No. 25162
No. 25175

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BIRDIE MAE DAVIS, ET AL., APPELLANTS, UNITED STATES OF AMERICA, APPELLANT

v.

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, ET AL., APPELLEES

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA

BRIEF OF THE UNITED STATES

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INDEX

STATEMENT OF THE CASE

I. Procedural History, 1963-66

On March 27, 1963, Negro students filed suit to desegregate the public schools in Mobile County. The complaint prayed that the appellees be enjoined from maintaining a dual school system based upon race or, in the alternative, that the appellees be directed to submit a complete plan for the reorganization of the Mobile County school system into a unitary, non-racial system. At the same time, a motion for a preliminary injunction was filed by plaintiffs.

By May 9, 1963, the trial court failed to grant or deny the preliminary injunction but rather granted time for the filing of briefs. Plaintiffs treated this as denying the motion and appealed, seeking either a reversal or relief in the nature of a writ of mandamus. This Court denied the petition and dismissed the appeal on May 24, 1963, holding that the trial court had not abused its discretion. Davis, et al., v. Board of School Commissioners of Mobile County, Alabama, 318 F. 2d 63 (C. A. 5, 1963).

A month later, On June 24, 1963, the district court denied plaintiffs' motion for preliminary injunction and set the case for trial on November 14. This decision was appealed and on July 9, 1963, this Court granted an injunction pending appeal and directed that the district court enter a judgment and order requiring appellees to make an immediate start in the desegregation of their schools. 322 F.2d 356. This order further required the district court to direct the school board to submit a complete desegregation plan by August 1, 1963, which was extended on rehearing to August 19, 1963. A stay of that mandate was denied by Justice Black on August 16, 1963. On August 12 appellees moved the district court to defer the desegregation of the rural schools in Mobile County until September, 1964, because of administrative problems, and upon stipulations by counsel for both parties, this deferral was ordered on August 12.

The first desegregation plan was submitted by appellees on August 19, 1963. Objections to the plan were filed on August 21 stating, inter alia, that the

plan did not conform to the mandate of this Court because it did not provide for transfers in all grades, but only for transfers in the twelfth grade. The plan was approved with minor changes by the district court on August 23.

On June 18, 1964, this Court decided the merits of the appeal taken from the order of the district court of June 24, 1963. 333 F.2d 53. This Court ordered that the order be vacated and remanded the case directing that the appellees be required to submit to the trial court a plan for desegregation which would meet the minimum constitutional standards outlined in a companion case, Armstrong v. Board of Education of the City of Birmingham, Alabama, 333 F.2d 47, (C.A. 5, 1964), and that the plan must provide for "the abolition of dual school zones, areas or districts . . ." Id., at p. 55.

Thereafter, on July 27, 1964 pursuant to an order of the district court, the appellees filed a desegregation plan with that court. The trial court approved this desegregation plan with minor modifications on July 31, 1964.

The plaintiffs on December 21, 1964, filed a motion for further relief requesting that the appellees be ordered to submit a desegregation plan which would meet current constitutional standards. On March 31, 1965, after a hearing, the trial court re-approved the appellees' plan with minor changes in the time of the transfer period, notice requirement, and expanded the number of grades where transfers would be available to include the 10th, 11th and 12th in all schools and the first in the city portion of the system.

The March 31, 1965 order was appealed by plaintiffs and on August 16, 1966, this Court reversed and remanded the case directing that the plan be modified to meet this Court's standards and that the plan be changed so that "all grades will be fully desegregated by the beginning of school in the fall of 1967" and that "there be an end to the present policy of hiring and assigning teachers according to race by the time the last of the schools are fully desegregated for the school year 1967-68." 364 F.2d 986, at p. 904. On August 19, 1966, upon remand and pursuant to an order of the district court, the Board of School Commissioners

amended its plan for the 1966-67 school year by providing for a four day transfer period from August 23-26 for certain students and requested that it be given 60 days to submit a full desegregation plan. On that same day the district court approved the amendments and granted the request for an additional 60 days. Plaintiffs moved the district court on August 26, 1966, to rescind that order and reopen and extend the transfer period through the first week of school. This motion was denied on August 30, 1966.

On October 19, 1966, the current plan was submitted to the district court, which approved it. Under it students are to continue attending the same school as in the past unless they exercise certain transfer or option rights.

II. History of the 1967 Proceedings

Plaintiff, on April 18, 1967, moved the district court for further relief and specifically for the entry of the decree in United States v. Jefferson County Board of Education, 372 F.2d 836 (decision on rehearing

en banc, C.A. 5, March 29, 1967, not yet reported). On July 18, plaintiffs amended this motion and asked the district court to reject the defendants' desegregation plan and "approve as an alternative plan one which will work to desegregate Mobile's schools". The United States intervened under section 902 of the Civil Rights Act of 1964 (42 U.S.C. 2000 h-2) on June 14 and moved the district court to order the defendants to amend their plan to meet the present constitutional standards. Following discovery, a hearing on the merits was held from July 18, 1967 to July 28, 1967. Plaintiffs and plaintiff-intervenors submitted briefs on August 7, 1967. A response brief was filed by the Board of School Commissioners on August 15, and arguments were heard on August 18.

On August 24, the district court entered an order, designated by the court an "interim order", directing that those students whose places of residence have been changed from one elementary school zone to another as a result of changes in six named boundary lines during the 1966-67 school year, should immediately

be afforded an opportunity to transfer to the school serving the attendance area in which their residence now lies, or any other school afforded to them by the existing desegregation plan, i.e., the nearest formerly white or formerly Negro school outside their attendance area. The transfer peiod was to be held from August 28-31 and the notice to be published in the newspaper was attached to the order.

Notice of appeal was filed by plaintiffs on August 30 and by the United States on September 1. Both parties plaintiff also filed motions for injunctions pending appeal, plaintiffs on August 30 and the United States on September 1. These motions were denied by this Court on September 13, but the court ordered expedited consideration of the appeal and set October 16, 1967 as the date for argument.

SPECIFICATION OF ERROR

The district court erred in failing to grant appropriate relief for the desegregation of the Mobile County schools.

DISCUSSION

There can be no doubt that the appellees are operating their school system in an unconstitutional manner and will refuse to take the necessary corrective action unless judicially ordered to do so. Moreover, it is equally clear that the court below erred in denying to grant any meaningful relief for the 1967-68 school year and that the order below must be vacated and the case remanded. The district court's order merely granted transfer rights to a limited number of students and a four day period during which these rights could be exercised. Thus, the only questions presented by this appeal are, first, whether this court--rather than the district court--should formulate the decree to be entered against appellees and second, if so, what the content of that decree should be. It is to these two questions that this discussion is addressed.

I.

UNDER THE CIRCUMSTANCES OF THIS CASE THIS COURT SHOULD FASHION A SPECIFIC DESEGREGATION DECREE FOR ENTRY BY THE DISTRICT COURT.

We believe that it is necessary and appropriate for this court to formulate a specific decree to be

entered by the court below for the following reasons: (a) delays in school desegregation are no longer tolerable; (b) the history of this litigation particularly indicates the need for very specific direction to the District Court by the Court of Appeals; (c) the record reveals that appellees continue to operate their school system in an unconstitutional manner; and, (d) this court has in the past formulated detailed decrees to be entered by the district court when necessary, and similar action is required here.

In approaching this case, it must be recognized that we are at a point in time when all delays in school desegregation must be brought to an abrupt end. It is now more than 13 years since the Brown decision and it has been more than two years since the Supreme Court said "Delays in desegregating school systems are no longer tolerable." Bradley v. School Board, 382 U.S. 103, 105 (1965). See also Davis v. Board of School Commissioners of Mobile County, 318 F. 2d 63, 64; 322 F. 356, 358; 333 F. 2d 53, 54-55; 364 F. 2d 896; United States v. Jefferson County, supra.

Moreover, the peculiar history of this case--marred by foot dragging by the appellees and unwillingness by the District Court to promptly and effectively implement the directives of this court--must also be recognized. This is the fifth appearance of this case in this Court. When the case was first presented to this Court nearly four and one-half years ago, Davis v. Board of School Commissioners of Mobile County, 318 F. 2d 63, at 64 (C.A. 5, 1963), this court noted that the district court was "left an area of discretion in the desegregation process," but added:

> ...this court must require prompt and reasonable starts [in the transition from segregated to desegregated schools], even displacing the District Court discretion, where local control is not desired, or is abdicated by failure to promptly act.

More than three years later, 364 F. 2d 896 at 898, the Court quoted the same language, and stated (Id.at 905):

The degree to which the appellee accepts the legal principles announced by the courts as the guiding principles upon which it undertakes anew the task of operating a constitutionally valid school system, the simpler and more professionally acceptable to all will it be. As the Supreme Court and this court develop and announce additional legal principles affecting the "deliberate speed" principle, the Board should be guided accordingly.

Furthermore, in the 13 years since Brown and the four and one-half years since this litigation was commenced, defendants have taken no significant steps toward desegregating their schools. Students were initially assigned to schools on a racial basis. (Record on Appeal filed August 24, 1965 at page 59). The only change in the method of student assignment is to allow some students to transfer out. Even after the appellate decision of last year in this case, defendants adopted and the court below approved a plan providing:[1/]

> Students in attendance at a particular school shall continue at that school from year to year unless:
>
> a. A transfer is requested and granted;
>
> b. He reaches the next option level [first grade and the beginning grades in junior and senior high school] and exercises his option to attend an alternative school; or
>
> c. His parents or guardians move their residence to a different attendance area and the option thereby granted is exercised.

1/ This plan was submitted to the district court on October 19, 1966. A more detailed discussion of appellees' attendance plan and the manner in which the school system is operated can be found in the trial brief of the United States which is attached hereto and accompanied by statistical data, a proposed decree and proposed findings of fact and conclusions of law which were submitted to the trial court.

As to students in non-option level grades, this is a transfer system identical to the systems condemned by this Court in Armstrong v. Board of Education of the City of Birmingham, 333 F. 2d 47 (C.A. 5, 1964); Stell v. Savannah-Chatham County Board of Education, 333 F. 2d 55 (C.A. 5, 1964); and even in Davis v. Board of School Commissioners of Mobile County, 333 F. 2d 53 (C.A. 5, 1964). Such a transfer student must have his parent go to the school board office, sign a paper and receive an application form. Both parents sign this form and must state the reasons why a transfer is desired. Section 6, School Attendance Plan.

Students in the option level grades receive a notice letter which advises them that they may choose either the feeder school or the nearest formerly white or formerly Negro school outside their attendance area. Negro schools continue to feed into Negro schools and white schools continue into white schools. The appellees do not notify the student as to what school other than his feeder school he may attend. Instead, the notice says, inter alia, "it would be an impossible task for the board to attempt to define for you the optional schools since this depends upon the location of your residence." (Pl. Ex. 8, 9).

After receiving this notice the student is required to complete the "option" form and return it the following day. (Pl. Ex. 10). Such a system not only violates Jefferson County but violates principles firmly established by this Court years ago. See Gibson v. Board of Public Instruction of Dade County, 272 F. 2d 763, at 767 (C.A. 5, 1959); Evers v. Jackson Municipal Separate School District, 378 F. 2d 408, at 411 (C.A. 5, 1964); Stell v. Savannah-Chatham County Board of Education, supra.

After examining the basic provisions of defendants' desegregation plan, it is not surprising that no significant progress has been made in student desegregation. Defendants estimated that only 668 out of the expected total of 31,820 Negro students were to be enrolled at desegregated schools in Mobile County this year. No white students are enrolled in Negro schools.

Defendants have similarly failed to take any significant steps in the area of faculty desegregation. The faculty was totally segregated during the entire 1966-67 school year, and remains almost totally segregated for the present year, despite this Court's order on August 16, 1966, (364 F. 2d at 904) that the defendants end their policy of hiring and assigning faculty according to race by the 1967-68 school year. Defendants' failure to desegregate their faculty despite this Court's specific instructions in 1966 is especially inexcusable in light of the facts that the defendants operate a large, urban

school system employing more than 2400 teachers (based on Pl. Ex. 23), with approximately 100 new teachers coming into the system this year and 80-90 vacancies occurring during the school year. (Pl. Int. Ex. 33).

Nor have other elements of the racially dual system been altered in the slightest. Schools have always been (see, e.g., Pl. Ex. 6 and Pl. Int. Ex. 61) and still are (Pl. Int. Ex. 64, 65, 66) located and constructed on a racial basis. The appellees continue to run racially separate sets of busses to their racially separate sets of schools (Pl. Int. Ex. 53A-53I). These bus routes are overlapping and duplicative (Montgomery Dep., pp. 15-17; Pl. Ex. 6 to McPherson Dep.; testimony of McPherson), but the appellees have no plans to change them (Montgomery Dep., pp. 17-18). And even today the appellees' athletic events are scheduled so that white teams do not play Negro teams (McPherson Dep., Vol. III, p. 66) and they hold a music program for just the Negro schools (Testimony of Mrs. Holloway). In short, the Mobile school system is still wholly organized on a racial basis and the appellees have no plans to change its segregated structure.

In a context such as this, where delays in ordering desegregation are no longer permissible, the appellees have refused to take any meaningful steps to desegregate, and the district court has not implemented previous instructions from this Court, it is appropriate and necessary for this

Court to formulate a specific decree to be entered by the district court. Such action has ample precedent. This Court has previously found it necessary to formulate specific decrees in voting cases. See, e.g., United States v. Ward, 349 F. 2d 795, 803 (C.A. 5, 1965); Scott v. Walker, 358 F. 2d 561 (C.A. 5, 1966). In school desegregation cases, this Court has formulated specific detailed injunctions to be entered by district courts pending appeal. Davis v. Board of School Commissioners, 322 F. 2d 356 (C.A. 5, 1963); Gaines v. Dougherty County Board of Education, 334 F. 2d 983 (C.A. 5, 1964); Stell v. Savannah-Chatham County Board of Education, 318 F. 2d 425 (C.A. 5, 1963). Finally, in Jefferson County, this Court en banc set forth a specific decree to be entered in each of the consolidated school desegregation cases there on appeal, and to serve as a model for all such cases in this circuit. Similar action is now essential in this case. We have therefore formulated a proposed decree fashioned around the peculiar circumstances of Mobile, and we urge this Court to direct the court below to enter that decree.

II.

THE CONTENT OF THE DECREE TO BE FORMULATED BY THIS COURT

With respect to the 1967-68 school year, we believe that the decree formulated by this Court should provide relief in three areas: alleviation of the overcrowded conditions existing at some of the Negro schools in the city portion of the school system, abolition of the dual attendance zones, and faculty desegregation. These are areas which are most in need of judicial attention and in which it is still possible to give effective relief with a minimum of disruptive impact on the school system.

For the 1967-68 school year, we believe that appellees should be required to transfer students from designated overcrowded Negro schools in the city part of the system to under capacity white schools in that part of the system at the beginning of the second semester of the present school year.[2/] We realized that such transfers might have a disruptive impact on students in mid-year and accordingly we provide that upon his request, a

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2/ The record shows that these Negro schools are overcrowded and are located near the white schools, which are under capacity. Both white and Negro schools in the non-city areas are overcrowded, so that similar relief would not be appropriate there. See our trial brief at pages 39-40, 53, 61-63, 83, and 103-105. It should also be noted that the city and rural portions of the system have traditionally been the subject of separate treatment.

residences. These dual attendance zones were condemned by Davis III, 333 F.2d 53, at p. 55.

In order that Mobile might have some meaningful faculty desegregation this school year, we propose that the decree require that for this school year, each teacher and other employee hired be assigned to a school of the opposite race if a vacancy exists for which he is qualified.[4/] Since 80 or 90 new teachers are normally hired during each school year, this provision should result in further faculty desegregation this year without creating administrative or educational problems. The defendants would also be directed to reassign teachers for the beginning of the second semester, to the extent it is educationally feasible, so that no school's faculty and staff will be composed exclusively of one race. In most junior and senior high schools courses are offered on a semester basis and it is possible to find a number of teachers who could be transferred without upsetting the continuity of a school's teaching program. Defendants should explore this possibility for faculty desegregation.

The above provisions are directed at this school year. However, we believe that this Court should now

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4/ This provision should remain in force until the appellees satisfy the Court that faculties are not identifiable as tailored for a heavy concentration of children of one race.

also look to future years and should include in the decree provisions which will provide a basis for the complete abolition of the racially dual system in Mobile. For example, in order to properly effect the desegregation of a large school system such as Mobile which uses geographic attendance areas, it is first necessary to ascertain just where the students live and what school facilities are available. A comprehensive survey of the Mobile County School system should precede its reorganization on a desegregated basis and such a survey is required by the decree. The need for planning to meet the problems of desegregation has been recognized by district courts.[5/] See Dowell v. School Board of Oklahoma City, 244 F. Supp. 971 (W.D. Okla. 1965), modified and aff'd. 375 F.2d 158 (C.A. 10, 1967), and Braxton v. Board of Public Instruction of Duval County, M.D. Fla., Civil Action No. 4598, order entered August 22, 1967. The district court in Dowell said, "Desegregation of public schools in a system as large as Oklahoma City requires a definite and positive plan providing definable and ascertainable goals to be achieved within a definite time according to a prepared procedure and with responsibilities clearly designated." at p. 976. The results of the survey would be reported to the district court by

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5/ It should be noted that both the Alabama State Department of Education and the University of Alabama conduct such school surveys for local school systems.

February 1, 1968, so that the court will have ample time to consider them and to ensure full desegregation in 1968-69. The survey would show the location of all the students living in the system, by race, grade, and school and be accompanied by recommendations for the redrawing of attendance zone lines and the reorganizing of the feeder system to achieve desegregation. The recommendations would be accompanied by a forecast of the enrollment, by grade, race, and school, based on the proposed attendance lines. It is both necessary and proper that such recommendations relating to new attendance lines and feeder patterns be made, for this is the basic method by which a school system operated on geographic attendance areas may truly fulfill the affirmative duty "to bring about a unitary, integrated school system", of which this Court spoke in Jefferson II, supra, at p. 5 of slip opinion.

It is essential that the survey should also reflect a description of each school in the system and the property holdings of the system, and, thus detailed information will be reported on buildings, sites, capacity, and similar items. These will be important in showing the district court just what can and should be accomplished at different stages of the desegregation process.

Until such time as the district court approves a desegregation plan based upon the survey set forth above, defendants should be enjoined from any further building projects where actual construction has not yet commenced. The decree provides for such an injunction, specifically naming three planned construction projects which the record already shows are based on race (see our trial brief at pp.82,83) and exempting the other project, for which the record does not show any racial basis. Since an approved plan should exist by next spring, this would not unduly burden the appellees. Federal courts have recognized that under appropriate circumstances school construction should be prohibited. In Kelly v. Altheimer, Arkansas Public School District No. 22, 378 F.2d 483 (C.A. 8, 1967), where Negro plaintiffs sought to enjoin an addition to the system's Negro school, the Court of Appeals said:

> We conclude that the construction of the new classrooms by the Board of Education had the effect of helping to perpetuate a segregated school system and should not have been permitted by the lower court. at p. 497.

And in Lee v. Macon County Board of Education, supra, the Court entered a model decree which enjoined school construction, consolidations and expansion which had been recommended in the course of racially conducted school surveys, unless subsequently approved by the state as non-racial. The need for such an injunction is demonstrated by the fact that once a school has been constructed on the basis of

racial considerations, the harm done to the desegregation process is irreparable and the constitutional rights of Negroes, already years postponed, are even more difficult to guarantee. Leave to proceed with particular construction projects could be obtained prior to the completion of the survey upon an evidentiary showing that the particular building project would not have the effect of perpetuating racial segregation.

In this case there is a great need for the basic provisions requiring non-racial hiring, assignment, and firing of faculty and staff except where necessary for the purpose of correcting the effects of past segregated assignments of faculty and staff under the dual school system. We believe we are at a stage where the defendants should be required to make assignments and reassignments to various schools so that by the start of the 1968-69 school year no faculty or staff will be recognizable as being tailored for a heavy concentration of Negro or white students. Both Jefferson, supra, and Lee, supra described this as the real objective of faculty desegregation and until it is accomplished, defendants have not met their constitutional responsibilities. In accomplishing this objective the defendants should, where possible, distribute talents and abilities evenly among the various schools in the system. This reassignment is consistent with the requirement of the equalization of formerly white and formerly Negro schools. It was specifically included in the Lee decree.

The provisions in the decree dealing with plans for encouraging teachers to voluntarily transfer to schools where their race is in the minority is an important part of achieving a smooth transition from a bi-racial to unitary system. This will afford the defendants with a clearer understanding of what teachers could best be reassigned to particular schools.

During the transitional period when a school system is moving toward complete desegregation, it is necessary that reports be submitted to the Court so that the progress may be measured. In this respect, the decree requires defendants to make various reports to the Court.

In its 1966 decision in this case, 364 F. 2d 896, at p. 898, this Court pointed out that "it has been the duty of appellate courts to interpret and reinterpret" the meaning of "deliberate speed" and, thus, the constitutional duty of school systems to desegregate. Furthermore, this Court has recognized the fact that relief must change and become more exacting and the transition to a non-racial school system, accelerated. In Price v. Denison Independent School District, 348 F. 2d 1010 (C.A. 5, 1966), at 1012 this

Court quoted from Ross v. Dyer, 312 F. 2d 191 (C.A. 5, 1963), at p. 194:

> . . . It is now clear that even though the 1960 order prescribes a plan in specific detail, this is not the end of the matter. The District Court of necessity retains continuing jurisdiction over the cause. This means it must make such adaptations from time to time as the existing developing situation reasonably requires to give final and effectual voice to the constitutional rights of Negro children. (Emphasis added).
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> In order to assist the district court in fulfilling its obligations in making these adaptations, it is appropriate and necessary for this Court to order the lower court to enter the attached decree.

CONCLUSION

For the reasons set forth in this brief we respectfully request this Court to remand this case to the district court for the entry of the proposed decree attached hereto.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 26, 1967, I served a copy of the United States' 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:

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APPENDIX

PROPOSED DECREE

It is ORDERED, ADJUDGED and DECREED that the defendants, their agents, officers, employees and successors and all those in active concert and participation with them be and they are permanently enjoined from discriminating on the basis of race or color in the operation of the Mobile school system. As set out more particularly in the body of the decree, they shall take affirmative action to disestablish all school segregation and to eliminate the effects of the dual school system:

I

STUDENT ASSIGNMENT

A. The defendants shall, to the extent feasible, make assignments of students and draw attendance area lines in such a way as to eliminate the effects of past racial decisions in assigning students, drawing attendance lines, and constructing school buildings.

B. In making administrative transfers where necessary to relieve conditions of overcrowding and for the purpose of changing school use, the defendants

shall, where possible, do so in a manner consistent with the objective of desegregating their schools. To that end, defendants shall, for the second semester of the 1967-68 school year assign a sufficient number of elementary students attending the Council, Emerson, Palmer, Howard, Grant, Gorgas, Stanton Road, Brazier, Thomas, Hillsdale, and Whitley schools, to the Arlington, Craighead, Ellicott, Glendale, Bienville, Old Shell Road, Crichton, Forest Hill, Whistler, Dickson, Chickasaw, Dodge, Eight Mile, Fonde, Mertz, Shepard, Westlawn, and Woodcock schools to relieve the overcrowded conditions at the first listed schools and to equalize the ratios of pupils per permanent teaching station at these schools; upon written request a student so transferred in 1967-68 may be allowed to remain at the school he is presently attending.

C. For the beginning of the second semester of the 1967-68 school year, the defendants shall assign to the school serving the elementary attendance areas in

which they live, all those Negro students presently living in attendance areas serving formerly white schools, except:

1. Students, upon their written request, may be allowed to remain at the schools they are presently attending; and
2. The number of students transferred will not exceed the emergency capacity of the receiving school, as already established by defendants.

D. The defendants shall not make administrative transfers of students which have the effect of perpetuating racial segregation, nor shall they fail to make administrative transfers because they would promote desegregation.

E. Transportation shall be provided to those students who are assigned to schools under paragraphs B and C above, in those cases where the new school is located more than two (2) miles from the student's residence.

F. After the attendance areas are redrawn to achieve the desegregation of the system as provided in section IV of this decree, all students will be required to attend the school serving their zone, absent some compelling non-racial reason.

II

CONSTRUCTION

Until such time as the Court approves a plan based on the survey conducted pursuant to paragraph I herein, construction shall be suspended for all planned building projects at which actual construction has not been commenced, including the Williamson, Howard, (Northside) and Central Texas Street projects, but not including the Scarborough project.

Leave to proceed with particular construction projects may be obtained prior to the completion of the survey upon a showing by the defendants to the Court, that particular building projects will not have the effect of perpetuating racial segregation.

III

FACULTY AND STAFF ASSIGNMENTS

A. Race or color will not be a factor in the hiring, assignment, promotion, demotion, or dismissal of teachers and other professional employees, except that race will be taken into account for the purpose of counteracting or correcting the effect of past segregated assignment of faculty and staff under the dual school system.

B. The faculty and staffs at each school will be reassigned and new vacancies filled so that by the start of the 1968-69 school year no faculty or staff will be recognizable as being tailored for a heavy concentration of Negro or white students.

C. Each new teacher, including those who begin work during the remainder of the 1967-68 school year, will be assigned to a school in which the faculty and staff is predominantly composed of members of the opposite race, if a vacancy exists for which such new teacher or employee is qualified. This provision shall remain in effect until the defendants demonstrate to this Court that no faculty or staff is recognizable as being tailored for a heavy concentration of Negro or white students.

D. Each vacancy filled by the reassignment of teachers, including those occurring during the remainder of the 1967-68 school year, will be filled by a qualified teacher of the opposite race except where such a teacher is not available.

E. The defendants shall, to the extent educationally feasible, reassign teachers and staff, for the beginning of the second semester of the 1967-68 school year, on a desegregated basis, so that no school has a faculty and staff which is composed exclusively of one race, and, wherever possible, they shall assign more than one faculty and staff member on a desegregated basis.

F. In reassigning the faculties, teachers should be assigned and reassigned in such a manner that 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 in the system.

G. Teachers and other professional staff members may 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 shall 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 shall 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 Clerk of the Court, serving copies upon opposing counsel, within five (5) days after such dismissal, demotion, etc., as proposed.

H. The Board will develop a plan to encourage voluntary transfers by teachers in order to achieve faculty desegregation. That plan shall include the following measures: (1) All teachers in the system should be advised in writing that they have a right to transfer to another school for the purposes of achieving

desegregation and they should also be advised of the procedures for exercising that right; (2) A questionnaire shall be sent to all teachers in the system inquiring as to whether they would be willing to transfer to another school for the purpose of desegregation; (3) Unless there is no vacancy in any school requested, those requests for transfer shall be honored; (4) In the course of the 1967-68 school year and each school year thereafter the defendants shall conduct training programs for the purpose of encouraging transfers of teachers, establishing exchange programs for various schools, and preparing faculty and staff to teach in desegregated situations; and (5) The defendants shall immediately begin reviewing all personnel files to ascertain where each teacher might best be assigned in order to meet the requirements of this decree.

IV

SURVEY

The defendants shall conduct a survey of their school system and report to the Court, by February 1, 1968, the results of such survey, and shall specifically report as follows:

A. The defendants shall prepare a map for each school showing the location, by race and grade, of each student in the school system during the 1967-68 school year.

B. Recommendations for redrawing attendance zone lines to achieve desegregation of the schools.

C. Recommendations for the reorganization of the "feeder" system consistent with the objective of achieving desegregation.

D. A description of each school in the school system to include:

1. The size of each site and whether it is suitable for permanent use, suitable for temporary use, or should be abandoned;

2. The number of buildings on each site and as to each, whether it is suitable for permanent use, suitable for temporary use or should be abandoned;

3. The standards and criteria used to determine whether buildings and sites are suitable for permanent use, suitable for temporary use, or should be abandoned;

4. The number of regular, special and portable classrooms at each school building and the number of square feet in each such classroom;

5. Recommendations for the future use (including grades to be accommodated) of each school building and site for the next ten years, including the need for additional classrooms and the information upon which such recommendations are based.

E. A property inventory to include:

1. A list of all sites currently owned;

2. A list of all sites which the defendants have present plans to acquire and the size and intended use of such sites;

3. The basis for selection of all sites listed under numbers 1 and 2.

F. The status of construction of each school building currently under construction and the status of planning for the use of sites currently owned.

G. A forecast of enrollment at each school for the next ten years and the information upon which such forecast shall be based.

V

ACTIVITIES AND PROGRAMS

No student shall be segregated or discriminated against on account of race or color in any service, facility, activity or program conducted or sponsored by the school system, including all inter-school activities.

VI

TRANSPORTATION

The defendants shall undertake a program to disestablish the dual system of transportation based on race and to establish a unitary non-racial transportation system available to all eligible students.

VII

REPORTS

A. Three weeks before the end of the first semester of the 1967-68 school year, defendants will file a report with the Court, and serve copies on opposing counsel, showing by race, grade and school transferred from and to, the number of students they expect to transfer under I B and I C above, and within a week after the start of the second semester they shall file and serve a comparable report showing the number who actually transferred.

B. Three (3) weeks before the end of this semester and within one week after the start of the second semester the defendants will submit reports to the Court, and serve copies on opposing counsel, showing respectively, the number of teachers, by race, grade (or where appropriate subject taught), and school, whom they, (1) expect to be reassigned under III E above and (2) the number actually reassigned.

C. On June 10, of each year beginning in 1968, defendants will submit a report to the Court, and serve copies on opposing counsel, showing the number of persons, by school, grade (where appropriate), and race they

anticipate will be employed for the fall semester. Within one week after the day classes begin for the fall semester in 1968 and each succeeding year defendants will submit a report to the Court, and serve a copy on opposing counsel, showing the number of teachers actually working at each school by grade (where appropriate) and race.

D. On the same dates set forth in VII C, above, reports will be submitted to the Court, and a copy served on opposing counsel, showing the number of students by school, grade, and race, expected and actually enrolled at the schools in Mobile County.

E. On February 1, 1968 and within one week after the opening of each school year, defendants shall submit a report to the Court and serve copies on opposing counsel, showing the number of faculty vacancies, by school, that have occurred or been filled by the defendants since the order of this Court or the latest report submitted pursuant to this sub-paragraph. 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.