

Drafts

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DELORES ROSS, a minor by	)	
her next Friend, Mary Alice	)	
Benjamin, et al.,	)	
	)	
Plaintiffs,	)	
	)	CIVIL ACTION
UNITED STATES OF AMERICA,	)	NO. 10444
by RAMSEY CLARK, Attorney General	)	
of the United States,	)	<u>NOTICE OF MOTION AND</u>
	)	<u>MOTION FOR SUPPLE-</u>
Plaintiff-Intervenor,	)	<u>MENTAL RELIEF</u>
	)	
v.	)	
	)	
ROBERT ECKELS, as President of	)	
the Board of Trustees of the	)	
Houston Independent School	)	
District, et al.,	)	
	)	
Defendants.	)	
_____	)	

Please take notice that on _____,
at _____, or as soon thereafter as counsel may be heard,
in the courtroom of the United States District Court
for the Southern District of Texas, Federal Courthouse,
Houston, Texas, the United States will move this Court
for further relief in this action.

The United States, plaintiff-intervenor, moves
this Court for an order modifying and supplementing

the orders of this Court dated August 12, 1960, and October 27, 1965, and, in support of this motion, states that:

I

This Court, on October 15, 1957, enjoined the defendants from requiring segregation of the races in any school under their supervision, from and after such time as might be necessary to make arrangements for admission of children to schools on a nondiscriminatory basis, with all deliberate speed. The defendants having failed to submit to this Court an acceptable desegregation plan, this Court entered an order on August 12, 1960, providing that students had the option of attending the previously all-white or all-Negro school serving their area of residence in accordance with transfer regulations to be promulgated by the defendants. This right to transfer was initially given to students entering the first regular grade and then by the terms of the order was to be extended to students entering the next higher grade each successive year until students in all twelve grades would have ~~this right~~ ^{this right} in September, 1972. Students who did not have this ~~option~~ ^{right to transfer} or who did not exercise ~~this option~~ ^{it} continued to be assigned to schools maintained for their respective races.

In the Summer of 1965, the defendants announced an acceleration of this grade-a-year plan so that grades 7 and 10 would be so "desegregated" in September, 1965, grades 8 and 11 would be so "desegregated" in September, 1966, and grades 9 and 12 would be so "desegregated" in September, 1967. On October 27, 1965, this Court further accelerated the rate of "desegregation" by requiring that the twelfth grade be desegregated in September, 1966.

II

On August 4, 1966, Houston Independent School District Superintendent's Bulletin No. 4-E was distributed to principals ~~and teachers~~ in the School District. This bulletin, a copy of which is attached to this motion (designated as Exhibit "B"), sets out procedures to be followed in the enrollment of students in elementary grades (kindergarten and grades 1-6) for the 1966-67 school year. It provides ^{in pertinent part,} that a pupil enrolled in a Houston elementary school in 1965-66 is automatically enrolled in the same school for 1966-67. For the pupil whose residence has not changed but whose parents choose for him to attend a school other than the one he attended in 1965-66, the parents should apply in person for enrollment at the other school, August 22 to August 31. Any pupil seeking enrollment in a given school is to be enrolled on a first-come, first-served basis, up to the

limit of reasonable class size and pupil desks available, in which case priority is to be given to pupils living closer to the school and to pupils who have a brother or sister enrolled in the school.

On August 9, 1966, Houston Independent School District Superintendent's Bulletin No. 4-S was distributed to principals and teachers in the School District. This bulletin, a copy of which is attached to this motion (designated as Exhibit "C"), sets out procedures to be followed in the enrollment of students in secondary grades (grades 7-12) for the 1966-67 school year. It provides, in pertinent part, that pupils registering at a junior high school for the first time may attend the junior high school of their choice and should apply for enrollment at that junior high school between August 22 and August 31, presenting the report cards from the elementary schools they attended. No procedures were announced for students registering at a senior high school for the first time. Students already attending a junior or senior high school during the 1965-1966 school year would be automatically enrolled in the same school in 1966-67, subject to a right of transfer. Those pupils wishing ^{desiring to attend a school other than} ~~to exercise that right~~ ^{the one attended in 1965-66 could} ~~of transfer were advised to~~ apply for enrollment at ^{another} ~~the other~~ school between August 22 and August 31, presenting report cards from the schools they last attended. The Superintendent's Bulletin also stated

that for

~~in~~ new secondary schools opened in 1966-67 (Fondren

Junior High School, Woodson Junior High School, Terrell

Junior High School), ^{attendance zones to be used for the first} ~~boundaries for the first~~ ^{year} ~~months~~

^{year} ~~months~~ of the schools' operation were established and

records of students living in new school areas were

sent to those schools at the close of the 1966 spring

semester. ^{students desiring to attend a school other} Once again, ~~parents were given the right~~

^{than the new school to which they were assigned could} ~~to transfer out of those schools by~~ applying for enroll-

ment in another secondary school between August 22 and

August 31. Finally, the Superintendent's Bulletin

stated that applications for enrollment of secondary

school pupils received from August 22 to August 31 were

to be numbered chronologically and considered in numer-

ical order up to the limit of reasonable class size and

classroom space and desks available, and that priority

would be given to pupils living in close geographic

proximity to that school and to brothers and sisters

of pupils already enrolled in the school.

In August, 1966, the defendants mailed approxi-
mately 25,000 letters to parents of Negro children

entering grades 6, 7, 8, 10 and 11, advising parents

that dual school boundaries or attendance zones had

been abolished for all grades except grade nine and

that students entering all grades other than the ninth

who desired to attend schools other than the ones they

had attended the past year or to which they were promoted

in June, 1966, should register at the school of their choice between 9:00 A.M., to 1:00 P.M., August 27-31, 1966. (A copy of the letter is attached to this motion and designated as Exhibit D). These letters advised that students who planned to attend the same school as last year should report for classes on opening day and that students who planned to attend the school to which they were promoted in June, 1966, should also report for classes on opening day. The defendants also provided for the publication in Houston newspapers of a list of all schools in the Houston Independent School District prefaced with a statement similar to that contained in the aforementioned letter mailed to some Negro parents.

The enrollment procedures set out in Superintendent's Bulletins 4-E and 4-S, and the contents of the letter mailed by the defendants to some Negro parents in August, 1966, comprise the full extent of the school desegregation plan formulated by the defendants for the operation of the School District for the 1966-67 school year.

III

The defendants have failed to formulate and promulgate a comprehensive and coherent plan of assigning students to schools which are constitutionally sufficient to ^{correct} ~~eliminate~~ the racial method of student

assignment used by the defendant's under ^{their traditional} ~~the~~ dual system. The method of student assignment which the defendants have established, which they claim to be a freedom of choice plan is constitutionally inadequate under existing judicial standards for such plans in failing to provide for and give Negro children an opportunity to enroll in those schools and require:

- (a) An annual freedom of choice for all students.
- (b) A procedure to insure the nonracial assignment of pupils who fail to choose a school.
- (c) A procedure to insure the nonracial assignment of those students whose choices are denied because enrollment exceeds capacity at the schools of their choice.
- (d) Notice to parents and students of the availability of school bus transportation to the school of their choice, choice procedures, the course to be followed where enrollment exceeds capacity at any particular school, and other information to fully inform them of their rights under the plan.

Failure of the defendants to establish a method of student assignment which is capable of replacing the racial method of student assignment used as an integral part of their traditional dual system violates the Equal Protection Clause of the Fourteenth Amendment.

IV

Prior to the 1965-66 school year, it was the practice and policy of the defendants to assign all Negro teachers to schools attended solely by Negro pupils, and all white teachers to schools attended by white students.

During the 1965-66 school year, the defendants, with few exceptions, did not deviate from ^{this practice} ~~the policy~~ and ~~policy~~ ^{practice} and assigned teachers to schools on the basis of race or color.

For the 1966-67 school year the defendants did not deviate from its practice and policy and thus teachers were assigned, with few exceptions, to schools on the basis of race or color. The defendants assigned teachers to secondary schools opened for the first time in September, 1966, in such a manner that these new schools were staffed exclusively with teachers of the same race.

The defendants have taken no meaningful steps to cease their practice and policy of assigning teachers to schools on the basis of race or color, nor have they formulated a plan to correct the existing effects of the past assignment of teachers to schools on the basis of race or color.

The practice and policy of the defendants in assigning teachers to schools on the basis of race or

color and the failure of the defendants to formulate and implement a plan to correct existing effects of the past assignment of teachers to schools on the basis of race or color deny to Negro children the equal protection of the laws to which they are entitled by the Fourteenth Amendment to the United States Constitution.

V

Prior to the order of this Court of August 12, 1960, the defendants operated a dual school system entirely on the basis of race or color. At the time that the defendants operated such a dual school system, a school bus transportation system was designed, established and maintained for the purpose of serving the traditional dual school system.

The defendants have failed to revise that bus transportation system which was established to serve a dual school system, and they continue to operate, maintain and provide a bus transportation system which was established to serve a dual school system.

The practice and policy of the defendants in operating, maintaining and providing a bus transportation system established to serve a dual school system has the effect of perpetuating the dual school system and preventing the establishment of a unitary, nonracial system, and thus that practice and policy of defendants violates the equal protection clause of the Fourteenth Amendment.

VI

We believe that unless restrained by order of this Court, the defendants will continue to deny to Negro children the equal protection of the laws by not taking adequate steps to establish a nonracial method of student assignment, to desegregate the faculty, ~~and~~ to establish a unitary non-racial school bus transportation^{system,} and to remove^{all} other vestiges of the traditional dual system.

WHEREFORE, the United States prays that this Court modify its orders of August 12, 1960, and October 27, 1965, by ordering the defendants to take the following steps to eliminate all aspects of a dual school system based on race or color and to establish a unitary nonracial school system in the Houston Independent School District:

1. Establish and implement a plan for the nonracial assignment of students to schools.
2. Establish and implement a plan for the elimination of, and the correction of the existing effects of, their practice and policy of assigning teachers to schools on the basis of race or color.
3. Cease operating and providing bus transportation which promotes the continued attendance of Negro students at schools formerly maintained for Negro students and white students at schools previously maintained for white students and shall operate and provide a transportation system to complement the nonracial assignment of students to schools.

4. The defendants shall take all other steps to eliminate all vestiges of a dual school system based on race and to correct the existing effects of past discriminatory patterns in the operation of the Houston Independent School District.

The United States further prays that this Court grant such additional relief as the needs of justice may require, including the costs and disbursements of this action.

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