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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MARY ELLEN CRAWFORD, a Minor, by ELLEN CRAWFORD, her Guardian Ad Litem; INITA WATKINS, a Minor, by CLARA M. WATKINS, her Guardian Ad Litem, for and in behalf of themselves and all pupils of the David Starr Jordan High School, similarly situated,

Plaintiffs,

v.

BOARD OF EDUCATION OF THE CITY OF LOS ANGELES,

Defendant.

No. 822854

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES ON ORDER TO SHOW CAUSE

## Preliminary Statement

Plaintiffs seek a temporary injunction, pendente lite, to enjoin the expenditure, by the defendant Board of Education, of monies to enlarge the Jordan High School, an alleged 100 per cent racially segregated high school until the case can be tried on the merits, and/or unless the Board takes affirmative steps to correct the racial imbalance in that school. The plaintiffs do not seek such a permanent injunction.

Neither they, their counsel, nor the organizations supporting this litigation -- United Civil Rights Committee, the National Association for the Advancement of Colored People, the American Civil Liberties Union and the American Jewish Congress -- seek to prevent any pupil in the Los Angeles school system from securing an education, in a school containing as many physical improvements as the money of the people of Los Angeles can buy; the essential relief the plaintiffs seek here is that which no money can buy -- not even the million dollars which the defendant Board has undertaken to spend on Jordan High School -- namely, the right which the constitution assures to the plaintiffs to be free from segregation because of race -- a right which is theirs now.

The temporary injunctive relief sought here was accorded Negro pupils in Taylor v. Board of Education, 191 F. Supp. 181, affirmed 294 F. 2d 36. There the trial court enjoined the re-building of a school, pendente lite. That decision was expressly approved in Jackson v. Pasadena School District, 59 A.C. 905.

## I

Any affirmative act by a school board which has the effect of maintaining, indurating or perpetuating a segregated school, violates constitutional right.

Certainly, the foregoing is true when a school board perpetuates racial segregation by affirmative zoning. Jackson, supra, page 5, slip opinion. This is equally true when a board perpetuates segregation by expending large sums of money, upon a Negro school that is 100% segregated, and which is located in a school district that is so zoned by the Board, as to keep said school racially segregated into the indefinite future.

Under such circumstances, the physical improvement of a school building, resulting in the non-physical, but definitive destruction of constitutional rights, constitutes "affirmative dis-

1 criminatory conduct by a school board" just recently unequivocally
2 condemned by a unanimous court.

3 Jackson, supra, at p. 7, slip opinion.

4

5 II

6 A Board of Education is under an affirmative constitutional
7 duty, even when it has not engaged in discriminatory actions, to take
8 corrective measures to eliminate racial imbalance, where that im-
9 balance is due to residential segregation.

10 The foregoing is the clear mandate of the Supreme Court in
11 Jackson. Here are the words of Chief Justice Gibson, speaking for
12 the entire court (pp. 7, 8, slip opinion):

13 "Although it is alleged that the board was guil-
14 ty of intentional discriminatory action, it should be
15 pointed out that even in the absence of gerrymander-
16 ing or other affirmative discriminatory conduct by a
17 school board, a student under some circumstances
18 would be entitled to relief where, by reason of resi-
19 dential segregation, substantial racial imbalance
20 exists in his school. So long as large numbers of
21 Negroes live in segregated areas, school authorities
22 will be confronted with difficult problems in provid-
23 ing Negro children with the kind of education they are
24 entitled to have. Residential segregation is in itself
25 an evil which tends to frustrate the youth in the area
26 and to cause antisocial attitudes and behavior. Where
27 such segregation exists it is not enough for a school
28 board to refrain from affirmative discriminatory con-
29 duct. The harmful influence on the children will be
30 reflected and intensified in the classroom if school
31 attendance is determined on a geographic basis with-
32 out corrective measures. The right to an equal oppor-

*tunity for education and the harmful consequences of segregation require that school boards take steps, insofar as reasonably feasible, to alleviate racial imbalance in schools regardless of its cause.* ..." (Italics supplied.)

The above are not words alone. To be sure they are not necessary to the decision; precisely, because so unnecessary, their meaning is that the Supreme Court intended by them to charter the rights of pupils, on the one hand; and, on the other hand, to prescribe the duties of school boards (and the courts), in order to furnish guide lines to boards (and to the courts where the intervention of the latter is necessary), to eliminate the evil of de facto school segregation currently existing in many communities in California.

It is for that reason that the Court quotes the Regulation adopted by the State Board of Education (California Administrative Code, Title 5, Sections 2010 and 2011), requiring local Boards of Education to "exert all effort to avoid and eliminate segregation of children on account of race or color."; and, to eliminate segregation, such Boards must avoid "practices which in practical effect discriminate upon an ethnic basis against pupils or their families or which in practical effect tend to establish or maintain segregation on an ethnic basis, ..." (page 8, slip opinion).

Our interpretation of the meaning of the decision in *Jackson* is in accord with that of the County Counsel of Los Angeles County, representing the respondents in *Jackson*, supra, in his Petition for Rehearing (Rehearing denied July 25, 1963), in which he stated (page 3):

> "*The clear import of the opinion is that local governing boards of school districts are required to take affirmative steps to bring about racial balance in the schools.* ..." (Italics ours.)

III

<u>Until this Court can adjudicate the important constitutional issues herein, on their merits, the status quo should be maintained by temporary injunctive relief restraining the expenditure of public funds, since such expenditure would result in perpetuating racial discrimination, to the irreparable injury of the plaintiffs.</u>

See: <u>Taylor</u> v. <u>Board of Education</u>, supra,
191 F. Supp. 181, 195 F. Supp. 231, affirmed 294 F. 2d 36;

See also: <u>Branche</u> v. <u>Board of Education</u>,
204 F. Supp. 150.

The complaint there sought, amongst other relief, an injunction against a projected referendum and bond issue for the enlargement of predominately Negro schools. The court stated at p. 153:

> "... it cannot be said with certainty that increasing the size of three school buildings that are predominantly Negro will not, in union with continuance of existing geographic attendance rule, transgress the constitutional right involved. ..."

In that case the Board, pending the court proceedings, postponed the building of the schools, the court noting (at p. 154):

> "The imminence of a vote on the school building bonds has for the present disappeared ..."

Compare also, <u>Brock</u> v. <u>San Francisco Board of Education</u>, USDC ND Cal, No. 41034.

In that case, following a suit for injunctive relief in behalf of Negroes asserting themselves to be the victims of de facto segregation, the defendant San Francisco Board of Education took various affirmative steps to alleviate the segregation complained of.

It is hoped that the defendant Board will do the same here on its own motion; if it will not, appropriate temporary injunctive

relief should be granted to the plaintiffs.

Respectfully submitted,

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W/s