

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

FILED

JUL 25 1969

MILLER C. FOSTER, JR., CLERK

SHIRLEY MAE WHEELER, a minor,
by JOSEPH WHEELER, her
Grandfather and next friend,

Plaintiff,

vs.

SCHOOL DISTRICT NUMBER 3,
CLARENDON COUNTY, SOUTH
CAROLINA, et al,

Defendants.

CIVIL ACTION NO. 8753

O R D E R

Minor plaintiff, in August of 1965, filed her complaint in this forum seeking redress under the provisions of 42 U.S.C.A. 1983 for the alleged deprivation of her civil rights. She demanded her rights, privileges and immunities under the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution. Alleging the existence of a compulsory bi-racial school system in School District Number 3, Clarendon County, she asked for injunctive relief against defendants, for herself and others of her class similarly situated. She specified the administrative practices offensive to her right of equal educational opportunity and her rights against discrimination on account of her race. She asked that the court direct the production of a desegregation plan of school administration, for other appropriate relief, for costs and counsel fees.

The defendants answered, pleading the virtues of a "freedom-of-choice" plan or process. The entire effort of the school district, as impotent as it is, may be classified as "freedom-of-choice foot-dragging."

By Order of March 28, 1967, this court directed the defendants to comply with the provisions of the Order of Chief Judge J. Robert Martin, Jr., in Whittenberg v. Greenville County School District (D.C. S.C. No. 4396, March 10, 1967, unreported). The Order further provided:

The hearing today involved plans for 1967-68. It is the direction of this court that plans for future years include the minimums here emphasized plus any further refinements which may be necessary to update the school desegregation plans and efforts in order to comply with the decrees of the United States Supreme Court, the United States Fourth Circuit Court of Appeals and this court.

In the course of time, defendants failed to carry out the mandates of Whittenberg or of the Supreme Court of the United States or of the United States Fourth Circuit Court of Appeals. Voluntarily, and not at the insistence of plaintiff, nor upon request of the United States Department of Justice, the United States Department of Health, Education and Welfare, or any of the various "sob-sister" organizations that feed on racial differences, was the case pressed before this court. At the direction of the Chief Judge of this court, the court, sitting en banc held a combined hearing in all of the pending school cases and directed, by Order, that all defendant school districts should update their methods of operation so as to conform with the rulings and direction of the United States Supreme Court in Green v. Kent County School Board (1968), 391 U.S. 430. It is apparent that the updating has not been accomplished. The Department of Health, Education and Welfare makes some explanation in its recommendations which will hereinafter be more fully discussed. There has not been that elimination of a dual school system, based on race, which appellate court decisions direct.¹

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¹ Brown v. Board of Education, 347 U.S. 483; Green, supra; Cooper v. Aaron, 358 U.S. 1; Watson v. City of Memphis, 373 U.S. 526; Goss v. Board of Education, 373 U.S. 683; Griggin v. County School Board, 37 U.S. 218; Calhoun v. Latimer, 377 U.S. 263; Bradley v. School Board, 382 U.S. 103; Rogers v. Paul, 382 U.S. 198; Ramey v. Board of Education, 391 U.S. 433; Monroe v. Board of Commissioners, 391 U.S. 450. Also: Wheeler v. Durham City Board of Education, 309 F.2d 630 (4th Cir. 1962); Buckner v. County School Board of Green County, 332 F.2d 452 (4th Cir. 1964); Coppege v. Franklin County Board of Education, 273 Supp. 289 aff'd 394 F.2d 410 (E.D. N.C. 1967); Singleton v. Anson County Board of Education, 387 F.2d 349 (4th Cir. 1967).

By Order filed March 31, 1969, the District Court of South Carolina, sitting en banc directed that all of 22 named school districts submit to the Office of Education, United States Department of Health, Education and Welfare certain proposals. These included existing methods of operation, along with proposed changes. They were each and all directed to develop, in conjunction with the experts of the Office of Education, an acceptable plan of operation. Provisions were made for placing the plans into immediate effect. If no plan was agreed upon within 30 days, the Department of Health, Education and Welfare was to submit a plan which, absent some special showing by the school district, the court would adopt.

In this case there is no agreement on a plan. The Department of Health, Education and Welfare offered a plan for school year 1969-70 which would accomplish total integration, and an alternate plan which would allow an orientation and preparation period for the year 1969-70 and a complete desegregation plan for 1970-71. The School District disagreed, and private counsel for plaintiffs disagreed, and, after a conference at Columbia, were asked to consult again with the Department of Health, Education and Welfare and to advise the court as to the possibility of agreement. On July 15, 1959, counsel met in open court at Columbia and again the School District and the plaintiffs voiced disagreement. The District has not, as yet offered a plan, disagrees with that offered by the Department of Health, Education and Welfare.

Plaintiffs made the following response to the proposed plan of the Department of Health, Education and Welfare:

H.E.W.'s report shows that freedom of choice is not an acceptable plan of desegregation in Clarendon County School District No. 3. During

the 1968-69 school year, 875 Negro and 769 white students were enrolled in the school district. Students were assigned pursuant to a freedom of choice plan. Only 5 Negro students, or approximately .6 per cent of all Negro students in Clarendon County No. 3 attended white schools. No white students attended Negro schools. * * * * These results were far worse than those condemned in Green v. County School Board, 391 U.S. 430 (1968), where 15 per cent of New Kent County's Negro students attended white schools.

H.E.W.'s report * * * * recommends either of two plans whereby a unitary system would be achieved in the 1969-70 school year. But * * * Addendum A proposes an alternate plan, the effect of which is to provide an "interim step" to desegregation for 1969-70 and to delay implementation of the effective plans until the 1970-71 school year.

The alternate plan described in Addendum A apparently contemplates the continued use of freedom of choice. The only provisions for desegregation beyond freedom of choice are the assignment of Negro students to white schools "to fill these schools to capacity" and the "use of teachers crossing racial lines . . . as a catalyst." * * * * The thrust of this alternate plan appears to be a human relations program to prepare the Clarendon community to accept desegregation. The alternate plan is supposed to "enhance successful implementation of the terminal plan." * * * * No explanation is proffered for the delay in implementing the terminal plan. This alternate plan should be rejected. Green v. County School Board, 391 U.S. 430 (1968), requires that school desegregation plans "promise realistically to work now," not a year from now. The Clarendon community has had 15 years to learn to accept desegregation. If the inevitability of desegregation has not yet been accepted, an additional year will be of no help. Furthermore, no showing has been made that the administrative problems in reorganizing the school system are so great as to again defer the fulfillment of long delayed constitutional rights. We grant that the implementation of a full desegregation plan for the 1969-70 school year may require a hard summer's work for school officials. It is much to be preferred, however, that school officials bear this burden than that Negro school children again attend segregated schools.

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In considering the issue of desegregation of this School District the court had before it the following facts (developed by H.E.W., included in that agency's report, and not disputed):

FACILITIES

The Clarendon School District #3 is located in the northern part of Clarendon County. This is one of three school districts within the County.

The school district is administered by the District Superintendent. The students are served by three (3) schools: (1) East Clarendon High School (grades 7-12) located in Turbeville, predominantly white; (2) East Clarendon Elementary (grades 1-6), located in Turbeville, predominantly white; (3) Walker-Gamble (grades 1-12), located in the New Zion community, Negro school.

The total student population was 1661 at the date of this survey. The student population was listed as 769 white and 892 Negro.

All schools are state accredited. The present conditions, however, have failed to provide for comprehensive vocational and academic offerings. The course offerings are typical for small rural school districts.

The buildings and school sites were generally well maintained and clean. A general description of each attendance center follows:

East Clarendon High - Located on a seven acre site in Turbeville, adjoining the East Clarendon Elementary ten acre site, the thirteen year old brick structure provides space for grades 7-12. Administrative, library, and health facilities are provided in this building. The cafeteria provides adequate space for approximately 180 students. There are approximately 650 students, grades 1-12, served daily in the cafeteria. The gymnasium compares favorably with the Walker-Gamble facility in size and seating capacity. Space is provided for vocational-agricultural and band on this site.

Walker-Gamble - This facility houses grades 1-12 and is located on a twelve acre site, approximately eight miles southwest of Turbeville. The one-story, modern, brick building provides 45,255 square feet of space. The sixteen year old structure was improved by the addition of recent classrooms, shop, and gymnasium. The elementary students are served by a portable library and one portable, housing a special education class. The gymnasium, shop area, and band facilities are housed in a separate complex. The high school library has office and processing space. The home economics department provides a small 'home living' area.

East Clarendon Elementary - This thirty two year old brick structure, two stories high, is located on a ten acre site in Turbeville. Space is provided for remedial reading and regular subjects for grades 1-6 in this plant. A small area is provided for administrative functions.

The composite building information form shows the present faculty composition. The classroom teaching staff was 67, with the majority being white. One white teacher was fulltime in

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the Walker-Gamble School. The survey did not show any Negro teachers in the predominantly white schools in Turbeville.

COMPOSITE BUILDING INFORMATION

1968 - 69 ASSIGNMENTS

Name of School	Grades	Capacity		Students			Staff		
		Perm.	W.Ports.	W	N	T	W	N	T
East Clarendon High	7-12	390	450	349	3	352	18	0	18
Walker-Gamble	1-12	900	930		887	887	1	33	34
East Clarendon Elem.	1-6	570	570	420	2	422	15	0	15

SOCIO ECONOMIC CONDITIONS

The land area of Clarendon County is 599 square miles. In 1960 the population of the county was 29,490. This represents a net decrease of -8.5% from the 1950 population (32,215). The natural population increase during this 10-year period was 27.9%, which did not stabilize the population due to a net migration of -36.4%.

Adding to the decline in population was a decrease in births from 1,005 in 1954 to 702 in 1964, an increase in deaths from 261 in 1954 to 306 in 1964, and a decrease in the proportion of Negroes in the county from 70.9% in 1950 to 68.2% in 1960.

Census statistics also show that while the population remains predominantly rural, the percentage is declining. Between 1950 and 1960 the urban population increased from 8.6% to 13.3% of the total population. Most of this non-rural population is clustered in Manning. This population trend from rural to urban coincides with a decline in the number of farms from 2,584 in 1959 to 1,906 in 1964, and a decline in the proportion of all land in farms from 60.8% to 55%.

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Of the 8,673 employed on an average monthly basis for 1960, 10.7% were in manufacturing and 20% were in white collar positions.

In 1960 the median income was \$1,945, compared with \$998 in 1950. Sixty-six and seven tenths percent of families had incomes under \$3,000 in 1960, while 2.5% had incomes of \$10,000 or more. For the year 1960, state and nationwide percentages for incomes from under \$3,000 were 32.1 and 21.5 respectively.

In 1960, 28.9% of the housing units were sound with all plumbing facilities. Of the 6,193 occupied housing units, 44.3% were owner occupied.

Between 1950 and 1960 the median school years completed for persons 25 years or older increased from 5.9 to 7.1. The latter figure compares with the national median of 10.6 years for the same age span level. At the state level it compares with the state median of 8.7 years for the total population, 10.3 years for the white population and 5.9 years for the Negro population. In 1960, 33.5% of the population had completed less than 5 years of school, compared with 42.8% in 1950, while 18% completed high school or more in 1960 compared to 9% in 1950. The total school enrollment in 1960 for persons 5 to 34 years old was 9.029.

Local government expenditures for 1962 show that \$1,337,000 was spent for education, \$99,000 for highways, \$14,000 for public welfare, \$468,000 for health and hospitals and \$78,000 for police protection. Property taxes, per capita, were \$17, compared with the national average of \$125 for 1965-66.

Land Area: 599 Square Miles

POPULATION:

Total, 1950:	32,215	Change: 1950-60:	-8.5%
Total, 1960:	29,490	Net migration:	-36.4%
Urban, 1950:	8.6%	Natural Increase:	27.9%
1960:	13.3%		
Negro, 1950:	70.9%		
1960:	68.2%		

Births, Total:	Deaths, Total:
1954: 1,005	261
1964: 702	306

EMPLOYMENT:

Total		
Manufacturing, 1950:	799	1960: 10.7%
White Collar, 1960:	20%	

AGRICULTURE:

	Total	Proportion of All	Farms under	Farms 10,000
Total Farms	Acreage	Land in Farms	10 Acres	Acres or More
1959: 2,584	233,000	60.8%		
1964: 1,906	211,000	55.0%	211 (11%)	26 (8.0%)

INCOME OF FAMILIES:

Median, 1950:	\$998	1960:	\$1,945
Under \$3,000, 1960:	66.7%		
\$10,000 and Over, 1960:	2.5%		

HOUSING UNITS, 1960:

Sound with all plumbing facilities:	28.9%
Total occupied units:	6,193
Owner occupied:	44.3%

LOCAL GOVERNMENT FINANCES, 1962:

Property taxes, per capita	\$	17
Expenditures: Education		1,337,000
Highways		99,000
Police Protection		78,000
Health and Hospitals		468,000
Public Welfare		14,000

EDUCATION:

Persons 25 years or older:

Median school years completed, 1950:	5.9%
1960:	7.1
Completed less than 5 years of school,	
1950:	42.8%
1960:	33.5%
Completed high school or more, 1950:	9.0%
1960:	18.0%

Persons 5 to 34 years old:

School enrollment, 1960: 9,029

FINANCIAL REPORT

The annual expenditures for 1968-69 by Clarendon County School District #3 is established to be \$489,741.01. Revenue from local sources is

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\$87,697.01; from state sources, \$300,207.59; from federal sources, \$101,836.41. The present total indebtedness of the school system is \$15,000.00.

Capital outlay from local sources amounted to \$2,047.07. The system received \$28,724.49 in capital outlay funds from federal sources. No capital outlay money was received from the state.

The total property evaluation is \$1,299,580.00. There is no bonded indebtedness at this time. The rate of assessment on property is 76 mills.

There are 35 Negro and 34 white teachers employed by the school system. Thirty-nine percent hold A certificates, forty-eight percent hold B certificates, and thirteen percent hold C+ permits. The supplement given by the district to teachers varied for \$270 to \$450 per year. The supplement is paid according to the following scale:

A certificate scoring over 600 on teacher exam	\$450
A certificate scoring under 600 on teacher exam	360
B certificate	270
C certificate and under	None

The East Clarendon High School and the Walker Gamble High School are accredited by the South Carolina Accrediting Agency. The remaining schools are not accredited.

Present School Organization:

The present school organization consists of the District School Superintendent, his office staff, and three (3) separate school building organizations. Student enrollment for the district is shown in Chapter I, Composite Building Information.

The Proposed Program:

There has been very little meaningful school desegregation in the Clarendon School District #3. With a 54% majority Negro school population, the white community has the attitude that complete desegregation would upsurp the educational and social standards of the district. School leaders are experiencing frustration in attempting to develop a suitable plan of desegregation. One of the major problems faced is the desegregation of all black schools.

There has been an absence of substantial progress toward desegregation of the District's schools. It is apparent that the white community strongly resists, while the Negro community makes little effort. When this court reviewed the poor effort and poorer

response to the directives of the United States Supreme Court and the United States Fourth Circuit Court of Appeals, its first impulse was to order a zoning to accomplish complete mixing of grades 1-6.² The court was persuaded to allow an interim plan for the school year 1969-70 and direct a terminal plan for 1970-71.

For the school year 1969-70, the following interim plan (recommended for most part by H.E.W.) is adopted and directed:

1. Staff - The assignment of additional professional staff members across racial lines, e.g., both races, should be accomplished during the 1969-70 school term.

The system's policies governing desegregation of the professional staff should be formulated early during the 1969-70 school term.

- a. These policies should be distributed to all employees immediately after publication.
- b. Staff members charged with the responsibility for implementation of these policies should make periodic reports to the governing board as to the effectiveness of personnel policies and the achievements toward the ultimate goal in staff desegregation.
In-serve activities shall be scheduled prior to the opening of the 1969-70 school term for all teachers for at least 4 days. The in-service program should deal with the positive effects of desegregation understanding students with different socio-cultural backgrounds, problems in crossing racial lines, etc. This envisions the use of teachers crossing racial lines in 1969-70 as a catalyst. Hopefully this would encourage other professional staff members to form bi-racial teams as the school year progresses. Bi-racial professional teams may:
 - (1) assist in implementing the student interaction exchange proposed in this Order.

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² The general conditions would be controlled by drawing a line, with a northwest-southeast axis, midway between East Clarendon Elementary and Walker Gamble. All children, grades 1-6, north and east would attend East Clarendon, all others in grades 1-6 would attend Walker Gamble.

(2) explore mutual professional interests.

(3) aid in implementing the local personnel policies.

(2)

FACULTY AND STAFF

The formulation and implementation of equitable personnel policies are a vital part of any desegregation plan. The visibility of both Negro and white personnel at each of the many levels of employment is essential to the full accomplishment of desegregation. In the absence of clear policy and diligent adherence to the principle of equality in procurement, assignment, and promotion of all personnel, the positive effects of school desegregation on both white and Negro students may be reduced.

It is directed that the following policy statements be adopted and implemented:

1. Professional staff will be hired, promoted, paid, demoted and dismissed without regard to race, color, or national origin.
2. Full use will be made of properly certified white and Negro teachers, assigning members of both races to regular professional positions in each school.
3. In any instance in which a qualified administrator, supervisor or teacher is displaced as a result of desegregation, no such vacancy should be filled until all qualified dismissed personnel have been assigned. Professional staff should not be assigned to positions for which they are not properly certified or be required to take a leave absence to undergo retraining at their personal as a condition of employment.
4. The salary of no employee should be reduced as a result of the implementation of any desegregation plan.
5. In the event that it becomes necessary to reduce the total number of staff because of desegregation, the qualifications of all professionals should be evaluated in selecting those to be released and the final choice will be made without regard to race, color, or national origin.
6. In the event that teachers are dismissed after an objective evaluation because of desegregation, the district should be prepared to demonstrate through the use of objective criteria that such dismissals did not occur because of race, color, or national origin.

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7. All teachers should be integrated into the regular school program and encouraged to participate in all activities of the school.
8. Personnel policies to facilitate staff desegregation should be formulated and distributed to all employees.
9. The staff of each school should approximate the overall ratio between white and Negro teachers in the district.

(3) TRANSPORTATION

All vestiges of a dual transportation system should be eliminated and a unitary system effected which makes no dual distinction among transported pupils. Bus routes should, in most cases, pick up all students living on the route regardless of school attended.

(4) TRANSFER POLICY

Where a plan calls for the establishment of school attendance areas, a student should be permitted to transfer from a school in which his race is in a majority to a school in another area in which his race is in a minority.

(5) SCHOOL CONSTRUCTION AND SITE SELECTION

The location of school sites and the construction of new facilities are significant factors in implementing any approach to desegregation. It is directed that:

School officials, to the extent consistent with proper operation of the school system as a whole, shall locate any new school and substantially expand any existing school with the objective of eradicating the vestiges of the dual system.

(6) COMPREHENSIVE APPROACH TO SCHOOL DESEGREGATION

Any approach to school desegregation should contain several basic elements as well as the physical plan to desegregate. These elements include:

1. A clear statement of board policy--written and widely disseminated--designed to clarify the board's position and to establish general guidelines covering school desegregation.
2. An active program of community information and involvement including the establishment of a bi-racial advisory committee of lay people and educators to help the board evaluate and, if necessary, redesign the district's approach to desegregation.

3. An extended in-service program for administrators and staff to continually analyze their progress and up-grade teacher competencies in light of desegregation and concomitant educational problems.
 4. Provision for administrators to visit and interact with their peers in other districts through area institutes and seminars.
 5. Preparation of all the students within the district to be well aware of the situation, to participate in solving problems peculiar to students and provided the opportunity to interact with members of the opposite race through organizations such as human relations councils prior to and following implementation of the plan.
- (7) The School District will arrange, in all grades, for transfer of teachers of same subjects to other schools of opposite racial balance, so that, at the end of the school year, each teacher will have an accumulation of four (4) weeks teaching in another school of opposite racial balance.

For the school year 1970-71, either Plan A or Plan B, as proposed by the Department of Health, Education and Welfare shall be put into effect:

PLAN A

The following proposal is directed for Clarendon District #3. This plan calls for a terminal date of 1969-70 (originally).

East Clarendon High School, with a present capacity of 390, will house grades 9-12. East Clarendon Elementary, with a capacity of 570, will house grades 6-8. Walker-Gamble school, with a capacity of 900, will house grades 1-5.

PLAN B

East Clarendon High School will remain the same as Plan A. East Clarendon Elementary, with capacity of 570, will house grades 1-3. Walker-Gamble, with capacity of 900, will house grades 4-8.

The school trustees shall file with the Clerk of this Court, on or before November 15, 1969, a designation of the Plan (A or B) they intend to effect in 1970-71.

All previous Orders of this court are incorporated by reference herein insofar as same are not inconsistent herewith. This Order shall take precedence over all other Orders heretofore issued.

AND IT IS SO ORDERED.


ROBERT W. HEMPHILL
United States District Judge

Columbia, South Carolina

July 25, 1969.

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IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

FILED

NOV 17 1969

MILLER C. FOSTER, JR., CLERK

SHIRLEY MAE WHEELER, a minor,)
by JOSEPH WHEELER, her)
Grandfather and next friend,)

Plaintiff,)

CIVIL ACTION NO. 8753

vs.)

SCHOOL DISTRICT NUMBER 3,)
CLARENDON COUNTY, SOUTH)
CAROLINA, et al,)

Defendants.)

The Defendants, in compliance with the Order of The Honorable Robert W. Hemphill, United States District Judge for the District of South Carolina, dated July 25, 1969, directing that the school trustees file with the Clerk of this Court on or before November 15, 1969, a designation of the plan (A or B) they intend to effect in 1970-71, the Board hereby advises the Court that they are working toward the implementation of the Order under Plan B, designated as such on page 13 of the Order heretofore referred to.

James M. Morris
James M. Morris
Attorney for Defendants

November 14, 1969.