

253 F.Supp. 306
United States District Court, M.D. Alabama,
Northern Division.

Arlam CARR et al., Plaintiffs, United States of
America, Amicus Curiae,
v.
MONTGOMERY COUNTY BOARD OF
EDUCATION et al., Defendants.

Civ. A. No. 2072-N.

|
March 22, 1966.

School desegregation case. The District Court, Johnson, J., ordered the desegregation of grades 1-4 and grades 7-12 of the public school system of Montgomery county, Alabama, commencing with school term in September 1966 and grades 5 and 6 commencing with school term in September 1967 pursuant to approved freedom of choice plan.

So ordered.

See also, D.C., 232 F.Supp. 705.

Attorneys and Law Firms

*307 Fred D. Gray, Gray & Seay, Montgomery, Ala., Jack Greenberg and Charles H. Jones, Jr., New York City, for plaintiffs.

John Doar, Asst. Atty. Gen. of U.S. for Civil Rights, Washington, D.C., Ben Hardeman, U.S. Atty., M. Dist. of Alabama, Montgomery, Ala., for United States, amici curiae.

Vaughan Hill Robison, and Joseph D. Phelps, Hill, Robison & Belser, Montgomery, Ala., for defendants.

Opinion

JOHNSON, District Judge.

In accordance with the conclusions reached by this Court in this matter and the evidence presented in this matter upon which those conclusions are based, it is hereby,

Ordered, adjudged, and decreed that the defendants, their agents, officers, employees, and successors, and all those

in active concert or participation with them shall:

1. Execute the Plan for Desegregation of the Montgomery County, Alabama Public School System which is attached hereto and incorporated herein.

2. Report to the Court, on or before June 7, and each such date until further Order of this Court, the anticipated student enrollment in each school by race and grade for the next school year and report, as it occurs, any subsequent substantial change in enrollment affecting desegregation.

3. Report to the Court by June 15, and each such date, until further Order of this Court, the planned assignments of professional staff to each school for the next school year by race and grade, or where appropriate, by subject taught or position held, and report, as it occurs, any subsequent change in planned staff assignment affecting staff desegregation.

4. Report as soon as possible after the opening of school, but no later than September 20, and each such date until further Order of this Court, the actual data for the items covered in the reports ordered in Paragraphs 2 and 3.

5. The Court specifically retains jurisdiction of the parties and the cause.

PLAN FOR DESEGREGATION OF THE PUBLIC SCHOOL SYSTEM OF MONTGOMERY COUNTY, ALABAMA

I.

GRADES COVERED

All grades of the Montgomery County Public School System shall be desegregated by the Fall of 1967.

(a) 1966: Commencing with the school term in September 1966, grades 1, 2, 3, 4, 7, 8, 9, 10, 11, and 12 of the Montgomery County Public School System shall be desegregated and pupils assigned, without regard to race or color, on a freedom of choice basis as described in this Plan.

(b) 1967: Commencing with the school term in September 1967, the remaining grades, specifically grades 5 and 6, of the Montgomery County Public School System shall be desegregated and pupils assigned, without regard to race or color, on a freedom of choice basis as described in this Plan.

II.

NONDISCRIMINATORY OPERATION OF NEWLY CONSTRUCTED SCHOOLS AND NEWLY EXPANDED SCHOOLS

Any school to be newly constructed and any school to be substantially expanded by the construction of additional classrooms will be planned, opened, expanded, and operated on a nonsegregated basis. Freedom of choice will cover all grades, and teachers and principals will be assigned so that the faculty is not composed of members of one race.

III.

OPERATION OF THE FREEDOM OF CHOICE PLAN

The following requirements shall apply for all students covered by freedom of choice under this Plan.

(a) Who May Exercise Choice: A choice of schools may be exercised by a ***308** 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 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: Each student, both white and Negro, is required to exercise a free choice of schools annually.

(c) Choice Period: The period for exercising choice will commence on April 1, and end on April 30, preceding the school year for which choice is to be exercised. No student or prospective student, who exercises his choice with the choice period, shall 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 does 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) Distribution of Explanatory Notice and Choice Form: On the first school day of the choice period, an explanatory notice and a choice form (Appendices A and B) will be sent home with each child in the Montgomery County Public School System. Extra copies of the explanatory notice and the choice form will be freely available to parents, students, prospective students, and the general public at each school in the system and at the office of the Superintendent.

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

(g) 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.

(h) Choice Forms Binding: Once a choice form has been submitted, it is binding for the entire school year and may not be changed except in cases of parents making different choices than their children under the conditions set forth in Paragraph III (a) of this Plan and in cases where compelling hardship is shown by the student.

(i) Preferences in Assignment: In assigning students to schools, no preference will be given to any student for prior attendance at a school, and no choice will be denied for any reason other than overcrowding. The Montgomery County Board of Education shall report to the Court each instance of preference given for prior attendance at a school because of special circumstances. If, as a result of such preference, a student residing closer to the school than the special student is denied his choice, a report of the disposition of the denied student, and reasons therefor, shall be made to the Court. In case of overcrowding at any school, preference will be given on the basis of the proximity of the school to the homes of students choosing it, without regard to race or color. In determining proximity for the 1966-1967 school year, existing district lines may be employed without regard to race. All existing attendance areas as defined by district ***309** lines and feeder school descriptions will be abolished effective 1967.

(j) Second Choice Where First Choice is Denied: Any student whose choice is denied must be notified in writing by May 30, and given his choice of each school in the system serving his grade level where space is available.

(k) Transfers for Special Needs: Each student must attend the school to which he is assigned under the foregoing provisions, except that any student who requires a course of study not offered at that school, or who is physically handicapped, may be permitted, upon his written application, to transfer to another school which is designed to fit, or offers courses for his special needs.

(l) Transportation: Busses will be routed to the maximum extent feasible so as to serve each student choosing any school in the system. In any event, every student choosing the school nearest his residence will be transported to the school to which he is assigned, whether or not it is his first choice, if that school is sufficiently distant from his home to make him eligible for transportation.

(m) Official Not to Influence Choice: No official, teacher, or employee of the school system shall require or request any student to submit a choice form during the choice period other than by the explanatory notice and the choice form. After the expiration of the choice period, the school system will make all reasonable efforts to obtain a completed choice form from each student who has not exercised a choice. However, at no time shall any official, teacher, or employee of the school system influence any parent, or other adult person serving as a parent, or any student, in the exercise of a choice, or favor or penalize any person because of a choice made. Information concerning individual choices made or schools to which individual students are assigned will not be made public.

(n) Public Notice: On, or shortly before, the date the choice period opens, a notice describing the desegregation plan will be published in the Montgomery daily newspapers. Copies of this notice will be distributed at about the same time to all other news media in Montgomery.

IV.

SERVICES, FACILITIES, ACTIVITIES, AND PROGRAMS

A student shall have full access to all services, facilities, activities, and programs (including transportation, athletics, and other extra curricular activities) that may be conducted or sponsored by, or affiliated with the schools of the system. A student attending school for the first time on a desegregated basis may 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 student.

V.

NEW STUDENTS

Each new student will be required to exercise a free choice of schools before enrollment. Each such student will be furnished a copy of the prescribed notice 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. Each will be given an opportunity to exercise his choice during the choice period. A prospective student exercising his choice after the choice period will be given at least one week to do so.

VI.

NON-COVERED GRADES

Students entering the fifth or sixth grade in September, 1966 will not be covered by this freedom of choice plan. However, any such student shall have the right to apply for transfer to and be enrolled in any school from which he was excluded, in the past, on account of his race.

*310 VII.

FACULTY AND STAFF

Race or color will henceforth not be a factor in the hiring, assignment, reassignment, promotion, demotion, or dismissal of teachers and other professional staff, with the exception that assignments shall be made in order to eliminate the effects of past discrimination. Teachers, principals, and staff members will be assigned to schools so that the faculty and staff is not composed of members of one race.

In the recruitment and employment of teachers and other professional personnel, all applicants or other prospective employees will be informed that Montgomery County operates a racially integrated school system and that members of its staff are subject to assignment in the best interest of the system and without regard to the race or color of the particular employee.

The Superintendent of Schools and his staff will take affirmative steps to solicit and encourage teachers presently employed to accept transfers to schools in which the majority of the faculty members are of a race different from that of the teacher to be transferred.

Teachers and other professional staff will not be 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 or school closings, they shall be transferred to any position in the system where there is a vacancy for which they are qualified.

VIII.

will be discontinued as educational facilities.

CLOSING OF INADEQUATE FACILITIES

Prior to the commencement of the 1966-67 school year, the Abraham's Vineyard, Phillips, Cecil, Arthur Cook, Battle, McCant's, and Katie Bowen Elementary Schools,

Prior to the commencement of the 1967-68 school year, the following schools will be discontinued as educational facilities:

Alice White

Lillian Dungee

Arrington

Waugh

Big Zion

Woodley

Tankersely

Zion Hill

Chappell Gray

McLean

G. W. Trenholm

McLemore

Lillian Dabney

Mt. Zion Road

The Montgomery County Board will design and provide remedial educational programs to eliminate the effects of past discrimination, particularly, the results of the unequal and inferior educational opportunities which have been offered in the past to Negro students in the Montgomery County School System.

Students displaced as a result of the closing of the above listed schools will be assigned to schools, without regard to race or color, on a freedom of choice basis as described in this plan, whether or not their grade is covered.

Expansion of existing school plants to accommodate displaced students will be designed to eliminate the dual school system.

APPENDIX A

NOTICE

Grades 1, 2, 3, 4, 7, 8, 9, 10, 11, and 12 will be operated on a desegregated basis next year. Any student in these grades may choose to attend any school in the Montgomery County School System regardless of the school's former racial designation. A choice must be made for each child who will be in grades 1, 2, 3, 4, 7, 8, 9, 10, 11, and 12 in September, 1966.

Attached to this Notice is a choice form which must be filled out on or before April 30, 1966. 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 a parent must sign the choice form.

No child will be denied his choice except for reasons for overcrowding. If a child's choice is denied for overcrowding, a second choice will be made available. *311 If no choice can be granted, because of

overcrowding, children nearest the school will be given preference.

All facilities, activities, and programs at the school chosen will be available to all students.

Transportation will be provided, if possible, no matter what school is chosen.

Choice forms may be returned by mail, in person, or by messenger to the Superintendent's Office at 305 South Lawrence Street, Montgomery, Alabama.

APPENSIX B

(ELEMENTARY) (JUNIOR HIGH SCHOOL) (HIGH SCHOOL)

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 mater which school the child attended last year, and it does not matter whether the school was formerly a white or a Negro school. The form must be mailed or brought to the office of the Superintendent, 305 South Lawrence Street, Montgomery, Alabama, by April 30, 1966. A choice is required for each child. Unless you

Name of School

are notified to the contrary by May 30th, your choice is approved.

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 pupil is entering _____

School Attending During _____

1965-66 School Year _____

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

Grades

Location

Signature _____ Date _____

To be filled in by Superintendent:

School Assigned: _____

All Citations

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