

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

FILED

SEP 28 1967

R. C. DOBSON, CLERK

By
Deputy Clerk

ANTHONY T. LEE and HENRY A. LEE, by
Detroit Lee and Hattie M. Lee, their
parents and next friends; PALMER SULLINS,
JR., ALAN D. SULLINS and MARSHA MARIE
SULLINS, by Palmer Sullins and Della D.
Sullins, their parents and next friends;
GERALD WARREN BILLES and HELOISE ELAINE
BILLES, by I. V. Billes, their father and
next friend; WILLIE M. JACKSON, JR., by
Mabel H. Jackson, his mother and next
friend; WILLIE B. WYATT, JR., and BRENDA
J. WYATT, by Willie B. Wyatt and Thelma A.
Wyatt, their parents and next friends;
NELSON N. BOGGAN, JR., by Nelson Boggan, Sr.,
and Mamie Boggan, his parents and next
friends; WILLIE C. JOHNSON, JR., BRENDA
FAYE JOHNSON and DWIGHT W. JOHNSON, by
Willie C. Johnson and Ruth Johnson, their
parents and next friends, and WILLIAM H.
MOORE and EDWINA M. MOORE, by L. James
Moore and Edna M. Moore, their parents and
next friends,

Plaintiffs,

UNITED STATES OF AMERICA,

Plaintiff-Intervenor
and Amicus Curiae,

vs.

CIVIL ACTION
NO. 604-E

MACON COUNTY BOARD OF EDUCATION, MADISON
DAVIS, Chairman; JOHN M. DAVIS, B. O. DUKES,
F. E. GUTHRIE, and FRANCES (MRS. J. R.)
RUSH, and C. A. PRUITT, Superintendent of
Schools of Macon County, Alabama; LURLEEN
BURNS WALLACE, in her capacity as Governor
of the State of Alabama, and as President
of Alabama State Board of Education;
ALABAMA STATE BOARD OF EDUCATION; ERNEST
STONE, Secretary and Executive Officer of
Alabama State Board of Education; JAMES D.
NETTLES, ED DANNELLY, MRS. CARL STRANG,
FRED L. MERRILL, W. M. BECK, VICTOR P.
PCOLE, W. C. DAVIS, CECIL WORD and HAROLD
C. MARTIN, as members of Alabama State
Board of Education,

Defendants.

MOTION FOR FURTHER RELIEF

PLAINTIFFS PRAY THAT THE COURT ENTER AN ORDER IMPLEMENTING ITS JUDGMENT AND DECREE OF MARCH 22, 1967 BY DECLARING UNCONSTITUTIONAL ACT No. 285, SENATE BILL 596 ALABAMA ACTS, AND ACT No. 266 SENATE BILL 324 ALABAMA ACTS, AND BY RESTRAINING THE ENFORCEMENT OF SAID ACTS (A COPY OF EACH OF SAID ACTS IS ATTACHED HERETO AS AN APPENDIX). IN SUPPORT OF SAID MOTION, PLAINTIFFS REPRESENT AND SHOW UNTO THE COURT THE FOLLOWING:

1. ON MARCH 22, 1967 THIS COURT ORDERED THE DEFENDANTS TO EXERCISE THEIR POWERS OVER PUBLIC EDUCATION IN THE STATE OF ALABAMA IN SUCH A WAY AS TO EFFECTUATE, RATHER THAN DEFEAT, DESEGREGATION OF THE PUBLIC SCHOOLS OF THE STATE (267 F. SUPP. 458). AMONG OTHER THINGS, THE DEFENDANTS WERE ORDERED TO HENCEFORTH ASSIST AND ENCOURAGE FACULTY DESEGREGATION IN THE LOCAL SCHOOL SYSTEMS THROUGHOUT THE STATE (DECREE, PARAGRAPH 11; 267 F. SUPP. AT 481). THE COURT STATED IN ITS OPINION (267 F. SUPP. AT 473):

AS IN OTHER AREAS, SOME OF WHICH HAVE ALREADY BEEN DISCUSSED, DEFENDANTS HAVE ENDEAVORED TO THWART AND, WITH CONSIDERABLE SUCCESS, HAVE THWARTED EFFORTS TOWARD IMPLEMENTATION OF THE CONSTITUTIONAL REQUIREMENT TO ELIMINATE FACULTY AND STAFF SEGREGATION IN THE PUBLIC SCHOOL SYSTEM OF ALABAMA. THE GOVERNOR'S LEGAL ADVISOR WAS INDEED CORRECT WHEN HE DECLARED THAT, 'IT (IS). . . THE PUBLIC POLICY OF THE STATE THAT NEGRO TEACHERS NOT TEACH WHITE CHILDREN' . . . DEFENDANTS, THROUGH THE USE OF PRESSURES, SOME OF WHICH HAVE HEREIN BEEN OUTLINED, HAVE REQUIRED LOCAL BOARDS TO CONFORM TO THEIR VIEWS ON FACULTY AND STAFF SEGREGATION IN THE SCHOOL SYSTEM.

IN ADDITION, THE COURT INVALIDATED THE THEN LATEST VERSION OF THE ALABAMA TUITION GRANT STATUTE (DECREE, PARAGRAPH X; 267 F. SUPP. AT 485).¹ THE COURT HELD THAT THE TUITION GRANT STATUTE "IS BUT ANOTHER ATTEMPT OF THE STATE OF ALABAMA TO CIRCUMVENT THE PRINCIPLES OF BROWN BY HELPING TO PROMOTE AND FINANCE A PRIVATE SCHOOL SYSTEM FOR WHITE STUDENTS NOT WISHING TO ATTENDING PUBLIC SCHOOLS ALSO ATTENDED BY NEGROES" (267 F. SUPP. AT 476).

¹ CODE OF ALABAMA, TITLE 52, SECTION 61 (8) (TUITION GRANT STATUTE, No. 687, APPROVED SEPTEMBER 1, 1965).

2. THE HONORABLE LURLEEN B. WALLACE, GOVERNOR OF THE STATE OF ALABAMA, RESPONDED TO THIS COURT'S DECISION IN AN ADDRESS TO THE ALABAMA LEGISLATURE ON MARCH 30, 1967 BY STATING:

WE MUST RESIST THIS DECREE IN EVERY WAY
POSSIBLE--AND USE NOT ONLY OUR BEST EFFORTS,
BUT THE EFFORTS OF ALL ALABAMIANS.

3. SUBSEQUENT TO MARCH 30, 1967, THE HONORABLE LURLEEN B. WALLACE CAUSED TO BE INTRODUCED INTO THE ALABAMA LEGISLATURE ACTS 266-285 WHICH HAVE THE SOLE PURPOSE AND EFFECT OF FRUSTRATING AND DEFEATING THIS COURT'S DECISION OF MARCH 22, 1967.

4. ACT No. 285 REQUIRES

"ALL STUDENTS, ACTING THROUGH THEIR PARENT OR
GUARDIAN . . . TO EXERCISE A CHOICE . . . OF THE
RACE OF THE TEACHER DESIRED."

THE PRESCRIBED CHOICE FORM MUST BE EXECUTED PRIOR TO THE BEGINNING OF THE SCHOOL YEAR 1967-68 WHICH BEGINS SEPTEMBER 7, 1967. THE HONORABLE LURLEEN B. WALLACE IS REQUIRED TO "TAKE SUCH STEPS AS ARE NECESSARY TO SEE THAT NO STATE FUNDS ARE MADE AVAILABLE" TO LOCAL SCHOOL BOARDS WHICH DO NOT REQUIRE THEIR STUDENTS TO CHOOSE THE RACE OF THEIR TEACHERS, AND TO "TAKE SUCH ADMINISTRATIVE ACTION AS IS DEEMED NECESSARY TO ACCOMPLISH THE REQUIREMENTS OF THIS ACT."

APART FROM ITS OBVIOUS INCOMPATIBILITY WITH THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT, ^{ACT No. 285} HEREIN REFERRED TO AS THE TEACHER CHOICE ACT, COULD NOT BE MORE OBVIOUS IN ITS DESIGN TO THWART THIS COURT'S DECISION OF MARCH 22, 1967. PARAGRAPH VI OF THIS COURT'S DESEGREGATION PLAN EXPLICITLY PROVIDES (267 F. SUPP. AT 489):

RACE OR COLOR WILL 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 WILL BE TAKEN INTO
ACCOUNT FOR THE PURPOSE OF CORRECTING THE
EFFECT OF THE PAST SEGREGATED ASSIGNMENT OF
TEACHERS IN THE DUAL SYSTEM.

IT CANNOT BE SERIOUSLY SUGGESTED THAT THE PURPOSE OF THE TEACHER CHOICE ACT IS TO CORRECT THE EFFECTS OF PAST FACULTY SEGREGATION. RATHER, IT CONSTITUTES THE MOST RECENT--AND RECKLESS--FORM OF "DRAMATIC INTERFERENCE WITH LOCAL EFFORTS TO DESEGREGATE PUBLIC

SCHOOLS" (267 F. SUPP. AT 470).

5. NO DIFFERENCE OF ANY LEGAL SIGNIFICANCE EXISTS BETWEEN ACT NO. 266 HEREIN REFERRED TO AS THE TUITION GRANT BILL AND THE TUITION GRANT STATUTE INVALIDATED BY THIS COURT'S DECREE OF MARCH 22, 1967; FOR ACT NO. 266 WAS NONETHELESS BORN OF THE EFFORT TO DISCRIMINATE AGAINST NEGROES.

THE TUITION GRANT BILL REQUIRES GOVERNOR WALLACE TO APPOINT THREE PERSONS TO THE ALABAMA FINANCIAL ASSISTANCE COMMISSION, WHICH IS ESTABLISHED BY THE ACT TO ADMINISTER THE TUITION GRANTS. "(A)NALYZED IN THE HISTORICAL CONTEXT WHICH GAVE RISE TO ITS ENACTMENT," THE TUITION GRANT BILL MAKES IT "UNMISTAKABLY CLEAR THAT THE CONCEPT OF TUITION GRANTS TO STUDENTS WISHING TO ATTEND PRIVATE SCHOOLS IN ALABAMA WAS BORN OF AN EFFORT TO RESIST AND FRUSTRATE IMPLEMENTATION OF THE BROWN DECISION."

AS THE COURT OBSERVED IN ITS OPINION OF MARCH 22, 1967,

"IT IS NOW BECOMING APPARENT THAT THE STATE OF ALABAMA IS ATTEMPTING TO MAKE A CONCERTED EFFORT TO ESTABLISH AND SUPPORT A SEPARATE AND PRIVATE SCHOOL SYSTEM FOR WHITE STUDENTS. TWICE IN LESS THAN THREE YEARS THIS COURT HAS HAD TO STRIKE DOWN TUITION GRANT PROVISIONS DESIGNED TO ACHIEVE THIS END." (267 F. SUPP. AT 477).

ACT NO. 266 CALLS FOR THE THIRD--AND HOPEFULLY THE LAST--STRIKE.

PLAINTIFFS FURTHER AVER AND SHOW UNTO THE COURT THAT THE AVERT, WILLFUL, DELIBERATE, AND CONTINUOUS EFFORTS OF THE DEFENDANTS, AND OTHERS IN ACTIVE CONCERT AND PARTICIPATION WITH THEM, TO MAINTAIN RACIALLY SEGREGATED PUBLIC EDUCATION IN THE STATE OF ALABAMA IS CONTRIVED AND DESIGNED TO INFLUENCE, AND HAS THE EFFECT OF INFLUENCING THE CHOICE OF SCHOOLS BY NEGRO STUDENTS, TO THE EXTENT THAT THE FREEDOM OF CHOICE PLANS APPROVED BY THIS COURT HAVE BECOME A "FANTASY."

AS A DIRECT AND PROXIMATE RESULT OF THE EFFORTS OF THE DEFENDANTS AS AFORESAID, PLAINTIFFS AND MEMBERS OF THE CLASS THEY REPRESENT ARE DETERRED, THROUGH FEAR OF REPRISALS FROM THE EXERCISE OF FREE AND UNINHIBITED CHOICE. THE FREEDOM OF CHOICE PLAN THEREFORE DOES NOT MEET THE CONSTITUTIONAL MANDATE OF THE FOURTEENTH AMENDMENT.

WHEREFORE PLAINTIFFS RESPECTFULLY PRAY:

1. THAT THIS COURT DECLARE UNCONSTITUTIONAL ACT NO. 266 OF THE

LEGISLATURE OF THE STATE OF ALABAMA.

2. THAT THIS COURT DECLARE UNCONSTITUTIONAL ACT No. 285 OF THE LEGISLATURE OF THE STATE OF ALABAMA.

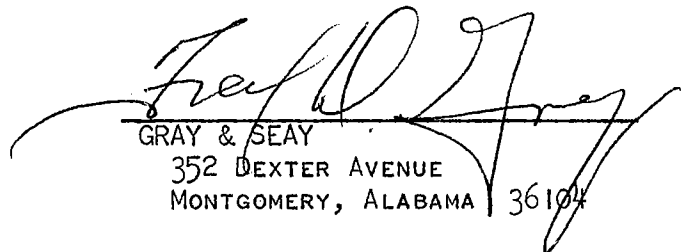
3. THAT THIS COURT ENTER A PRELIMINARY AND PERMANENT INJUNCTION RESTRAINING AND ENJOINING DEFENDANTS, THEIR SERVANTS, AGENTS, EMPLOYEES, AND ALL PERSONS IN ACTIVE CONCERT AND PARTICIPATION WITH THEM FROM ENFORCING ACT No. 266 OF THE LEGISLATURE OF THE STATE OF ALABAMA, OR PERFORMING ANY ACT WITH THE PURPOSE AND EFFECT OF IMPLEMENTING ACT No. 266.

4. THAT THIS COURT ENTER A PRELIMINARY AND PERMANENT INJUNCTION RESTRAINING AND ENJOINING DEFENDANTS, THEIR SERVANTS, AGENTS, EMPLOYEES, AND ALL PERSONS IN ACTIVE CONCERT AND PARTICIPATION WITH THEM FROM ENFORCING ACT No. 285 OF THE LEGISLATURE OF THE STATE OF ALABAMA, OR PERFORMING ANY ACT WITH THE PRUPOSE AND EFFECT OF IMPLEMENTING ACT No. 285.

5. THAT THIS COURT ENTER A PRELIMINARY AND PERMANENT INJUNCTION ENJOINING DEFENDANTS, THEIR SERVANTS, AGENTS, EMPLOYEES, AND ALL PERSONS IN ACTIVE CONCERT AND PARTICIPATION WITH THEM FROM FAILING TO PERFORM ANY ACT TO UNDO ANY ACTIONS TAKEN PURSUANT TO ACTS No. 266 AND 285.

6. THAT THIS COURT FORMULATE AND REQUIRE DEFENDANTS TO ADHERE TO A PLAN FOR THE DESEGREGATION OF THE PUBLIC SCHOOL SYSTEM OF THE STATE OF ALABAMA WHICH MEETS THE CONSTITUTIONAL MANDATE OF THE FOURTEENTH AMENDMENT.

RESPECTFULLY SUBMITTED,


GRAY & SEAY
352 DEXTER AVENUE
MONTGOMERY, ALABAMA 36104

JACK GREENBERG
MELVYN ZARR
CHARLES H. JONES, JR.
10 COLUMBUS CIRCLE
NEW YORK, NEW YORK 10019

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON SEPTEMBER 2, 1967, I SERVED A COPY OF
THE FOREGOING MOTION FOR FURTHER RELIEF AND APPLICATION FOR RESTRAINING
ORDER UPON EACH OF THE ATTORNEYS OF RECORD LISTED BELOW BY UNITED
STATES MAIL, POSTAGE PREPAID:

HON. JOHN DOAR
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION
U. S. DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

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U. S. DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

MR. ST. JOHN BARRETT
HEALTH, EDUCATION AND WELFARE
U. S. DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

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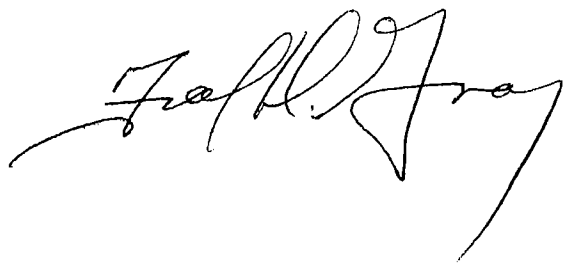
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JASPER, ALABAMA

REID B. BOWENS
ATTORNEY AT LAW
CENTREVILLE, ALABAMA



The State of Alabama

DEPARTMENT OF STATE

I, MABEL AMOS, Secretary of State of the State of Alabama, do hereby certify that the pages hereto attached, contain a true, accurate and literal copy of Act No. 266, Senate Bill 324, passed in the 1967 Regular Session of the Legislature and approved by the Governor on August 31, 1967,

as the same appears on file and of record in this office.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol, in the City of Montgomery, this 1st day of September One Thousand Nine Hundred and Sixty-seven

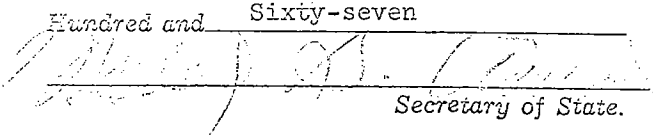

Secretary of State.



EXHIBIT 1

By: Mr. Givhan

Enrolled, An Act, To declare the public policy of the State of Alabama in regard to encouraging the education of all the school children of the state; to create as a body politic and corporate the Alabama Financial Assistance Commission; to provide for the membership of said Commission; to define the duties, powers and functions of said Commission; to authorize said Commission to make and pay grants of financial assistance from the funds of said Commission for the education of the school children of the state in private non-sectarian elementary and secondary schools in the state; to prescribe standards of eligibility for such financial assistance; to provide a procedure for making application for such financial assistance and for the approval or disapproval of same; to provide for judicial review of the actions of the Commission in the event of disapproval of an application for such financial assistance; to provide that any person who shall knowingly swear or affirm falsely to any matter or thing required by the terms of this Act shall be guilty of false swearing and to provide penalties therefor; to provide that any person accepting any payment authorized by this Act with knowledge that the child for whose benefit the payment is received was not actually a bona fide student at a private non-sectarian elementary or secondary school during the period for which payment is received, shall be guilty of a misdemeanor and prescribing penalties therefor; to create and establish in the state treasury the Alabama Financial Assistance Fund; and to repeal all laws or parts of laws in conflict with this Act. BE IT ENACTED BY THE LEGISLATURE OF ALABAMA: Section 1. That the Legislature of Alabama, mindful of the need for a literate and informed citizenry, and being desirous of advancing the cause of education generally, hereby declares that it is the policy of this state to encourage the education of all the children of Alabama. In furtherance of this objective, and to afford each individual freedom in choosing public or private schooling, the Legislature finds that it is desirable and in the public interest that financial assistance should be provided from the public funds of the state for education of the children in private non-sectarian elementary or secondary schools in this state. Section 2. There is hereby created, established and constituted, as a body politic and corporate, the Alabama Financial Assistance Commission, hereinafter sometimes referred to as the "Commission," which shall be composed of three members to be appointed by the Governor. One member of said Commission shall be appointed for a term of two years, one for a term of four years, and one for a term of six years, and members shall continue in office until their successors are appointed and qualified; and the Governor shall have the right to fill any vacancy among the membership of said Commission, whether such vacancy shall occur by death, resignation, or otherwise, but every appointment made to fill such vacancy shall be only for the unexpired portion of the term of the member in respect to whom the vacancy occurred. The members shall serve without pay, but they shall be entitled to reimbursement of actual expenses incurred while on the business of the Commission, when such business has been authorized by the Commission, to be paid out of the funds of the Commission, on the warrant of the chairman, attested by the secretary. Section 3. The Commission shall have authority to adopt such by-laws, rules and regulations for the orderly transaction of its own business as it may deem necessary and appropriate, not inconsistent with the provisions of this Act, and shall select from its own members a chairman and a vice-chairman, the latter to act as chairman in the absence of the elected chairman. Two members of the Commission shall constitute a quorum for the transaction of business, and meetings of said Commission shall be held upon call by the chairman or vice-chairman at such time and place as may be designated after notice to the other members. The Commission shall have authority to select, employ and

fix the compensation of a director, who shall be the chief executive officer of the Commission, and a secretary, whose duty it shall be to preserve a record of all business transacted by the Commission and to perform such other duties as the Commission may designate. It may appoint, retain and discharge such legal, secretarial, clerical and other personnel as it may consider necessary and requisite for the efficient transaction of its business, and shall have authority to fix the compensation of such personnel, not inconsistent with the provisions of the Merit System Act and the rules and regulations adopted pursuant thereto. Section 4. The Commission is hereby declared to be a public corporation of the State of Alabama, domiciled in the County of Montgomery, invested with all powers, privileges, rights and immunities conferred by law upon other corporations of like character within the state. It shall have and possess the authority to sue and be sued. All legal process shall be served upon the chairman or vice-chairman, personally, of the Commission, in their official capacity. Section 5. Pursuant to the power and authority herein conferred, the Commission is authorized and empowered: A) To receive and administer all funds now or hereafter appropriated to, provided for, or otherwise accruing to the Alabama Financial Assistance Fund, hereinafter created, for the purpose of providing financial assistance to students attending private non-sectarian elementary and secondary schools in this state; for the purpose of defraying the cost of the Commission's operations; and for any and all purposes necessary or proper for the administration of the provisions of this Act. For purposes of this Act, a private non-sectarian elementary or secondary school is defined as a school whose operation is not controlled directly or indirectly by any church or sectarian body or by an individual or individuals acting on behalf of a church or sectarian body. B) To prescribe standards, within the limitations hereinafter imposed, for qualification for such financial assistance, which standards shall be as follows: Applicants must: (1) Be eligible under the laws of the State of Alabama for admission to elementary or secondary schools within the public school system of the State of Alabama. (2) As often as the Commission might, in its discretion, require it, furnish a certificate, on any form satisfactory to the Commission of immunization from contagious or communicable diseases, inoculation against which would protect the school children of the state and the public health; and (3) Furnish satisfactory evidence of admissibility to a private non-sectarian elementary or secondary school in this state, legally constituted and operated under the Constitution and laws of the State of Alabama. C) To establish such municipal, county or area offices, under the jurisdiction of the Commission, and to staff the same, as may be necessary to discharge the duties and functions imposed by this Act. D) To determine and pay the amount of the financial assistance to be made available to each applicant, and in so doing to prescribe classifications of applicants according to grade in school and courses pursued, and to take into account the expenses of the applicant, and no financial assistance shall exceed the sum of \$181.50 for 180 days within any one calendar year or the sum of not to exceed \$1.00 per day for each day the applicant shall have attended such private school as provided for in Section 5 (A); provided, however, that all applicants having the same classification shall receive equal financial assistance. E) To prescribe standard forms of applications and related documentary evidence for financial assistance, as authorized by the provisions of this Act and the Commission may require that such applications and evidences be submitted under oath or affirmation by the parent or guardian of, or the person standing in loco parentis, to, any child for whom application is made. F) Each application shall specify the number of days for which the financial assistance is requested, but in no event shall any one application be for more than 180 days within any one calendar year. Subsequent applications may be filed on behalf of any child who continues to meet the standards and requirements herein prescribed or as may be fixed by the Commission within the limitations imposed by this Act. G) Upon approving the application for financial assistance the Commission shall issue its commitment in writing to the parent or guardian of, or person standing in loco parentis to, the applicant, which said commitment shall be for a specified number of days, and for a specified amount for each day, but no commitment

shall be for a period in excess of 180 days within a calendar year. Payments made under such commitment shall be made by the Commission, in accordance with his application and the provisions of this Act.

H) In the event of disapproval by the Commission of an application for financial assistance payable from Commission funds, the Commission shall give notice to the applicant, through the parent or guardian of, or person standing in loco parentis to, the applicant, by certified mail, and any applicant, through the parent or guardian of, or the person standing in loco parentis to, the applicant, may within ten days after receipt of such notice apply to such Commission for a hearing, and shall be given a prompt and fair hearing on the question of entitlement to such financial assistance. The Commission shall render prompt decision upon such hearing, and if the Commission shall affirm its previous action of disapproval of the application, notice shall be given to the applicant, through the parent or guardian of, or the person standing in loco parentis to, the applicant, by certified mail, and any applicant aggrieved by the action of the Commission may, through the parent or guardian of, or the person standing in loco parentis to, the applicant, within ten days after receipt of such notice, file a petition in the circuit court of Montgomery County for a hearing in the matter on all questions of fact and of law. The petition shall be served upon the chairman or vice-chairman of the Commission as prescribed by this Act. Within thirty days after service of the petition the Commission shall prepare and deposit a certified transcript of the record in the case in the office of the clerk of the circuit court of Montgomery County, which record shall include a copy of the application and any official findings, orders and rulings of the Commission in the case. The Commission shall have thirty days after service of the petition within which to appear and file exceptions, answers or other pleadings. Additional time for preparation of the certified transcript of the record, and for appearing and filing exceptions, answers or other pleadings, may be granted to the Commission by order of any judge of said circuit court. The court, after considering the law, the pleadings and such evidence as may be adduced in the case, may modify, affirm or reverse the findings of the Commission and make issue and enter its judgment accordingly. Appeal from any such judgment shall be subject to the procedures applicable to appeals in ordinary civil actions. I) All payments made in accordance with any commitment issued by the Commission shall be by check to the parent or guardian of, or the person standing in loco parentis to, the applicant. The private non-sectarian elementary or secondary school attended shall furnish, upon forms prescribed by the Commission, as often as the Commission shall require it, sworn certificates, signed by the director or other appropriate official of said elementary or secondary school, showing the number of days actually attended by the applicant, and assigning reasons for any reported absences. An applicant is deemed to be in attendance within the meaning of this section, although temporarily absent due to illness or other good cause, so long as such applicant is enrolled in the private non-sectarian elementary or secondary school as a bona fide enrollee. Section 6. Any person who shall knowingly make any false affidavit or shall knowingly swear or affirm falsely to any matter or thing required by the terms of this Act to be sworn or affirmed to, shall be guilty of false swearing, and upon conviction shall be punished by a fine and imprisonment as other persons guilty of perjury. Section 7. It shall be unlawful for any parent or guardian, or a person standing in loco parentis to a child, to accept any payment authorized by this Act knowing that the child for whose benefit the payment is received did not actually attend, or was not actually a bona fide student at a private non-sectarian elementary or secondary school during the period for which payment is received. Any person violating this section shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment in the county jail for not more than one year or by a fine of not more than five hundred dollars (\$500.00), or by both such fine and imprisonment. Section 8. There shall be established in the state treasury a special fund to be designated the "Alabama Financial Assistance Fund," which fund shall be composed of all monies received by the Alabama Financial Assistance Commission regardless of source. Payments shall be made from the fund only on orders of the Commission or its officers as authorized by the Commis-

sion. Section 9. The Alabama Financial Assistance Commission is hereby vested with all powers necessary or convenient to carry out the purpose of this Act and this Act shall be liberally construed to that end. Section 10. The several provisions, sentences, sections, clauses, phrases or other parts of this Act shall be severable and distinct, and if any provision, sentence, section, clause, phrase or other part of this Act shall be held by any court to violate any of the provisions of the Constitution of the State of Alabama or of the United States of America, such decision shall not be construed as invalidating any other provision, sentence, section, clause, phrase or other part of this Act not held unconstitutional. Section 11. All laws or parts of laws in conflict herewith be and the same are hereby repealed only to the extent of such conflict. This Act supersedes all statutes of this State providing for payment of school tuition grants. Section 12. This Act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.



President and Presiding Officer of the Senate.



Speaker of the House of Representatives.

S. 324

Senate 8-9-67

I hereby certify that the within Act originated in and passed the Senate, as amended.

McDowell Lee,
Secretary

House of Representatives
Passed 8-23-67

By: Mr. Givhan

APPROVED Aug 31 1967
TIME 11:00 AM


Governor

NO. 266

RECEIVED

AUG 31 1967

TIME 11:32 AM

Secretary of State

The State of Alabama

DEPARTMENT OF STATE

I, MABEL AMOS, Secretary of State of the State of Alabama, do hereby certify that the pages hereto attached, contain a true, accurate and literal copy of Act No. 285, Senate Bill 596, passed in the 1967 Regular Session of the Legislature and approved by the Governor on September 1, 1967,

as the same appears on file and of record in this office.

In Testimony Whereof, I have hereunto set my hand and

affixed the Great Seal of the State, at the Capitol,

in the City of Montgomery, this 1st

day of September One Thousand Nine

Hundred and Sixty-seven

Mabel A. Amos
Secretary of State.



EXHIBIT 2

By: Messrs. Cooper, Turner,
Engel, Goodwyn, Clark,
Lolley, Givhan, Pelham,
Giles, Stone, Pierce,
Branyon, and Adams

Enrolled. An Act, To amend Section 6, Act No. 367, Acts of Alabama, 1957, Title 52, Section 61 (6), Code of Alabama, 1940 (Recompiled, 1958), relating to the assignment and transfer of teachers in the schools of the state. Be it enacted by the Legislature of Alabama: Section 1. Section 6, Act No. 367, Acts of Alabama, 1957, Title 52, Section 61 (6), Code of Alabama, 1940 (Recompiled, 1958), is hereby amended by striking said Section 6 and inserting in lieu thereof the following: "Section 6. Subject to the provisions of law governing tenure of teachers, local boards shall have the authority to assign and reassign or transfer all teachers in schools within their jurisdiction; provided, however, all students, acting through their parent or guardian, shall be required to exercise a choice prior to the beginning of the School Year 1967-68 or within two weeks after the effective date of this act, whichever is sooner, and prior to the beginning of school each year thereafter of the race of the teacher desired on a form substantially as follows:

Name of Child _____

Address _____

School Attending _____

Grade _____

I (We) prefer that my (our) child shall be taught
by a teacher of the following race:

White _____

Negro _____

Other (Specify) _____

Date

Signature of Parent or
Guardian

"No child shall be required to have a teacher of a race different from the one preferred by his or her parent or guardian except when the preference made does not represent the majority will of the parents or guardians of students similarly situated. The preference shown by the parent or guardian for the race of the teacher may be considered by the local boards of education in making assignments of such students to any particular school within the system." Section 2. It shall be the responsibility of the local boards of education to carry out the requirements of this Act, and the failure or refusal of any local board of education to carry out such requirements shall be grounds for the withholding of state funds from such local board of education. If the Governor is convinced upon reasonable proof that the requirements of this Act have not been carried out by any local board of education, the Governor shall, after giving notice to the local board, and affording such board an opportunity to be heard, take such steps as are necessary to see that no state funds are made available to such local board unless and until the requirements of this Act are met. The Governor shall also have the authority to take such administrative action as is deemed necessary to accomplish the

requirements of this Act, or may direct the Attorney General of the State to take such administrative action as the Governor deems necessary to carry out the provisions of this Act. Section 3. All laws or parts of laws in conflict with this Act are hereby repealed. Section 4. If any section or part of this Act is declared to be unconstitutional, such declaration shall not affect the part which is not declared to be unconstitutional. Section 5. This Act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

H. M. V. P. H.

President and Presiding Officer of the Senate.

R. 225

Speaker of the House of Representatives.

S. 596

Senate 8-22-67

I hereby certify that the within Act originated in and passed the Senate.

McDowell Lee,
Secretary

House of Representatives
Passed 8-30-67

By: Messrs. Cooper, Turner, Engel, Goodwyn, Clark, Lolley, Givhan, Pelham, Giles, Stone, Pierce, Branyon, and Adams.

APPROVED Sept 1 1967

TIME 11:44 A.M.

Luther B. Warner
Governor

NO. 285

RECEIVED

SEP 1 - 1967

TIME 12:10 P.M.

Secretary of State