest predominance of black students. For example, the faculty at Leslie J. Steele Elementary School is 48.3% black, while its student body is 98% black. At Terry Mill Elementary School the proportion of black teachers is 44.1%, while its student body is 98% black. Conversely, at Montgomery Elementary, where 12% of the students are black, only 6.9% of the faculty are black.

Two reasons were supplied by the Associate Superintendent for Community and Staff Relations to explain the higher concentration of black teachers in the more predominantly black schools: (1) teachers living near those schools prefer to teach in a school near their homes and (2) principals desire to have more teachers who are the same race as most of the students so that the students have someone to "relate to". Involuntary transfers are rarely used to alter the distribution of teachers in the individual schools.

Attendance Zone Changes

A number of attendance lines changes were instituted in the southwest portion of DeKalb County in 1974 and 1975. This same area has experienced an increase in the percentage of black students, due to the influx of black families and the departure of white families from the area. The general pattern of transition is for the black residential area to proceed on a circumference which has been expanding, year to year, from the Atlanta city limits into DeKalb County. The transitional area has been moving from northwest to southeast. Accompanying this transition has been an increase in the ratios of black students in the schools in this area. For example, the area served by Clifton, Meadowview, and Cedar Grove (formerly Bouldercrest) elementary schools, has changed from 7.4% black students in 1972 to 50% black students in 1975.

Major alterations in elementary school zones were implemented in 1974 and 1975 affecting the area covered by the above-mentioned schools. The primary factor motivating these changes was the closing of the Bouldercrest school which had been built on a site too small by state standards. The site for a new school (Cedar Grove) had been chosen in 1969, before this court's previous order, and at a time when the population in the entire southwest portion of the county was 98% white. There is no claim of impropriety in the choosing of the Cedar Grove site.

The building of the new school necessitated boundary line changes because the Cedar Grove site was located within the Clifton attendance zone. Prior to the change, both the Bouldercrest and Clifton school zones extended southward to the Clayton and Henry county lines. The Meadowview school zone formed an immediate circumference around that school. In January 1974, the new

school zone which would be served by Cedar Grove was announced. It encompassed the predominantly white southern halves of the Bouldercrest and Clifton school zones, lying below the South River and Interstate 285. Most of the upper half of the old Bouldercrest zone was added to Meadowview, except that portion immediately surrounding Bouldercrest school. The former Clifton zone was cut off at the South River and was pushed back into almost half of the original Meadowview zone. Since the new Cedar Grove school could not be ready as planned for the fall of 1974, students in the new Cedar Grove district attended the old Bouldercrest school for the 1974-75 term, accompanied by the students residing in the area immediately surrounding Bouldercrest.

When the zone change was made, Clifton went from 29.6% black (in June 1974) to 63.4% black (in September 1974); Meadowview went from 51.8% black to 58% black; Bouldercrest changed from 7% to 14% black. In the fall of 1975, the new Cedar Grove Elementary School was opened, and the area immediately surrounding the Bouldercrest school was zoned into the Clifton zone as originally planned. With this change Clifton's black population increased from 67% (as of June 1975) to 77% (as of September 1975); Meadowview changed from 62% to 67% black; and Bouldercrest's, now Cedar Grove's, black population decreased from 14% to 12%. The net effect of the changes meant that the two older schools would now serve the predominantly black population in the northern part of the area, and the new school would service the predominantly white students to the south. It is impossible to determine, however, to what extent changes in the racial composition of the schools was affected by changes in the racial composition of the residential areas encompassed by these school zones.

The high schools in this area were also subject to zone changes and substantial shifts in their racial ratios during the

years 1971 to 1975. The area now served by Gordon, Walker, and Cedar Grove high schools has changed from 22% black students in 1971 to 70% black students in 1975. The building of a new high school, Cedar Grove, in 1972, was again the major cause of attendance zone changes. The new school was built to relieve overcrowding in Walker and Gordon high schools which formerly served the area, and to reduce the distance traveled for students in the south part of the county. Cedar Grove was built on available land adjacent to the new elementary school, and there is no allegation of impropriety in the location of this school.

In 1971, the year before Cedar Grove High School opened, Gordon was 45% black and Walker was 3.9% black. Columbia and Southwest DeKalb, surrounding schools also affected by the building of Cedar Grove, each were 2.7% and 4.5% black, respectively. The new Cedar Grove school zone cut off the southern portions of the Walker and Gordon zones, constricting those zones to the area north of Interstate 285.

In 1974, additional zone changes were made affecting these high schools. Gordon's southern boundary was pushed further north to I-20, and the racially mixed residential area remaining went to Walker. Cedar Grove's zone, which originally extended past I-285, was constricted south of I-285. The Walker zone absorbed this area and now completely separated the Cedar Grove zone from the Gordon zone. Gordon's black population went from 89% in September 1973 to 92% in June 1974, and 97% in September 1974. Over this same period, Walker went from 35% to 43% and 60% black. Cedar Grove's black population remained at 14-16% during this period.

An additional zone change was made for the 1975-76 school term whereby part of Southwest DeKalb's attendance area (1% black), which had become overcrowded, was zoned into Cedar Grove, which

was under capacity. The area rezoned was primarily white. At the time of the zone change Columbia (then just under 50% black) was also under capacity.

The court cannot determine, as to these high school boundary-line changes, to what extent shifts in residential patterns affected the rate of change in the racial compositions of the schools.

Legal Discussion

M-to-M Program

In its June 1969 order, this court held that defendants "shall take affirmative action to disestablish all school segregation and to eliminate the effects of the dual school system." Pitts v. Cherry, No. 11946 (N.D. Ga., June 12, 1969). For the past few years, the DeKalb school system has operated an M-to-M program, outlined above, as such an affirmative action. Although the program technically violated the 1969 order which prohibited transfers of students outside their respective attendance zones, M-to-M transfer programs were given approval by the Supreme Court in Swann v. Charlotte-Mecklenberg Board of Education, 402 U.S. 1, 26 (1971):

> "An optional majority-to-minority transfer provision has long been recognized as a useful part of every desegregation plan. Provision for optional transfer of those in the majority racial group of a particular school to other schools where they will be in the minority is an indispensable remedy for those students willing to transfer to other schools in order to lessen the impact on them of the state-imposed stigma of segregation."

The current operation of the DeKalb M-to-M program, however, imposes impermissible burdens upon those students wishing to take part in the program, discouraging widescale use of this desegregation tool. A student wishing an M-to-M transfer, for example, faces a substantial amount of unnecessary red tape before his transfer may be effected. The student must go through the same administrative process each year, never becoming a permanent student in the transferee school.

Even greater constraints are placed on M-to-M transferees and their parents in terms of the permissible schools into which students may transfer and the lack of transportation provided to get the transferees to those schools. Defendants justify the "next nearest school" requirement for M-to-M transfers as preserving the neighborhood school concept as much as possible. As the Supreme Court stated in Swann, supra, "All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation." 402 U.S. at 28. In the instant case, due to the racial distribution in DeKalb County, the next nearest school limitation may compel a student to transfer to a school whose racial composition is only marginally different from his neighborhood school, a difference perhaps not worth the transfer.

Defendants have offered to alter the present program by requiring that a student may transfer only to the next nearest school where his race comprises no more than 15% of the student body. Defendants contend that this will accommodate the preferences of many of the named movant-plaintiffs to transfer to the more predominantly white schools. However, this same limitation will inhibit students who desire to attend a school where their race is in the minority, but which is also close to their homes.

The purpose of the current 40% requirement, and presumably the proposed 15% figure, is actually to prevent those schools from "tipping", or rapidly becoming predominantly black schools. Defendants have cited no authority, nor can this court find any support, for the use of such limitations in an M-to-M program to retard any change in the racial composition of a school in this manner. In fact, the implication from Swann is that very few restrictions should be imposed upon a student desiring to participate in an M-to-M transfer: "In order to be effective ... space must be made available in the school to which he desires to move." 402 U.S. 26-27 (emphasis added). Currently, a student may transfer only to a qualifying school where space is available, and is given no priority over other students. The effect may often be to preclude a child from attending his transferee school the following year if space in that school becomes unavailable. The Fifth Circuit has held, however, that under M-to-M programs, "a transferee is to be given priority for space." Singleton v. Jackson Municipal Separate School District, 426 F.2d 1364, 1369 (5th Cir. 1970). See Lee v. Macon County Board of Education, No. 70-251 (N.D. Ala., Aug. 27, 1976), slip opinion at 26.

The effectiveness of an M-to-M program is also dependent upon the provision of free transportation. Swann v. Board of Education, 402 U.S. 26-27; United States v. Greenwood Municipal Separate School District, 460 F.2d 1205 (1972). The lack of transportation for transferees under the present DeKalb plan forces the students and "their parents to shoulder the burden of eliminating these vestiges of segregated schools," United States v. Greenwood, supra, 460 F.2d at 1207, and, in fact, makes it impossible for some students to participate in the program.

Defendants complain that if the next nearest school rule is eliminated, and free transportation is required, the school system will be faced with an unreasonable and unfeasible task of transporting select students to different schools all across the county. Before it is known how many students will participate in a revised M-to-M program, however, such fears are purely speculative.

Defendants also raise a general objection to any revisions made by this court in the voluntarily-established M-to-M program. Defendants maintain that they have complied with the specific mandates of this court's 1969 order and are now operating a unitary school system. Therefore, the court is without power, defendants argue, to make any changes in the school program which accomplishes the intentions of the previous order. Pasadena City Board of Education v. Spangler, supra, 440 U.S.L.W. at 5117. However, this court has never made any finding that defendants are operating a unitary system, and finds instead that the regulations imposed under the M-to-M program perpetuate the vestiges of a dual system.

Defendants also rely upon the Equal Educational Opportunity Act of 1974, 20 U.S.C. §§ 1701, et seq., to block the above-mentioned changes in their M-to-M program. The Act, which emphasizes that "the neighborhood is the appropriate basis for determining public school assignments," 20 U.S.C. § 1701(b), also states that

> "No court ... shall ... order the implementation of a plan that would require the transportation of any student to a school other than the school closest or next closest to his place of residence which provides the appropriate grade level and type of education for such student."

The Act also makes clear, however, that its provisions are "not intended to modify or diminish the authority of the courts of the

United States to enforce fully the fifth and fourteenth amendments to the Constitution of the United States." 20 U.S.C. § 1702(b). This court, therefore, retains its equitable powers to remedy past wrongs, the scope of which "is broad, for breadth and flexibility are inherent in equitable remedies." Swann, supra, 402 U.S. at 15. In analyzing the impact of the Educational Act upon the court's equitable powers, the First Circuit stated in Morgan v. Kerrigan, 530 F.2d 401, 412-13 (1st Cir. 1976),

> "By explicitly leaving the district court the power to determine the adequacy of remedies, the Act necessarily does not restrict the breadth of discretion of that court to determine what scope of remedy is constitutionally required. Thus the Act manifests its purpose not to limit judicial power but to guide and channel its exercise. In a sense it is a statutory 'less restrictive means' guideline, endeavoring to ensure that substantial compulsory transportation be used as a last resort."

It should be noted that the revisions of the M-to-M program contemplated by this court do not involve a program of forced busing, a remedy which the Act seeks to discourage, but a program which will provide transportation for those students who volunteer to transfer to a school in which their race is in the minority. So long as the school system operates its M-to-M program, this court finds that transportation and other revisions are constitutionally required so that the program will provide equal educational opportunities while helping to eliminate the vestiges of a dual school system in DeKalb County, cf. Morgan v. Kerrigan, supra, 530 F.2d at 413.

Teacher Assignments

This court held in its 1969 order that

> "Race or color shall not be a factor in the hiring, assignment, reassignment, promotion, demotion, or dismissal of teachers and other professional staff members, including student teachers, except that race may be taken into account for the purpose of counteracting or correcting the effect of the segregated assignment of faculty and staff in the old dual system." (Slip opinion at 7.)

The court accordingly required that "[w]herever possible, teachers shall be assigned so that more than one teacher of the minority race (white or Negro) shall be on the desegregated faculty." Id. The defendants have more than complied with this explicit requirement. However, the court also mandated that the

> "County Board shall establish as an objective that the pattern of teacher assignment to any particular school not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school .... [and] shall take steps to assign and reassign teachers and other professional staff members to eliminate the effects of the dual system." (Slip opinion at 8.)

The court finds that the defendants have not taken adequate steps to utilize reassignment of teachers to reduce the racial identifiability of faculty in accordance with the standard set out in Singleton v. Jackson Municipal Separate School District, supra. In Singleton, the Court of Appeals for the Fifth Circuit held that in order to reduce racial identifiability of a faculty, staff should be assigned so that the ratio of black to white teachers in each school is "substantially the same" as such ratio throughout the entire school system. 419 F.2d at 1218.

Defendants ask that the court compare the facts in the instant case with Ellis v. Board of Public Instruction of Orange County, 423 F.2d 203, 205 (5th Cir. 1970), where the court found the school system to be in compliance with Singleton, despite the existence of racial ratios in individual schools twelve percentage points higher than the racial ratio of the entire school system. While the court is aware of the problems inherent in requiring that the teachers at any school be maintained at an exact arbitrary racial ratio, United States v. Wilcox County Board of Education, 494 F. 2d 575 (5th Cir. 1974), the current 40-48% of black teachers in some of the more predominantly black elementary schools does not even "approximate" the 15% system-wide ratio. See Carter v. West Feliciana Parish School Board, 432 F.2d 875, 876 (5th Cir. 1970).

A significant reason for the wide disparity in the racial ratios amongst schools in DeKalb County is the reliance on the replacement process, and the avoidance of reassignments to even out the distribution of faculty. The court finds that this system does not comply with the Singleton standard, nor with this court's 1969 order which required reassignment of teachers to eliminate the effects of the dual school system. Accordingly, reassignment of teachers must be utilized to make the racial ratio of the faculty in individual schools truly substantially similar to the system-wide ratio, Lee v. Macon County Board of Education, supra, slip opinion at 23.

Attendance Zone Changes

In its previous order, this court held that

> "[T]o the extent consistent with the proper operation of the system, the County will, in locating and designing new schools, in expanding existing facilities and in consolidating schools,

do so with the objective of eradicating segregation and perpetuating desegregation."

Plaintiffs contend, however, through a report prepared for the court by the Department of Health, Education and Welfare, that the "DeKalb County School System, in its response to racial transition, ignored its responsibility to affirmatively eradicate segregation and perpetuate desegregation." HEW Report, at 11. Specifically, plaintiffs argue that the school zone changes made by defendants have resulted in racially identifiable schools.

Defendants counter by stating that the increasing number of racially identifiable schools in the southwest section of DeKalb County has been caused not by the zone changes implemented by the board, but by the natural population transition which has occurred in the residential sections of that area. Defendants further argue that having implemented the 1969 desegregation order, they cannot be held responsible for residential patterns that have developed since that order. Defendants rely upon Swann, supra, wherein the court stated

"Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies since the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. This does not mean that federal courts are without power to deal with future problems; but in the absence of a showing that either the school authorities or some other agency of the state has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further inter-

vention by a district court should not be necessary."

Defendants also point to the recent case of Pasadena Board of Education v. Spangler, 44 U.S.L.W. 5114 (June 29, 1976), which involved the subsequent interpretation of a desegregation plan entered by a district court in 1970. The court-approved plan required that no school have a majority of minority students. Within two years of the entry of the order, changes in the residential patterns in the area caused some schools to have a black enrollment in excess of 50%. The Supreme Court found that although the school system had not yet achieved the unitary system contemplated by the above-quoted language from Swann,

> "* * * [T]hat does not undercut the force of the principle underlying the quoted language from Swann. In this case the District Court approved a plan designed to obtain racial neutrality in the attendance of students at Pasadena's public schools. No one disputes that the initial implementation of this plan accomplished that objective. That being the case, the District Court was not entitled to require the School District to rearrange the attendance zones each year so as to ensure that the racial mix desired by the court was maintained in perpetuity." Id. at 5117.

In Pasadena, once the initial desegregation order had been implemented, changes in residential patterns and resulting shifts in the racial makeup of schools were unaffected by any actions taken by school officials, because no official action was taken. It is for this reason that the district court in Pasadena was forbidden from ordering school officials to restructure attendance lines.

Different considerations are relevant, however, when shifts in residential patterns are accompanied by alterations in attendance lines made by school officials. The Supreme Court has held that

> "* * * [A]ny attempt by state or local officials to carve out a new school district from an existing district that is in the process of dismantling a dual school system 'must be judged according to whether it hinders or furthers the process of school desegregation. If the proposal would impede the dismantling of a dual system, then a district court, in the exercise of its remedial discretion may enjoin it from being carried out.'" United States v. Scotland Neck Board of Education, 407 U.S. 484, 489 (1971), quoting Wright v. Council of Emporia, 407 U.S. 451, 460 (1971).

In the instant case new boundary lines were drawn with the building of Cedar Grove elementary and high schools. At the same time, schools in that area experienced substantial changes in their racial composition. This court must look to whether such boundary-line changes had the effect of impeding desegregation in these schools. Of course, such inquiry cannot ignore the racial transition occurring in this area apart from any zone changes.

The court must pursue this examination despite its finding that boundary-line changes were made for the most part to accommodate the new schools which had been built to relieve overcrowding. In determining whether a school board's action is permissible, courts have "focused upon the effect--not the purpose or motivation" of such action on the dismantling of a dual system. "The existence of a permissible purpose cannot sustain an action that

has an impermissible effect." Wright v. Council of Emporia, supra, 407 U.S. at 462.

In applying this test to the facts as found by the court, it is apparent that the redrawing of elementary school lines in southwest DeKalb had some effect upon the perpetuation of a dual system in the county. Over the course of one summer, Clifton went from 30% to 63% black. Surely the influx of black families and departure of white families accounted for some of the increase. But the redrawing of attendance lines along I-285 and the South River must have contributed somewhat to this dramatic increase. Additionally, it must be said that the total effect of the horizontal boundary lines drawn to accommodate these three elementary schools was to ensure that one predominantly white school, Cedar Grove, would remain predominantly white for a number of years.

Although the school board's actions may have had these effects, its zoning decision must also be scrutinized in the context of the circumstances existing at the time and the feasibility and practicality of available alternatives. For it is only the availability of more promising courses of action to dismantle a dual system that "places a heavy burden upon the board to explain its preference for an apparently less effective method." Green v. County School Board, 391 U.S. 430, 439 (1967), Wright v. Council of Emporia, supra, 407 U.S. at 467.

At the time these attendance zone changes were made, the Cedar Grove site had already been chosen, and the choice was made at a time when the racial composition of the area was almost completely white. As it developed, it was the location of this new school, accompanied by a transition in the residential patterns in the area, which had the effect of perpetuating a dual system, because the school site dictated to a large extent the placement of the new attendance lines. The propriety of the selection of

Even so, plaintiffs, supported by HEW, contend that, given the location of the Cedar Grove Elementary School, attendance lines could have been drawn in such a way as not to accentuate the racial identifiability of the schools. HEW's report suggests that since blacks reside primarily north of I-285 and the South River, and most whites are located to the south of those lines, drawing boundary lines vertically, like some of the original lines, as opposed to the horizontal lines chosen by the defendants, would have created more racially balanced zones. However, HEW's report fails to consider the exact location of families south of I-285 and the South River. For with the exception of the predominantly black County Line community, just north of Henry County, most of the population clusters towards the center of this area. The drawing of vertical lines would thus have had little effect upon the racial makeup of the school. In fact, because of the residential patterns in southwest DeKalb as of 1973-74, and because of the location of Meadowview, Clifton and Cedar Grove within those patterns, only the drawing of extremely gerrymandered lines would have resulted in more racially balanced schools. Such gerrymandering would have created large travel distances for students and would have been generally impractical. In light of the circumstances existing at the time these zone changes were made, it cannot be said that such changes were constitutionally impermissible.

The same is largely true with respect to changes in high school attendance zones. The location of the Cedar Grove High School mandated to a certain degree the establishment of a predominantly white school because of the racial composition of the population surrounding Cedar Grove, and two predominantly black schools, because of the residential transitions occurring in that area. The alternative of vertical boundary lines, suggested by HEW, was virtually impossible because Cedar Grove High School is located directly between them.

Plaintiffs and HEW, however, also complain about certain changes that were made after the Cedar Grove school had opened and the area had been rezoned accordingly. As to these changes, there appear to have been alternatives--among them, to make no change at all--and defendants have not adequately met the heavy burden of explaining the alternatives chosen which tended to hinder, rather than further, desegregation. Specifically, the zone changes in 1974 which constricted Gordon to the area north of I-20 and moved Cedar Grove's northern boundary to I-285, with the area in between going to Walker, had the effects of (1) increasing Gordon's already predominantly black population, (2) isolating the Cedar Grove area from the path of residential transition, with Walker serving as a buffer zone, and (3) helping Walker to tip over to a predominantly black school. Defendants justify the Cedar Grove boundary change by demonstrating that 35 out of 43 students removed from Cedar Grove as a result of the rezoning were white. Yet, defendants could clearly see that this area rezoned from Cedar Grove to Walker was in the direct path of residential transition and was becoming increasingly black. Defendants have offered no further justifications for their zone changes.

Another contested boundary line change occurred in 1975 when part of Southwest DeKalb's attendance area was zoned into Cedar Grove to relieve overcrowding in Southwest DeKalb. The zone change split a subdivision down the middle and created traveling distances of up to five-and-a-half miles for some of the rezoned children. HEW points out that, like Cedar Grove, Columbia was also under capacity and a largely white area between I-20, Candler Road and I-285 could have been rezoned from Southwest DeKalb into Columbia. Such a change would have impeded Columbia's transition towards becoming another predominantly black school, and, in addition, the maximum travel distance for a rezoned child would be only two-and-a-half miles. Therefore, in an attempt to

relieve overcrowding in one school, defendants failed to choose an available alternative which would have also furthered desegregation.

There are two problems with a finding by this court that the above boundary changes had the effect of hindering the process of desegregation within the meaning of Wright, supra. First, because of the rapid residential transition occurring throughout this section of the county, and affecting the racial ratios of schools in which no zone changes have been made, it is impossible to determine whether the zone changes in question actually accelerated the transition at one extreme, or whether they had little effect on the process of desegregation which was in fact impeded by a natural process of residential transition. The second problem is that even were the court to find the former to be true and conclude that therefore the boundary changes were impermissible, an injunction against their imposition at this point in time would be meaningless. The percentage of blacks in this area has increased dramatically and, as the HEW report admits,

> "Because of this concentration of black students, we believe consideration of remedies would have to look beyond mere alteration of school zone lines in the area schools." HEW Report, at 11.

Whatever indeterminable effect the aforementioned zone changes have had on the process of desegregation in this portion of DeKalb County, the actions of the defendants in making these changes do not justify the ordering of a remedy which would go beyond the alteration of school zone lines. The court does wish to ensure, however, that any future zone changes as well as the purchase of any new school sites are made so as to have the effect of furthering as opposed to hindering desegregation. Accordingly,

a biracial committee will be established which will, as part of its functions, approve such zone changes and school site purchases. Singleton v. Jackson Municipal Separate School District, supra, 426 F.2d at 1370; Ellis v. Board of Public Instruction, 423 F.2d 203, 207, n.4 (5th Cir. 1970).

O R D E R

For the foregoing reasons, the court hereby ORDERS that:

(1) The M-to-M program be modified so that any student may transfer from a school where his race is in the majority to any other school within the county in which his race is in the minority. Space must be made available in the receiving schools for transferees who shall be given priority for space over other new students, but in no instance shall a transferee displace a student previously enrolled in the receiving school.

(2) Such M-to-M transfers shall be effected by as simple an administrative procedure as possible. The school system will provide M-to-M transfer forms at the student's neighborhood school. The student's parent or guardian must, under usual circumstances, complete the form on or before May 1 of the school year preceding the school year for which the student desires to participate in the M-to-M program. The school system shall provide the student with a copy of the form which shall be presented to the receiving school by the student on the annual registration day.

(3) The school system shall publicize the M-to-M transfer procedure by paid advertisements in local newspapers; news releases to all media; brochures available at each school; and notices placed in school newsletters and newspapers no later than March 15 of each year. Such publicity shall be followed by notices sent to each parent or guardian no later than March 31 of each year.

(4) Any student may exercise a majority-to-minority transfer once during the student's elementary career and once during

the secondary school career. Once a transfer is effected, the transferee need not reapply for the transfer each year. If the student's race becomes a majority in the receiving school, he may (a) remain at the receiving school; (b) return to his neighborhood school; or (c) transfer to another school in which his race does not comprise more than a majority of the student body.

(5) Transportation shall be provided at the expense of the school system to any M-to-M student who so requests and who lives more than one mile from the receiving school. Defendants may seek modification of this provision of the order if, based on the number of students electing to exercise M-to-M transfers and the receiving schools chosen, a workable plan of transportation proves impossible.

(6) These changes in the M-to-M program shall be implemented for transfers beginning with the 1977-78 school term. Students wishing to participate in the program for the remainder of the 1976-77 school term, may transfer to a school which qualifies under the provisions of this order and in which there is space available. Transferees must provide their own transportation for the balance of the 1976-77 school term.

Distribution of Faculty

(7) The ratio of black to white teachers in each school must be substantially similar to the system-wide racial ratio. Defendants are required to reassign teachers with all deliberate speed so that the racial distribution of faculty in all schools approximates the distribution of faculty in the entire school system.

Biracial Committee

(8) A biracial committee shall be established which shall oversee the operation of the M-to-M program as modified by this order. The committee's approval must also be secured on any proposed school zone changes or school site purchases. The committee to be established by this order from names submitted by parties

to this suit. The number of members will be determined by this court and shall consist of no more than 20 nor less than ten members. The membership shall be equally divided between whites and blacks and the chairmanship shall alternate annually between a white and a black chairman. The committee shall make annual reports to the court concerning the functioning of the M-to-M program and any other action taken by the committee on proposed attendance zone changes or school purchase sites.

IT IS SO ORDERED.

This 8th day of November, 1976.

NEWELL EDENFIELD
United States District Judge