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

ANTHONY T. LEE, et al.,

Plaintiffs,

UNITED STATES OF AMERICA,

Plaintiff-Intervenor
and Amicus Curiae,

versus

CIVIL ACTION NO. 604-E

MACON COUNTY BOARD OF
EDUCATION, et al.,

Defendants.

SUPPLEMENTAL BRIEF OF THE UNITED STATES

MIDDLE DISTRICT OF ALABAMA

Plaintiffs,

SUPPLEMENTAL BRIEF OF
THE UNITED STATES

Defendants.

1. The timing of the decision in this case.
2. The need for some changes in the language of our proposed decree.
3. State Superintendent Stone's motion to dismiss.

At the oral argument the Court stated that decision in these cases would await the outcome of an en banc rehearing of United States v. Jefferson County Board of Education if the Court of Appeals decided to hold such a rehearing. The Court of Appeals has since decided to reconsider Jefferson en banc. This Court also indicated its intention to grant its decree in time to provide effective relief for

the beginning of the school year in September 1967. While deferral of decision seems sound in NAACP v. Wallace, we respectfully urge the Court to reach a decision in Lee v. Macon County Board of Education without awaiting the Court of Appeals decision in Jefferson County. The facts in Lee are clear, and full relief can be granted on the basis of well established rules of law that are in no way dependent upon any ruling in Jefferson County. We believe we have shown in our previous briefs that each paragraph of the proposed decree is fully warranted by clear and convincing evidence.

There is a substantial reason for entering the decree expeditiously. The mechanics of school administration require lead time - - time for the State Superintendent to adjust the workings of his Department to the requirements of the decree, time for the local systems to take the steps required by the State Superintendent, time for the State Superintendent to report to this Court and for the parties to analyze the reports. Teacher hiring, student assignments, construction, and planning of bus routes for September 1967 will commence soon. They should not again commence on a racially discriminatory basis.

B. The Decree

Three types of changes in our proposed decree seem desirable. First, we have become convinced, from study of the other briefs submitted in this case and from oral argument, that parts of the decree-----particularly the teacher and trade school and junior college provisions-----require greater specificity. Second, the substitution of parties and the affidavit supplementing the record require minor alterations.

Third, we have discovered minor internal inconsistencies in the decree, which should be corrected. The following pages discuss those changes in the order in which they appear in the decree, and an amended proposed decree is attached as an appendix to this brief.

The Court having substituted Mrs. Lurleen Burns Wallace and Dr. Ernest Stone as defendants, the decree should be altered accordingly.

Part II of the proposed decree spells out the State Superintendent's duties respecting faculty desegregation.^{1/} Paragraph A of Part II requires the State Superintendent to develop a detailed program for assisting and encouraging faculty desegregation. Because the term "faculty desegregation" is amenable to varying interpretation, we believe the decree would be more effective if the duty to desegregate faculty was more specifically defined. We propose adding to the end of Paragraph A the following:

The program should, at a minimum, establish ways in which the State Department of Education will assist local systems in recruiting, and in planning for the placing of new teachers and reassigning of old teachers on a desegregated

^{1/} The plans provided for in Part IV of our proposed decree spell out the obligations of the local systems with respect to faculty desegregation.

basis so that by the Fall of 1967, insofar as it is administratively feasible, no school will have teachers of only one race. The program should also provide for assistance in providing training which may be necessary to upgrade the qualifications of some teachers in order to facilitate desegregation of faculty. The program should provide for further progress after 1967-68, to help local school systems stay in compliance with current judicial standards.

We have added a similar provision to Section V, relating to institutions under State Board of Education control.

Section III of the proposed decree deals with transportation. Paragraph D, insofar as it requires that routes and criteria be communicated to parents and students prior to the choice period, is inconsistent with the time schedule in paragraph C. In addition, paragraph C does not set a time within which the State Superintendent should rule on the routes and criteria. Accordingly, paragraph C should require that the State Superintendent approve or disapprove the proposed routes and criteria within 30 days of receiving them, and, to the extent that he disapproves them, he should notify the local systems of their deficiencies. The last sentence in paragraph D should be amended to read:

School systems operating under a freedom-of-choice attendance plan shall notify parents and children, prior to the choice period, that the bus routes and criteria governing the eligibility for bus transportation are being revised and will be established on a nondiscriminatory basis.

Section IV deals with desegregation plans for local systems. As originally submitted it used the Jefferson County decree as a minimum standard for free choice plans, incorporating that decree by reference. We believe that the provisions of that decree are supported by existing case law. When question was raised at oral argument whether the relief ~~we seek~~ in Lee was dependent on the decision in Jefferson County, we suggested that there was no such dependence and that the plan could be set out in full without reference to Jefferson County. In setting out the plan as part of our proposed decree it appeared that some modifications should be made to conform the plan to the obligations of the defendant state officials as set out elsewhere in our proposed decree. We have therefore added more specific provisions to the transportation and construction provisions of the Jefferson County decree and have made other changes in the language where they seemed appropriate.

Since Clay County is now uncommitted and Opp now has an HEW plan,^{2/} the list of systems on page E-6 of the proposed decree should be modified to include Clay County and to exclude Opp.

2/ Affidavit of Brian Landsberg, dated February 1, 1967.

Section V, relating to institutions under the control of the State Board of Education, should be corrected and made more specific. At the oral argument on February 3, 1967, the Court inquired whether our proposed decree required desegregation of the state colleges, and we erroneously indicated that state colleges were not under State Board of Education control and had therefore been omitted from the decree (Tr. 176). In fact, however, Alabama law places control and management of the state colleges in the State Board of Education (Ala. Code, Title 52, §§438, 452; see also Govt. Ex. 153, pp. 31-32). We therefore modify the decree to include state colleges.

Section VII of the proposed decree relating to information and reports, should have the following added to paragraph A:

8. Records showing the attendance zones, bus routes, racial composition of faculty, and racial composition of student body for each trade school, junior college, and state college.

C. Dr. Stone's Motion to Dismiss

State Superintendent Stone was formally substituted as a defendant under Rule 25(d). Before 1961, the Rule provided that an action could be maintained against a successor if "it is satisfactorily shown to the court that there is a substantial need for so continuing and maintaining it." In 1961 the rule was amended to provide for automatic substitution. The Advisory Committee on Rules stated:

Under the amendment, the successor is automatically substituted as a party without an application or showing of need to continue the action. An order of substitution is not required, but

may be entered at any time if a party desires or the court thinks fit.

In thus shifting the burden to the successor the Advisory Committee said:

Where the successor does not intend to pursue the policy of his predecessor which gave rise to the lawsuit, it will be open to him, after substitution, as plaintiff to seek voluntary dismissal of the action, or as defendant to seek to have the action dismissed as moot or to take other appropriate steps to avert a judgment or decree. Contrast *Ex parte LaPrade*, supra; *Allen v. Regents of the University System*, 304 U.S. 439 (1938); *McGrath v. National Assn. of Mfgs.*, 344 U.S. 804 (1952); *Dannenberg v. Cohen*, 213 F.2d 944 (7th Cir. 1954).^{3/}

State Superintendent Stone has made no disavowal of his predecessor's policies. His affidavit, attached to his motion to dismiss, could as easily have been signed by Dr. Meadows and avoids any mention of the defendant's obligation

^{3/} Justice Douglas criticized this aspect of the Amendment, stating that the burden should rest on the claimant, "not with the newcomer to office," 368 U.S. 1012.

to correct the discriminatory practices of the State Department of Education. Further, his office requires that he serve as the agent of a State Board of Education still committed to segregation, and his own statements about segregation ^{4/} suggest that he is not disposed to a course contrary to that of the Board. Even were none of these factors present, the need for affirmative action to correct the results of the discriminatory practices of Superintendent Stone's predecessors, would require his continued presence as a defendant in order to assure complete relief.

The defendant's brief cites cases and legal texts. All but one of the cases cited were decided before the 1961 Amendment to Rule 25(d). The other case, Four Star Publications, Inc., v. Erbe, 304 F.2d 872 (8th Cir. 1962) is easily distinguishable on its facts. ^{5/} By contrast, a district court

4/ On August 31, 1965, Dr. Stone, then Jacksonville City School Superintendent, wrote Governor Wallace to explain Jacksonville's desegregation plan (U.S. Ex. 11C, Stone Dep.):

As you perhaps remember, I was born and raised on Sand Mountain. I was a big boy of several years of age before I even saw a negro. In fact a negro was not allowed to travel over Sand Mountain when I was a boy. I will match my segregation philosophy and beliefs with any man in Alabama! My Board of Education and I have done only what we had to do in order to keep our schools open - this we know!

5/ The plaintiffs sought to enjoin the Attorney General of Iowa and his Advisory Committee from precensoring publications. As soon as suit was brought, the defendants ceased the complained of practices. When a new Attorney General took office, the Advisory Committee disbanded. The new Attorney General explicitly disavowed his predecessor's actions, even after the District Court had found that his predecessor had not precensored plaintiff's publications. The Court of Appeals dismissed the plaintiff's appeal as moot, in light of these facts.

decision in the Fifth Circuit upholds the automatic substitution of successors under Rule 25(d). New Orleans Terminal Company v. Spencer, 255 F. Supp. 1, 9 (E.D. La., 1965).

Professor Moore does not, as the defendant's brief implies, support the defendant. He writes (Federal Practice, 2d Ed., Vol. 4, p. 64 of Cum. Supp.):

It is no longer necessary to show that there is a substantial need for continuing the litigation when substituting a successor public officer as a party to a pending action "Public officer" is to be interpreted to include Federal, State, and local officers.

Respectfully submitted,

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Assistant Attorney General

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Department of Justice

CERTIFICATE OF SERVICE

I hereby certify that on February 22, 1967,
I served the Supplemental Brief to which this is
attached upon each party in this case by sending by
United States air mail a copy thereof, postage prepaid,
to each attorney of record as follows:

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APPENDIX

AMENDED PROPOSED DECREE

The Alabama State Board of Education, Mrs. Lurleen Burns Wallace, Governor of the State of Alabama and President of the Alabama State Board of Education, James D. Nettles, Ed Dannelly, Mrs. Carl Strang, Fred L. Merrill, W. M. Beck, Victor P. Poole, W. C. Davis, Cecil Word, and Rev. Harold C. Martin, members of the Alabama State Board of Education, and Ernest Stone, Executive Officer and Secretary of the Alabama State Board of Education, and Alabama State Superintendent of Education together with their agents, servants, employees, successors in office, and all those in active concert or participation with them who receive actual notice of the order or any of them, shall be and hereby are permanently enjoined from discriminating on the basis of race. As set out more particularly in the body of the decree, they shall take affirmative action to disestablish all public school segregation and to eliminate the effects of past racial discrimination in their activities and the operation of the school systems throughout the State:

I

School Construction and Consolidation

A. The State Superintendent of Education shall require all local school systems that have been the subject of a survey conducted by or under the auspices of the State Department of Education to submit to him, prior to the commencement of the 1967-68 school year,

all plans that have been formulated or adopted for the consolidation of any schools in their systems that had at the time of the survey, or now have, fewer students than required under the minimum-student standards of the State Department of Education.

B. The State Superintendent of Education shall continue to conduct surveys of the local school systems throughout the State, and require that those conducting the surveys shall:

1. Continue to collect and report data regarding the residence of students and the attendance at schools by race;

2. Not fail to recommend consolidation because desegregation would result;

3. Recommend, to the extent consistent with the proper operation of the school system as a whole, that consolidation shall be achieved in a manner to effect desegregation of the schools of the system;

4. Recommend, to the extent consistent with the proper operation of the school system as a whole, that the location, grades and capacity of new schools and expansions of existing school plants be such as to effect desegregation of the schools of the system.

C. Approval by the State Superintendent of Education of all sites upon which schools are to be constructed or existing facilities expanded shall not be based on any survey conducted prior to the entry of this Court's Order, or any survey that does not accord with the standards set forth above in paragraph (B).

D. Approval by the State Superintendent of Education of all sites upon which schools are to be constructed or existing facilities expanded shall be withheld, if, judged in light of the capacity of existing facilities, the residence of the students, and the alternative sites available, the construction will not, to the extent consistent with the proper operation of the school system as a whole, further the eradication of the vestiges of the dual system and the elimination of the effects of segregation.

II

Teachers

A. The State Superintendent of Education shall develop a detailed program for assisting and encouraging faculty desegregation in the local school systems throughout the State for implementation prior to the 1967-68 school year and shall submit this program to the Court and all parties within 60 days after the entry of this Court's order. The program should, at a minimum, establish ways in which the State Department of Education will assist local systems in recruiting, and in planning for the placing of new teachers and reassigning of old teachers on a desegregated basis so that by the Fall of 1967, insofar as it is administratively feasible, no school will have teachers of only one race. The program should also provide for assistance in providing training which may be necessary to upgrade the qualifications of some teachers in order to facilitate desegregation of faculty. The program should provide for further progress after 1967-68, to help local school systems stay in compliance with current judicial standards.

B. Any services made available by the State Superintendent of Education to assist local school boards to locate and employ suitable teachers, or to assist teachers to find suitable positions, shall be provided in a manner to effect faculty desegregation in the public schools throughout the State.

C. The State Superintendent of Education shall not give force or effect to that provision of §339 of Title 52 of the Alabama Code which requires that separate teacher institutes be held for Negro and white teachers; and he shall direct that a single, system-wide teacher institute be held in each local school system for the 1967-68 school year, and for each school year thereafter, and that such institutes be conducted in a nondiscriminatory manner.

D. The State Superintendent of Education shall conduct all in-service training programs on a desegregated basis.

E. The State Superintendent of Education shall apply certification requirements without discrimination on the basis of race, and shall not apply certification requirements, or grant provisional certificates, in a manner to perpetuate faculty segregation or to avoid faculty desegregation.

F. The State Superintendent of Education shall inform all applicants for certification that the school systems throughout the State are obliged to desegregate their faculties, and that teachers are subject to assignment in accordance with that obligation.

III

School Transportation

A. The defendant state officials shall require all local school boards, prior to the commencement of the 1967-68 school year, to eliminate race as a basis for assigning students to school buses and to eliminate overlapping and duplicative bus routes based on race.

B. The defendant state officials shall require all local school boards, prior to the commencement of the 1967-68 school year, to establish nondiscriminatory criteria governing the availability of bus transportation to students within the school district. For school districts that have a freedom-of-choice attendance plan, and generally provide school transportation, these criteria, at a minimum should entitle each student to be transported to the school he attends if that school is the one nearest his residence that had traditionally been maintained for students of the opposite race and if that school is at least two miles from his residence.

C. The State Superintendent of Education shall require all local school boards to submit to him for approval within 60 days after the entry of this Order their proposed bus routes and criteria governing the eligibility for bus transportation. The State Superintendent shall approve or disapprove the proposed routes and criteria, within 30 days of receiving them, according to the standards set forth in the preceding paragraphs (A) and (B) of this section, and, to the extent that he disapproves them, he shall notify the local systems of their deficiencies.

D. The State Superintendent of Education shall require all local school boards to communicate those routes and criteria he has approved to students and parents of the school districts in a readily understandable manner and substantially before the opening of the 1967-68 school year. School systems operating under a freedom-of-choice attendance plan shall notify parents and children, prior to the choice period, that the bus routes and criteria governing the eligibility for bus transportation are being revised and will be established on a nondiscriminatory basis.

E. Whatever technical assistance is made available by the State Superintendent for assisting local school boards in meeting school transportation problems shall be provided in a manner to assist local school boards to eliminate overlapping and duplicative bus routes based on race and to formulate nondiscriminatory criteria regarding eligibility of students for transportation.

IV

Desegregation Plans for Local School Systems

The State Superintendent of Education shall notify the following school systems that they are required to adopt a desegregation plan and that, if they adopt a freedom-of-choice plan, it must meet the standards embodied in the attached desegregation plan, and, if they adopt a plan based upon geographic attendance zones, it must meet the standards embodied in the pertinent provisions of "Revised Statement of Policies for School Desegregation Plans under Title VI of the Civil Rights Act of 1964," 45 C.F.R., Part 181:

Attalla	Dothan	Marshall Co.
Baldwin Co.	Elmore Co.	Morgan Co.
Bibb Co.	Escambia Co.	Mountain Brook
Brewton City	Fayette Co.	Muscle Shoals
Calhoun Co.	Geneva Co.	Opelika
Chambers Co.	Henry Co.	Pickens Co.
Chilton Co.	Houston Co.	Russell Co.
Clarke Co.	Jasper	Shelby Co.
Clay Co.	Lanett	Talladega
Colbert Co.	Lee Co.	Tallapoosa Co.
Conecuh Co.	Linden	Tallassee
Coosa Co.	Marengo Co.	Tarrant City
Dallas Co.	Marion City	Thomasville
Demopolis	Marion Co.	Washington Co.

The State Superintendent of Education shall inform these local school systems that the desegregation plan should be adopted within 15 days from the entry of the Court's order, and within twenty days from the entry of this Court's order the State Superintendent shall submit a report to this Court and to all parties informing them of the action taken by him to discharge this obligation and the results of that action.

V

Institutions Under State Board of Education Control

No person shall be denied admission to any trade school, junior college, or state college administered by the Alabama State Board of Education, upon the ground of race, nor shall he be subjected to racial discrimination in connection with his application for enrollment in or his attendance at any such trade school, junior college, or state college. Dual attendance zones based on race

for trade schools, junior colleges, and state colleges shall be abolished. The State Department of Education shall direct the trade schools, junior colleges, and state colleges to recruit, hire, and assign teachers so as to desegregate faculty and to accomplish some faculty desegregation in each trade school, junior college, and state college by September 1967.

VI

Equalization of Facilities

The State Superintendent of Education shall develop, and submit to this Court and all the parties within 120 days after the entry of this Court's Order, a detailed program for bringing the quality of the physical facilities, equipment, services, courses of instruction, and instructional materials of schools previously maintained for Negro students up to the level in schools previously maintained for white students. This program shall eliminate those disparities reflected in different pupil-teacher ratios, survey classifications of buildings and sites, per pupil expenditures, valuation of school property, library books per pupil, course offerings, accreditation and transportation. In connection with applications for teacher units for vocational teachers or teachers of exceptional children, the State Superintendent of Education shall consider and grant those applications that satisfy educational requirements and had been submitted before the entry of this Court's order on behalf of schools traditionally maintained for Negro students, prior to acting upon other applications for such units.

VII

Information and Reports

A. The State Superintendent of Education shall make, at reasonable times and places, and upon reasonable notice, the following available to all the parties:

1. All consolidation plans submitted to him by local school boards pursuant to the requirements of paragraph (A) of Section I of this Order.

2. All survey reports hereafter conducted pursuant to paragraph (B) of Section I of this Order.

3. All applications and records of action by the State Superintendent of Education regarding the approval or disapproval of school construction or expansion, together with all information relating to the sites, including the pertinent survey reports.

4. All documents relating to teacher institutes and to in-service training programs, including a report giving the number of teachers that attended each institute, the schools the teachers were from, and the race of the teachers.

5. All proposals of the local school boards relating to the routing of school buses and the criteria governing eligibility for bus transportation that are submitted to the State Superintendent for his approval under paragraph (3) of Section III of this Order, together with a report indicating which proposals have been approved and when and how students and parents in the various school systems throughout the State were informed of these routes and criteria.

6. All records pertaining to action taken by the State Superintendent of Education with respect to applications for teacher units for teachers of exceptional children and vocational education teachers.

7. Records indicating the State Superintendent's action with respect to provisional teaching certificates, and a report indicating how applicants for certification were informed of the obligation of the local systems regarding faculty desegregation.

8. Records showing the attendance zones, bus routes, racial composition of faculty, and racial composition of student body for each trade school, junior college, and state college.

B. The State Superintendent of Education shall submit to the Clerk of this Court and serve upon all parties:

1. Within 60 days after the entry of this Order the detailed program regarding faculty desegregation required by paragraph (A) of Section II of this Order.

2. Within 120 days after the entry of this Order the detailed program regarding school equalization required by Section VI of this Order.

3. Within 20 days after entry of this Order, a report on the action taken by the State Superintendent of Education respecting the forty-two school districts listed in Section IV of this Order, and the results of that action.

4. A report, which must be submitted by October 5 each year, setting forth the following information with respect to any school system that, at that time, is

neither subject to a court order requiring desegregation nor to a voluntary desegregation plan accepted by the Office of Education of the United States Department of Health, Education and Welfare:

(a) The number of students by race, in each grade of each school for the current school year;

(b) The number of faculty members of each race assigned to each school for the current school year, together with the number of faculty vacancies or new positions, by school, that have arisen or have been filled by the school board since the last report; and

(c) The number of students that have requested to transfer from the schools they were assigned to, together with a description of the action taken by the local school board on such requests and the reasons therefor.

5. A report, which must be submitted prior to June 1 of each year, setting forth the following information with respect to any school system that, at that time, is neither subject to a court order requiring desegregation nor to a voluntary desegregation plan accepted by the Office of Education of the United States:

(a) For each school system operating under a freedom-of-choice attendance plan, the number of choice applications received for each grade, the number of choices granted and denied, and the reasons for all denials;

(b) For each school system operating under an attendance plan based on geographic zones, the name and location of each school facility planned to be used during

the coming school year, the attendance zones for each school in operation during the current school year, and any changes in the attendance zones planned for the coming school year.

IX

Interference

The defendant state officials shall not interfere with, prevent or obstruct by any means the elimination of racial discrimination by local school officials in any school system in the State of Alabama.

The costs of this action shall be taxed against the defendant state officials.

The Court further orders and directs the United States to submit to this Court within 30 days, and serve upon all parties, a report informing the Court whether any of the school systems listed in Section IV of this decree have failed, following the entry of this Court's Order, to adopt a satisfactory desegregation plan.

ATTACHMENT

Desegregation Plan

The _____ Board of Education will take the following affirmative action to disestablish all school segregation and to eliminate the effects of past racial discrimination in the operation of the school system:

I.

EXERCISE OF CHOICE

The following provisions will apply to all grades commencing with the 1967-68 school year:

(a) Who May Exercise Choice. A choice of schools may be exercised by a parent or other adult person serving as the student's parent. A student may exercise his own choice if he (1) is exercising a choice for the ninth or a higher grade, or (2) has reached the age of fifteen at the time of the exercise of choice. Such a choice by a student is controlling unless a different choice is exercised for him by his parent or other adult person serving as his parent during the choice period or at such later time as the student exercises a choice. Each reference in this plan to a student's exercising a choice means the exercise of the choice, as appropriate, by a parent or such other adult, or by the student himself.

(b) Annual Exercise of Choice. All students, both white and Negro, will be required to exercise a free choice of schools annually.

(c) Choice Period. The period for exercising choice will commence April 1, 1967 and end May 1, 1967, and in subsequent years will commence March 1 and end March 31 preced-

ing the school year for which the choice is to be exercised. No student or prospective student who exercises his choice within the choice period will be given any preference because of the time within the period when such choice was exercised.

(d) Mandatory Exercise of Choice. A failure to exercise a choice within the choice period will not preclude any student from exercising a choice at any time before he commences school for the year with respect to which the choice applies, but such choice may be subordinated to the choices of students who exercised choice before the expiration of the choice period. Any student who has not exercised his choice of school within a week after school opens will be assigned to the school nearest his home where space is available under standards for determining available space which will be applied uniformly throughout the system.

(e) Public Notice. On or within a week before the date the choice period opens, the school board will arrange for the conspicuous publication of a notice describing the provisions of this plan in the newspaper most generally circulated in the community. The text of the notice will be substantially similar to the text of the explanatory letter sent home to parents. (See Paragraph I (f).) Publication as a legal notice will not be sufficient. Copies of this notice will also be given at that time to all radio and television stations serving the community. Copies of this plan will be posted in each school in the school system and at the office of the Superintendent of Education.

(f) Mailing of Explanatory Letters and Choice Forms. On the first day of the choice period there will be distrib-

uted an explanatory letter and a choice form to the parent (or other adult person acting as parent, if known to the school board) of each student, together with a return envelope addressed to the Superintendent. The text for the explanatory letter and choice form will essentially conform to the sample letter and choice form appended to this plan.

(g) Extra Copies of the Explanatory Letter and Choice Form. Extra copies of the explanatory letter and choice form will be freely available to parents, student, prospective students, and the general public at each school in the system and at the office of the Superintendent of Education during the times of the year when such schools are usually open.

(h) Content of Choice Form. Each choice form will set forth the name and location of the grades offered at each school and may require of the person exercising the choice the name, address, age of student, school and grade currently or most recently attended by the student, the school chosen, the signature of one parent or other adult person serving as parent, or where appropriate the signature of the student, and the identity of the person signing. No statement of reasons for a particular choice, or any other information, or any witness or other authentication, will be required or requested.

(i) Return of Choice Form. At the option of the person completing the choice form, the choice may be returned by mail, in person, or by messenger to any school in the school system or to the office of the Superintendent.

(j) Choices not on Official Form. The exercise of choice may also be made by the submission in like manner of any other writing which contains information sufficient to

identify the student and indicates that he has made a choice of school.

(k) Choice Forms Binding. When a choice form has once been submitted and the choice period has expired, the choice is binding for the entire school year and may not be changed except in cases of parents making different choices for their children under the conditions set forth in Paragraph I(a) of this plan and in exceptional cases where, absent the consideration of race, a change is educationally called for or where compelling hardship is shown by the student.

(l) Preference in Assignment. In assigning students to schools, no preference will be given to any student for prior attendance at a school and except with the approval of the State Superintendent of Education in extraordinary circumstances, no choice will be denied for any reason other than overcrowding. In case of overcrowding at any school, preference will be given on the basis of the proximity of the school to the homes of the students choosing it, without regard to race or color. Standards for determining overcrowding will be applied uniformly throughout the system.

(m) Second Choice where First Choice is Denied. Any student whose choice is denied will be promptly notified in writing and given his choice of any school in the school system serving his grade level where space is available. The student will have seven days from the receipt of notice of a denial of first choice in which to exercise a second choice. .

(n) Transportation. Where transportation is generally provided, buses will be routed to the maximum extent feasible in light of the geographic distribution of students, so as to serve each student choosing any school in the system. Every student choosing the school nearest his residence that had traditionally been maintained for students of the opposite race must be transported to the school to which he is assigned under these provisions, whether or not it is his first choice, if that school is at least two miles from his residence. The school system will adopt nondiscriminatory bus routes and criteria governing the availability of bus transportation to students, so that race will not be a basis for assigning students to school buses and overlapping and duplicative bus routes based on race will be eliminated. Prior to the choice period, parents and children will be advised that such routes and criteria will be adopted, and substantially prior to the opening of the 1967-68 school year the parents and children will be notified of the routes and criteria, in a readily understandable manner.

(o) Officials not to Influence Choice. At no time shall any official, teacher, or employee of the school system influence any parent, or other adult persons serving as a parent, or any student, in the exercise of a choice or favor or penalize any persons because of a choice made. If the school board employs professional guidance counselors, such persons will base their guidance and counselling on the individual student's particular personal, academic, and vocational needs. Such guidance and counselling by teachers as well as professional guidance counselors will be avail-

able to all students without regard to race or color.

(p) Protection of Persons Exercising Choice.

Within their authority, school officials are responsible for the protection of persons exercising rights under or otherwise affected by this plan. They will, without delay, take appropriate action with regard to any student or staff member who interferes with the successful operation of the plan. Such interference will include harassment, intimidation, threats, hostile words or acts, and similar behavior. The school board will not publish, allow, or cause to be published, the names or addresses of pupils exercising rights or otherwise affected by this plan. If officials of the school system are not able to provide sufficient protection, they will seek whatever assistance is necessary from other appropriate officials.

II.

PROSPECTIVE STUDENTS

Each prospective new student will be required to exercise a choice of schools before or at the time of enrollment. All such students known to the school system will be furnished a copy of the prescribed letter to parents, and choice form, by mail or in person, on the date the choice period opens or as soon thereafter as the school system learns that he plans to enroll. Where there is no pre-registration procedure for newly entering students, copies of the choice forms will be available at the Office of the Superintendent and at each school during the time the school is usually open.

III

SERVICES, FACILITIES, ACTIVITIES AND PROGRAMS

No student will be segregated or discriminated against on account of race or color in any service, facility, activity, or program (including transportation, athletics, or other extracurricular activity) that may be conducted or sponsored by or affiliated with the school in which he is enrolled. A student attending school for the first time on a desegregated basis will not be subject to any disqualification or waiting period for participation in activities and programs, including athletics, which might otherwise apply because he is a transfer or newly assigned student except that such transferees shall be subject to longstanding, non-racially based rules of city, county, or state athletic associations dealing with the eligibility of transfer students for athletic contests. All school use or school-sponsored use of athletic fields, meeting rooms, and all other school related services, facilities, activities, and programs such as commencement exercises and parent-teacher meetings which are open to persons other than enrolled students, will be open to all persons without regard to race or color. All special educational programs conducted by the school system will be conducted without regard to race or color.

IV

SCHOOL EQUALIZATION

(a) Inferior Schools. In schools heretofore maintained for Negro students, the school system will take prompt steps necessary to provide physical facilities, equipment, courses of instruction, and instructional materials of quality equal to that provided in schools previously maintained for white persons. Conditions of overcrowding, as determined by pupil-teacher ratios and pupil-classroom ratios will, to the extent feasible, be distributed evenly between schools formerly maintained for Negro students and those formerly maintained for white students. If for any reason it is not feasible to improve sufficiently any school formerly maintained for Negro students, where such improvement would otherwise be required by this subparagraph, such school will be closed as soon as possible, and students enrolled in the school will be reassigned on the basis of freedom of choice. By October of each year, the school board will report to the State Superintendent of Education pupil-teacher ratios, pupil-classroom ratios, and per-pupil expenditures both as to operating and capital improvement costs, and will outline the steps to be taken and the time within which they will accomplish the equalization of such schools.

(b) Remedial Programs. The school system will provide remedial education programs which permit students attending or who have previously attended all-Negro schools to overcome past inadequacies in their education.

V.

SCHOOL CONSTRUCTION AND CONSOLIDATION

To the extent consistent with the proper operation of the school system as a whole, the school board will, in locating and designing new schools, in expanding existing facilities, and in consolidating schools, do so with the object of eradicating past discrimination and of effecting desegregation. The school board will not build, consolidate or expand schools based on recommendations of any state survey conducted prior to March 1967 unless the state reapproves such building, consolidation or expansion. The school board will not fail to consolidate schools because desegregation would result.

VI

FACULTY AND STAFF

(a) Faculty Employment and Assignment. 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. Teachers, principals, and staff members will be assigned to schools so that the faculty and staff is not composed exclusively of members of one race. Wherever possible, teachers will be assigned so that more than one teacher of the minority race (white or Negro) will be on a desegregated faculty. The school board will take affirmative steps

to accomplish the desegregation of its school faculties, including substantial desegregation of faculties in as many of the schools as possible for the 1967-68 school year. The objective of the school system is that the pattern of teacher assignment to any particular school shall not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school. The school system will accomplish faculty desegregation in a manner whereby the abilities, experience, specialties, and other qualifications of both white and Negro teachers in the system will be, insofar as administratively feasible, distributed evenly among the various schools of the system.

(b) Dismissals. Teachers and other professional staff members will not be discriminatorily assigned, dismissed, demoted, or passed over for retention, promotion, or rehiring, on the ground of race or color. In any instance where one or more teachers or other professional staff members are to be displaced as a result of desegregation, no staff vacancy in the school system will be filled through recruitment from outside the system unless no such displaced staff member is qualified to fill the vacancy. If, as a result of desegregation, there is to be a reduction in the total professional staff of the school system, the qualifications of all staff members in the system will be evaluated in selecting the staff member to be released without consideration of race or color. A report containing any such proposed dismissals, and the reasons therefor, shall be filed with the State Superintendent of Education.

VII

REPORTS

(a) Report on Choice Period. The school system will file with the State Superintendent of Education on or before May 15 of each year a report tabulating by race the number of choice applications and transfer applications received for enrollment in each grade in each school in the system, and the number of choices and transfers granted and the number of denials in each grade of each school. The report will also state any reasons relied upon in denying choice and shall tabulate, by school and by race of student, the number of choices and transfers denied for each such reason.

(b) Report After School Opening. The system will file with the State Superintendent of Education within 15 days after the opening of schools for the fall semester of each year, a report setting forth the following information:

(1) The name, address, grade, school of choice and school of present attendance of each student who has withdrawn or requested withdrawal of his choice of school or who has transferred after the start of the school year, together with a description of any action taken on his request and the reasons therefor.

(2) The number of faculty vacancies, by school, that have occurred or been filled since the adoption of this plan or the latest

report submitted pursuant to this subparagraph. This report shall state the race of the teacher employed to fill each such vacancy and indicate whether such teacher is newly employed or was transferred from within the system. The tabulation of the number of transfers within the system shall indicate the schools from which and to which the transfers were made. The report shall also set forth the number of faculty members of each race assigned to each school for the current **year**.

(3) The number of students by race, in each grade of each school.

EXPLANATORY LETTER

(School System Name and Office Address)

(Date Sent)

Dear Parent:

All grades in our school system will be desegregated next year. Any student who will be entering one of these grades next year may choose to attend any school in our system, regardless of whether that school was formerly all-white or all-Negro. It does not matter which school your child is attending this year. You and your child may select any school you wish.

Every student, white and Negro, must make a choice of schools. If a child is entering the ninth or higher grade, or if the child is fifteen years old or older, he may make the choice himself. Otherwise a parent or other adult serving as parent must sign the choice form. A child enrolling in the school system for the first time must make a choice of schools before or at the time of his enrollment.

The form on which the choice should be made is attached to this letter. It should be completed and returned by May 1, 1967.* You may mail it in the enclosed envelope, or deliver it by messenger or by hand to any school principal or to the Office of the Superintendent

* In subsequent years the dates in both the explanatory letter and the choice form should be changed to conform to the choice period.

at any time between April 1 and May 1. No one may require you to return your choice form before May 1 and no preference is given for returning the choice form early.

No principal, teacher or other school official is permitted to influence anyone in making a choice or to require early return of the choice form. No one is permitted to favor or penalize any student or other person because of a choice made. A choice once made cannot be changed except for serious hardship.

No child will be denied his choice unless for reasons of overcrowding at the school chosen, in which case children living nearest the school will have preference.

Transportation will be provided, if reasonably possible, no matter what school is chosen. The school board is rerouting busses and writing new rules for assigning students to buses, so that there will be no more overlapping bus routes and students will be assigned to buses without regard to race. [Delete if the school system does not provide transportation.]

Your School Board and the school staff will do everything we can to see to it that the rights of all students are protected and that desegregation of our schools is carried out successfully.

Sincerely,

Superintendent

CHOICE FORM

This form is provided for you to choose a school for your child to attend next year. You have 30 days to make your choice. It does not matter which school your child attended last year, and does not matter whether the school you choose was formerly a white or Negro school. This form must be mailed or brought to the principal of any school in the system or to the office of the Superintendent, [address], by May 1, 1967. A choice is required for each child.

Name of child _____
(Last) (First) (Middle)

Address _____

Name of Parent or other
adult serving as parent _____

If child is entering first grade, date of birth:

(Month) (Day) (Year)

Grade child is entering _____

School attended last year _____

Choose one of the following schools by marking an X beside the name.

Name of School	Grade	Location
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Signature _____

Date _____

To be filled in by Superintendent:

School Assigned _____