IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF TENNESSEE

EASTERN DIVISION

BRENDA K. MONROE, et al. Plaintiffs, and UNITED STATES OF AMERICA, Amicus Curiae, v. COUNTY BOARD OF EDUCATION, MADISON COUNTY, TENNESSEE, et al. Defendants.	)	CIVIL ACTION NO. 1327

MEMORANDUM IN SUPPORT AND
PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

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MEMORANDUM OF THE UNITED STATES IN SUPPORT OF ITS PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to this Court's request at the conclusion of the hearing in this cause of August 29, 1972, the United States, amicus curiae herein, hereby submits this memorandum in support of its proposed findings of fact and conclusions of law.

The plaintiffs' Motion for Further Relief filed May 23, 1972, raises the following issues:

1. Defendants present method of student assignment does not meet current judicial standards, and as a result has failed to eliminate all vestiges of the dual school structure with respect to at least three schools, Denmark Elementary, West Junior High and West Senior High.

2. Defendants have failed to enforce their present school zone lines under their present plan.

3. Defendants have failed to assign faculty and staff in the district in accordance with this court's order of January 16, 1970.

4. Defendants have demoted black staff in violation of federal law and have failed to hire black teachers in a non-discriminatory manner.

We file this memorandum to assist the Court in evaluating the evidence presented and address the issues raised, and if warranted, to suggest an orderly procedure for resolving the issues.

I. PROCEDURAL HISTORY

On May 21, 1964 the original order of desegregation was entered in this case. In August, 1968 the plaintiffs filed a Motion for Further Relief requesting that the defendant school district be required to adopt a desegregation plan that would completely dismantle the dual school system in Madison County. On May 7, 1969, this Court found that the County operated a dual system based on race and ordered the defendant school district to submit a new desegregation plan based on a geographic zoning by January 1, 1970. This order was subsequently amended by the Court on December 16, 1969 pursuant to the Supreme Court decision in Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969) and Carter v. West Feliciana Parish School Board, 396 U.S. 290 (1969), to require the defendants to implement the geographic zoning assignment plan by February 1, 1970 and obtain the assistance of the Department of Health, Education and Welfare in formulating such plans.

On January 2 and 15, 1970 respectively the defendants and HEW filed proposed school desegregation plans based on slightly different geographic zone lines. On January 16, 1970 the Court approved the school district plan with certain modifications in zone lines in accordance with the HEW proposal. This geographic zone line plan continues to be the basis of student assignment at the present time.

II. FACTS

1. Student and Faculty Assignments

Prior to the 1970 school year, Denmark Elementary, West Junior High and West Senior High Schools had an all black student body and were constructed and maintained for black students. (Tr. p. 124 and Court order of May 7, 1969). The student enrollments for these three schools for the 1970, 1971 and 1972 school years are as follows:

	1970			1971			1972		
School	%B	B	W	%B	B	W	%B	B	W
Denmark Elementary	95%	527	24	96%	523	20	95%	492	12
West Junior H. S.	89%	373	42	87%	357	54	90%	346	37
West Senior H. S.	97%	300	10	96%	290	15	95%	299	16

At the present time over 60 per cent of the black secondary students attend West Junior and Senior High Schools (645 out of 1074); over 38 percent of the black elementary students in the system attend Denmark Elementary. The faculty assignments for the three schools during the 1971-72 and 1972-73 school years are as follows:

	1970-71			1971-72		
School	B	W	%B	B	W	%B
Denmark Elementary	12	11	52.2	12	11	52.2
West Junior H. S.	15	7	68.2	14	8	63.6
West Senior H. S.	9	9	50.0	9	10	47.4

The Court approval of the desegregation plan submitted by the defendants in January, 1970 was based, in large part, on the defendants' projected student enrollments for each school in the district. However, the defendants did not meet the 1971-72 projections[1/], in seven schools as shown below:

School	1971-72 School Year Actual Student Enrollment B	W	T	%B	Projected Student Enrollment B	W	T	%B
Beech Bluff Elem.	64	261	325	19.7	113	193	309	36.5
Denmark Elem.	523	20	543	96.3	429	96	525	81.7
Pope Elem.	165	379	544	30.3	259	348	607	42.7
Northside J. H.	159	473	632	25.2	190	311	501	38.0
Northside S. H.	114	391	505	22.8	155	269	424	60.1
West J. H.	357	54	411	86.9	361	123	484	74.6
West S. H.	290	15	305	95.1	315	143	458	68.8

There was little change between the student enrollments for 1970-71 and 1971-72. See Appendix A for 1970-71 statistics.

In conjunction with the projected enrollment figures, it appears that many white students attended schools outside the zones where they legally reside during the 1971-72 school year. Several incidents of zone jumping were reported to the defendant school district. (Tr. 54, 55) Although the Board appears to have taken some action to ensure proper attendance of students based upon complaints they received, it did not make a detailed

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1/ Actual statistics taken from Defendants' July 1972 Report to the Court; projected enrollments taken from plan approved by court.

inquiry to determine whether white and black children were attending the schools to which they had been assigned according to the projections of the plan. (Testimony of Superintendent Walker, Tr. 115). For example, approximately 130 white students who were projected into West High School did not attend. At the same time if a detailed study were made, it may reflect why approximately 120 whites are attending Northside High School and approximately 80 white students are attending Southside High who were not projected there. Similarly approximately 75 white students were projected into Denmark Elementary who did not attend; at Young Elementary there are over 180 white students attending who were not projected there.

The defendants placed portable classrooms at the several schools to accommodate overcrowded conditions rather than take advantage of space available at other schools where students could have been reassigned to further desegregation. For example, defendants have placed classrooms at the predominantly white Northside and Beech Junior High Schools. The Board did not consider taking advantage of classroom space available at the predominantly black West Junior High School for the 1971-72 and 1972-73 school year since the present order did not require it. (Tr. 154-55). There was also classroom space available at the predominantly white Westover Elementary School for the 1971-72 and 1972-73 school years, but the Board added a portable classroom at Denmark to alleviate the overcrowding there. (Tr. 187).

After the first semester of 1970, the defendants did not utilize the majority-to-minority transfer provision. However, Mr. Walker recognized that the transfer provision "was one method of increasing the effectiveness of desegregation." (Tr. p. 106, 284).

Defendants' January 1970 Court order required that black teachers in the system be assigned to each school in the same ratio as they are throughout the entire system. Six schools for the 1971-72 school year did not come within 10 percent of meeting the 66-34% faculty ratio required by the January, 1970 court order.[2/] For the 1972-73 school years, seven schools did not come within 10 percent of meeting the ratio.

The following chart illustrates the faculty assignments for the above mentioned schools for the two years:

	1971-72				1972-73			
School	B	W	T	B%	B	W	T	B%
Denmark	12	11	23	52.2	12	11	23	52.2
East	5	10	15	33.3	5	2	9	55.6
Huntersville	4	3	7	57.1	4	15	20	20.0
Mercer	3	4	7	42.9	3	3	6	50.0
Westover	2	7	9	22.2	2	6	8	25.0
Southside Sr.H.	5	18	23	21.7	5	19	24	20.8
West Jr. H.	15	7	22	68.2	14	8	22	63.6
West Sr. H.	9	9	18	50.0	9	10	19	47.4

2/ Four schools did not come within 15 percent of meeting the ratios, the standard which the defendants used, Tr. p. 192. Board of Education of Oklahoma City v. Dowell, 375 F. 2d 158 (10th Cir., 1967) held approximately 10% to be reasonable tolerance.

2. Faculty Demotion

As a result of the defendants school desegregation order in 1970, five schools were closed. (Tr. 62). Two of the former black principals at the closed schools were reassigned as classroom teachers in the system, the three remaining black principals retained their position as principals or assistant principals. (Tr. 62-64). The record reflects that the defendants reassigned these black principals on the basis of the qualifications of the five principals affected by the school closings and did not consider the qualifications of all the principals in the system. (Tr. 65-66).

3. Faculty Hiring

Defendants hire black teachers into the system in the same proportion to the number of black students in the system, (Tr. 190, 311, 355). The defendants hired three black teachers and 15 white teachers for the 1972-73 school year.[3/]

For the 1971-72 school year the defendants employed four black principals and all were assigned to black schools with black faculties. (Tr.307). The defendants employed four black principals for the 1972-73 school year and assigned one to a formerly white school.[4/]

3/ July 1972 Report to Court.

4/ July 1972 Report to Court.

III. DISCUSSION

Prior to the filing of this lawsuit, the Madison County Board of Education operated a segregated school system based on race. (Testimony of Superintendent Walker, Tr. 124 and Court opinion of May 7, 1970).

In January 1970 this Court approved the existing desegregation plan. It appears that the Board takes the position that it has a "unitary school system" (Tr. p. 118) and no further steps are necessary.

On April 20, 1971 the Supreme Court again enunciated the judicial standards for desegregating a dual school system. Chief Justice Burger stated that "school authorities should make every effort to achieve the greatest possible degree of actual desegregation and will thus necessarily be concerned with the elimination of one race schools." Swann v. Board, 402 U.S. 1, at p. 26. In its opinion the Court cited with approval the Green [Green v. County School Board, 391 U.S. 430 (1968)] holding that "school authorities are clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." Swann, p. 15.

The Court has said that "where the school authority's proposed plan for conversion from a dual to a unitary system contemplates the continued existence of some schools that are all or predominantly of one race," the Board has the burden of showing that such assignments are not the result of "present or past discriminatory action." Swann, p. 26. See also Northcross v. Board of Education

of Memphis, Nos. 72-17-3-31 (6th Cir., August 29, 1972). Three formerly black schools, Denmark Elementary, West Junior High and West High Schools were constructed and maintained for black students. These schools have never been desegregated in accordance with the Swann guidelines. The Board has never proposed an alternative plan to desegregate these three predominantly black schools "to the greatest possible degree" nor has the Board justified with facts their continued existence. Rather the Superintendent has said that although West Senior High was 95% black it was "desegregated" since the school served a single zone (Tr. p. 119); he testified with respect to the majority-to-minority transfer provision that the board did not feel it necessary to come back in the Court and secure permission to utilize that provision, (Tr. pp. 108-09) although he recognized that the provision was one way of increasing the effectiveness of desegregation, (Tr. pp. 106, 284); although the Board did take some action, it did not make a detailed inquiry to determine why it did not meet its projected enrollments (for example, whether white students were zone jumping from the West High School zone to the contiguous Northside High School

zone or Southside High School zone), and the Board placed portable classrooms at predominantly white high schools to relieve overcrowding rather than assign white students to the predominantly black West High since the present court order did not require it. (Tr. 154,155)

It appears that the Board may have misunderstood its legal duty under Swann to take "whatever steps" are necessary to convert to a "unitary system". It is a well-founded principle in school desegregation cases that the board has the primary responsibility for assessing and solving problems incidental to the maintenance of a unitary school system. Brown v. Board of Education, 349 U.S. 294, 299 (1954); Green, supra, p. 442; Swann, supra, p. 15.

The defendants also contend that the residential pattern of the district accounts for the racial composition of the schools. However, the defendants prepared the zone lines presently in operation which have resulted in a pattern of racially identifiable schools. The courts have long held that geographic zone lines may not, consistent with Fourteenth Amendment mandates, be drawn to conform to the racial compositions of the neighborhoods in its districts, Northcross v. Board of Education of Memphis, Nos. 72-1630-31, (6th Cir., August 29, 1972); Kelley v. Metropolitan County Board of Education of Nashville, Tennessee, 436 F. 2d 856 (6th Cir., 1970); Robinson v. Shelby County Board of Education, 442 F. 2d 255 (6th Cir., 1971).

United States v. School District 151 of Cook County, Illinois, 286 F. Supp. 786 (N.D. Ill., 1968), nor may school districts intentionally build upon private residential discrimination. Taylor v. Board of Education School District of City of New Rochelle, 294 F. 2d 36 (C.A. 2, 1961); Brewer v. Norfolk School Board, 397 F. 2d 37 (C.A. 4). "Geographic zoning, like any other attendance plan adopted by a school board -- is acceptable only if it tends to disestablish rather than reinforce the dual system of segregated schools." United States v. Greenwood Municipal Separate School District, 406 F. 2d 1086 (5th Cir., 1969).

Defendants have said that alternative student assignment plans are available to them and could be implemented without disruption. Although, the Board says that such alternative plans may require transportation, (Tr. 330) the record does not reflect whether an increase in transportation would be required or merely the changing of existing routes. Compare Swann, supra, 402 U.S. at 30. Both the courts and proposed legislation suggest ways to comply with the law while holding transportation to a minimum. 5/

5/ See, e.g., the proposed Equal Educational Opportunities Act of 1972 (H.R. 13915) Sections 402 and 403; United States v. TEA, ___ F. 2d ___ (5th Cir., 1972), slip op. at 75-79 (copies attached).

Based on this record, the Board has a legal obligation to consider an alternative plan for the three schools. If the alternate plan proposes the continued existence of any of the three predominantly black schools, the school board should include in the plan the facts relied upon to justify the continued existence of the black schools and further the Board should provide options to fully desegregate the three schools.

There have been several complaints of students attending schools out of zone and with regard to these complaints the Board appears to have taken some action by notifying the parents and students that attendance outside of residence is not permitted. (Tr. p. 56) From the actual and projected student enrollment statistics (cited supra, p. 5) it appears that there may exist considerable attendance out of zone by white students assigned to formerly black schools. Therefore, it is suggested that the Board be required to conduct a survey to determine whether students are attending the proper school. One method of ascertaining this information may be to list a roster of student assignments by their proper school, determine which students are not attending the school, and finally determine if any of the students not attending their proper schools are attending other schools in the system. This may demonstrate, in part, why the projected enrollments were not met at certain schools.

The Board also ought to consider the implementation of the majority-to-minority transfer provision. Such a provision has long been recognized by the courts "as a useful part of every desegregation plan." Swann, supra, p. 26. As the Supreme Court said, "in order to be effective, such

a transfer arrangement must grant the transferring students free transportation and space must be made available in the school to which he desires to move." Swann, p. 27.

2. Faculty and Staff Assignment

In desegregating a dual system, black teachers are to be assigned to each school in proportion to their ratio in the entire system. The defendants have failed to meet the ratio in six schools for the 1971-72 school year and seven schools for the 1972-73 school year. See chart, p. 6, supra.

Faculty desegregation is a necessary corollary to the conversion to a unitary system of student assignment. Under their plan the defendants must desegregate the faculty and administrative staff throughout the school district in accordance with the order of this Court of January 16, 1970, and current judicial standards. Swann, supra, at 19, Singleton v. Jackson Municipal Separate School District, 419 F. 2d 1211 (5th Cir., 1969); United States v. Jefferson County, 372 F. 2d 836 (1966); United States v. Board of Education of City of Bessemer, 349 F. 2d 44 (5th Cir., 1968); Kier v. County School Board of Education, Augusta County, 249 F. Supp. 239 (1966).

If pursuant to desegregation, it becomes necessary to close schools, federal law requires that Boards take appropriate steps to ensure that black faculty are not subject to racially discriminatory practices.

Under the 1970 court order and Singleton v. Jackson Municipal Separate School District, supra, see also United States v. TEA (La Vega), 459 F. 2d 600 (5th Cir., 1972) the Madison County board is under an obligation to adopt

non-racial objective criteria and apply such criteria to all the staff (e.g., principals, coaches, band directors, etc.) before a demotion occurs. The order in this case requires the Board to adopt the HEW faculty plan commencing with the year 1970-71. The HEW plan sets forth faculty and staff guidelines as enunciated in Singleton, as follows:

> If there is to be a reduction in the number of principals, teachers, teacher-aides or other professional staff employed by the school district which will result in a dismissal or demotion of any such staff members, the staff member to be dismissed or demoted must be selected on the basis of objective and reasonable non-discriminatory standards from among all the staff of the school district. In addition, if there is any such dismissal or demotion, no staff vacancy may be filled through recruitment of a person of a race, color or national origin different from that of the individual dismissed or demoted until each displaced staff member who is qualified has had an opportunity to fill the vacancy and has failed to accept an offer to do so. Prior to such a reduction, the school board will develop or require the development of non-racial objective criteria to be used in selecting the staff member who is to be dismissed or demoted. These criteria shall be available for public inspection and shall be retained by the school district. The school district also shall record and preserve the evaluation of staff members under the criteria. Such evaluation shall be made available upon request to the dismissed or demoted employee. 'Demotion' as used above includes any reassignment (1) under which the staff member receives less pay or less responsibility than under the assignment he held previously, (2) which requires a lesser degree of skill than did the assignment he held previously, or (3) under which the staff member is asked to teach a subject or grade other than one for which he is certified or for which he has had substantial experience within a reasonably current period. In general and depending upon the subject matter involved, five years is such a reasonable period.

Upon the closing of Rosenwald and Tri-Community Elementary Schools, it appears that the Board did not apply the procedures to Mrs. H. Hearnton and Mrs. M. Williams as required in the order. The Board did not select the staff member to be dismissed or demoted on the basis of objective and reasonable non-discriminatory standards from among all the staff of the school district but rather the Board considered the qualifications of only the affected black principals. (Tr. 65-66)

Although the record does reflect some statistical evidence of alleged discriminatory hiring practices, the record does not indicate whether any qualified black applicants were rejected. However, the defendants should reexamine their hiring policies to determine whether qualified black applicants are not being hired on the basis of their present policies. In addition, the Board should assign principals in a non-discriminatory manner.

IV. RELIEF

Based upon the record in this case, we suggest the following relief: That the Court require the defendants to submit an alternative desegregation plan for student assignment to the plan currently being implemented for the full desegregation of the three remaining predominantly black schools (Denmark Elementary, West Junior and West Senior High) in the district for the second semester of the 1972-73 school year. With respect to the other schools where the projected enrollments were not met, the Board should be required to take appropriate steps to enforce the present school zone lines in order to make the plan effective. We feel at this time, however, that except for the three predominantly black

schools mentioned above, that the Board ought to have the opportunity to make the plan work. A majority-to-minority transfer provision with transportation provided to the students should also be a part of the desegregation plan.

With respect to the faculty, the Board should be required to make their faculty assignments for the second semester of 1972-73 school year in conformity with this Court's order of January 1970 and Swann.

Furthermore, the Board should adopt objective non-racial criteria (similar to that criteria adopted in La Vega) supra, and applying the criteria to all principals in the system including the two black principals who were demoted after their schools were closed in 1970. (Mrs. M. Hearnton - Rosenwald School and Mrs. M. Williams - Tri-Community Elementary School).

Of the group, the most qualified persons based upon the criteria ought to be principals. If principal vacancies occur subsequent to any demotion, the demotees are to receive first considerations for such vacancies.

Additionally we suggest that the defendants file with the Court, with copies to all parties, as part of their new student assignment plans theinformation as outlined in Appendix B of this memorandum.

Respectfully submitted,

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APPENDIX A

1970-71 Student Enrollment

School	Grade Structure	B	W	T	%B
West J.H.S.	7-9	373	42	415	89.8
West S.H.S.	10-12	300	10	310	97.
Westover Elem.	1-6	55	140	195	28.2
J.B. Young Elem.	K-6 (Spec. Ed)	78	561	639	12.2
Southside H.S.	10-12	64	453	517	12.3
Southside Elem.	7-9	77	527	604	12.7
Pope Elem.	K-6	184	356	540	34.
Pinson Elem.	K-6	35	123	158	22.1
Nova Elem.	K-4	95	234	329	28.8
Northside H.S.	10-12	111	308	509	21.8
Northside J.H.S.	7-9	174	425	599	29.
Mercer Elem.	1-6	76	34	110	69.1
Malesus	1-6 (Spec. Ed)	79	373	452	17.4
Huntersville	4-6 (Spec. Ed)	5	9	14	35.7
East Elem.	K-6	89	220	309	28.8
Beech Bluff H.S.	1-12	73	232	305	24
Denmark Elem.	K-6	527	24	551	95.6

APPENDIX B

REPORTING PROVISIONS

1. Student enrollments for each school and grade by race.

2. Faculty assignments for each school by race.

3. Projected student enrollments for each school and grade by race for the following school year.

4. List of all faculty and staff demotions and promotions by school and race.

5. The number of applicants by race for faculty positions.

6. The number of teachers and administrative staff hired and fired for each school by race.

7. List the number of student transfers granted by race, including the reason the transfer was granted and the schools involved in the reassignment.

8. List the number of students transported by school and race.

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PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

Proposed Findings of Fact

1. The Madison County School District is a school district created and existing under the law of the State of Tennessee.

2. The Board of Trustees and the Superintendent of Schools is responsible under Tennessee law for the operation of the school system.

3. As a result of plaintiffs' Motion for Further Relief filed in August 1968 requesting that the defendants be required to adopt a desegregation plan that would completely dismantle the dual school system in

Madison County; this Court on May 7, 1969, found that the county operated as a dual school system based on race and ordered the defendants to submit a new desegregation plan for the 1970-71 school year by January 1, 1970, based on a geographic zoning.

4. This order was amended by the Court on December 16, 1969 pursuant to the Supreme Court decisions in Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969) and Carter v. West Feliciana Parish School Board, 396 U.S. 290 (1969), to require implementation of the geographic zone assignments by February 1, 1970 and the assistance of HEW in formulating such plans.

5. On January 2 and 15, 1970 respectively the defendants and HEW filed proposed school desegregation plans based on slightly different geographic zone. On January 16, 1970 this Court approved the defendant school board's plan with certain modifications in zone lines in accordance with the HEW proposal. This geographic zone plan continues to be the basis of student assignment at this present time.

6. The plaintiffs' Motion for Further Relief filed on May 23, 1972 raised the following issues:

a. Defendants present method of student assignment does not meet current judicial standards, and as a result has failed to eliminate all vestiges of the dual school structure with respect to at least three schools, Denmark Elementary, West Junior High and West Senior High.

b. Defendants have failed to enforce their zone lines under their present plan.

c. Defendants have failed to assign faculty and staff in accordance with this Court's order of January 16, 1970.

d. Defendants have demoted black staff in violation of federal law and have failed to hire black teachers in a non-discriminatory manner.

7. Prior to the 1970 school year, Denmark Elementary, West Junior High and West Senior High Schools had an all black student body and were constructed and maintained for black students. (Tr. p. 124 and Court order of May 7, 1969) The student enrollments for these three schools for the 1970, 1971 and 1972 school years are as follows:

	1970			1971			1972		
School	%B	B	W	%B	B	W	%B	B	W
Denmark Elementary	95%	527	24	96%	523	20	95%	492	12
West Junior H. S.	89%	373	42	87%	357	54	90%	346	37
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At the present time over 60 per cent of the black secondary students attend West Junior and Senior High Schools. (645 out of 1074); over 38 percent of the black elementary students in the system attend Denmark Elementary. The faculty assignments for the three schools during the 1971-72 and 1972-73 school years are as follows:

School	1970-71 B	W	%B	1971-72 B	W	%B
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8. The Court approval of the desegregation plan submitted by the defendants in January, 1970 was based, in large part, on the defendants' projected student enrollments for each school in the district. However, the defendants did not meet the 1971-72 projections[1/], in seven schools as shown below:

School	1971-72 School Year Actual Student Enrollment B	W	T	%B	Projected Student Enrollment B	W	T	%B
Beech Bluff Elem.	64	261	325	19.7	113	193	309	36.5
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West J.H.	357	54	411	86.9	361	123	484	74.6
West S.H.	290	15	305	95.1	315	143	458	68.8

9. During the 1970-71 school year the district enrolled 6,556 students, 4,161 white and 2,395 black and operated 17 schools with the following racial composition:

School	Grade Structure	Student Enrollment B	W	T	%B
West J.H.S.	7-9	373	42	415	89.8
West S.H.S.	10-12	300	10	310	97.
Westover Elem.	1-6	55	140	195	28.2
J.B. Young Elem.	K-6 (Spec. Ed)	78	561	639	12.2
Southside H.S.	10-12	64	453	517	12.3
Southside Elem.	7-9	77	527	604	12.7
Pope Elem.	K-6	184	356	540	34.
Pinson Elem.	K-6	35	123	158	22.1
Nova Elem.	K-4	95	234	329	28.8
Northside H. S.	10-12	111	398	509	21.8
Northside J.H.S.	7-9	174	425	599	29.
Mercer Elem.	1-6	76	34	110	

1/ Actual statistics taken from Defendants' July 1972 Report to the Court; projected enrollments taken from plan approved by court.

Malesus	1-6 (Spec. Ed)	79	373	452	17.4
Huntersville	4-6 (Spec. Ed)	5	9	14	35.7
East Elem.	K-6	89	220	309	
Beech Bluff H.S.	1-12	73	232	305	24.
Denmark Elem.	K-6	527	24	551	95.6

10. During the 1971-72 school year the defendants operated 17 schools and enrolled 6,928 students, 2,432 black and 4,496 white.[2/] There was little change between the student enrollments for 1970-71 and 1971-72.

11. It appears that many white students attended schools outside the zones where they legally reside during the 1971-72 school year. Several incidents of zone jumping were reported to the defendant school district. (Tr. 54, 55) Although the Board appears to have taken some action to ensure proper attendance of students based upon complaints they received, it did not make a detailed inquiry to determine whether white and black children were attending the schools to which they had been assigned according to the projections of the plan. (Testimony of Superintendent Walker, Tr. 115). For example, approximately 130 white students who were projected into West High School did not attend. At the same time if a detailed study were made, it may reflect why approximately 120 whites are attending Northside High School and approximately 80 white students are attending Southside High who were not projected there. Similarly approximately 75 white students were projected into Denmark Elementary who did not attend, at Young Elementary there are over 180 white students attending who were not projected there.

2/ Defendants' Memorandum of Information submitted to the Court in July 1972.

12. The defendants placed portable classrooms at the several schools to accommodate overcrowded conditions rather than take advantage of space available at other schools where students could have been reassigned to further desegregation. For example, defendants have placed classrooms at the predominantly white Northside and Beech Junior High Schools. The Board did not consider taking advantage of classroom space available at the predominantly black West Junior High School for the 1971-72 and 1972-73 school year since the present order did not require it. (Tr. 154-55). There was also classroom space available at the predominantly white Westover Elementary School for the 1971-72 and 1972-73 school years, but the Board added a portable classroom at Denmark to alleviate the overcrowding there. (Tr. 187)

13. After the first semester of 1970, the defendants did not utilize the majority-to-minority transfer provision. However, Mr. Walker recognized that the transfer provision "was one method of increasing the effectiveness of desegregation." (Tr. p. 106, 284)

14. Defendants' January 1970 Court order required that black teachers in the system be assigned to each school in the same ratio as they are throughout the entire system. Six schools for the 1971-72 school year did not come within 10 percent of meeting the 66-34% faculty

ratio required by the January, 1970 Court order.[3/] For the 1972-73 school year, seven schools did not come within 10 percent of meeting the ratio.

The following chart illustrates the faculty assignments for the above mentioned schools for the two years:

	1971-72				1972-73			
School	B	W	T	%B	B	W	T	%B
Denmark	12	11	23	52.2	12	11	23	52.2
East	5	10	15	33.3	5	2	9	55.6
Huntersville	4	3	7	57.1	4	15	20	20.0
Mercer	3	4	7	42.9	3	3	6	50.0
Westover	2	7	9	22.2	2	6	8	25.0
Southside S.H.	5	18	23	21.7	5	19	24	20.8
West J.H.	15	7	22	68.2	14	8	22	63.6
West S.H.	9	9	18	50.0	9	10	19	47.4

15. As a result of the defendants school desegregation order in 1970, five schools were closed. (Tr. 62) Two of the former black principals at the closed schools were reassigned as classroom teachers in the system, the three remaining black principals retained their position as principals or assistant principals. (Tr. 62-64) The record reflects that the defendants reassigned these black principals on the basis of the qualifications of the five principals affected by the school closings and did not consider the qualifications of all the principals in the system. (Tr. 65-66)

16. Defendants hire black teachers into the system in the same proportion to the number of black students

3/ Four schools did not come within 15 percent of meeting the ratios, the standard which the defendants used, Tr. p. 192.

in the system, (Tr. 190, 311, 355). The defendants hired three black teachers and 15 white teachers for the 1972-73 school year. (July 1972 Report to Court.)

For the 1971-72 school year the defendants employed four black principals and all were assigned to black schools with black faculties. (Tr. 307) The defendants employed four black principals for the 1972-73 school year and assigned one to a formerly white school. (July 1972 Report to Court).

Proposed Conclusions of Law

1. This Court has retained jurisdiction of this action under the provisions of the order entered by this Court on January 16, 1970. (Formal order dated February 12, 1970. Court ruling was issued on January 16, 1970.) This Court's retention of jurisdiction is for all purposes, including the right of the parties to submit, by proper procedures, motions, evidence and other relevant materials with respect to alternative plans, modifications of the plan ordered by the Court by the January 1970 order, and supplemental relief. Raney v. Board of Education, 391 U.S. 443, at 449 (1968); Swann v. Board of Education, 402 U.S. 1, 21 (1971).

2. School authorities should make every effort to achieve the greatest possible degree of actual desegregation and will thus necessarily be concerned with

the elimination of one race schools. Swann v. Board, 402 U.S. 1, at p. 26. School authorities are clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch. Swann, p. 15, Green v. County Board, 391 U.S. 430 (1968).

3. Where the school authority's proposed plan for conversion from a dual to a unitary system contemplates the continued existence of some schools that are all or predominantly of one race, the Board has the burden of showing that such assignments are not the result of present or past discriminatory action. Swann, p. 26. See also Northcross v. Board of Education of Memphis, Nos. 72-17-3-31 (6th Cir., August 29, 1972). Three formerly black schools, Denmark Elementary, West Junior High and West High Schools were constructed and maintained for black students. These schools have never been desegregated in accordance with the Swann guidelines. The Board has never proposed an alternative plan to desegregate those three predominantly black schools "to the greatest possible degree" nor has the Board justified with facts their continued existence.

4. School authorities have the primary responsibility for assessing and solving problems incidental to the maintenance of a unitary school system. Brown v. Board of Education, 349 U.S. 294, 299 (1954); Green v.

County School Board, 391 U.S. 430, 442 (1968); Swann v. County School Board, 402 U.S. 1, 15 (1971).

5. Geographic zone lines may not, consistent with the Fourteenth Amendment mandates, be drawn to conform to the racial composition of neighborhoods in its district, United States v. School District 151 of Cook County, Illinois, 286 F. Supp. 786 (N.D. Ill., 1968), nor may school districts intentionally build upon private residential discrimination. Taylor v. Board of Education, School District of the City of New Rochelle, 294 F. 2d 36 (2nd Cir., 1961); Brewer v. Norfolk School Board, 397 F. 2d 37, (4th Cir.).

Geographic zoning, like any other attendance plan adopted by a school board -- is acceptable only if it tends to disestablish rather than reinforce the dual system of segregated schools. United States v. Greenwood Municipal Separate School District, 406 F. 2d 1086 (6th Cir., 1969).

6. School authorities' remedial plan to eliminate all vestiges of a dual school system or a District Court's remedial decree is to be judged by its effectiveness. Swann, supra; see also Northcross v. Board of Education of Memphis City Schools, Nos. 72-1630-31 (6th Cir., August 29, 1972); Kelley v. Metropolitan County Board of Education of Nashville, Tennessee, 436 F. 2d 856 (6th Cir., 1970); Robinson v. Shelby County Board of Education, 442 F. 2d 255 (6th Cir., 1971).

7. Faculty desegregation is a necessary corollary to conversion to a unitary system of student assignment.

United States v. Jefferson County, 372 F. 2d 835 (5th Cir., 1966); Kier v. County School Board of Augusta County, 249 F. Supp. 239 (1966). The ratio of black to white faculty members in each school should be the same as the ratio in the entire district. Swann, supra, p. 19. Singleton v. Jackson Municipal Separate School District, 419 F. 2d 1211 (5th Cir., 1969); Court order of January 16, 1970; United States v. Board of Education of City of Bessemer, 349 F. 2d 44 (5th Cir., 1968); Board of Education of Oklahoma City v. Dowell, 375 F. 2d 158 (10th Cir., 1967).

8. If pursuant to desegregation it becomes necessary to close schools, federal law requires that boards take appropriate steps to ensure that black faculty are not subject to racially discriminatory practices. If a demotion is necessary, the Board is required to adopt non-racial objective criteria and apply such criteria to all the staff (e.g., principals, coaches, band directors, etc.) before any person is demoted. The demotees are to receive first consideration to subsequent vacancies. Singleton v. Jackson Municipal Separate School District, supra, United States v. TEA (La Vega), 459 F. 2d 600 (5th Cir., 1972).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Memorandum of the United States in Support of Its Proposed Findings of Fact and Conclusions of Law and Proposed Findings of Fact and Conclusions of Law have been served by United States air mail, postage prepaid, on the attorneys of record as shown below on this 18th day of December, 1972.

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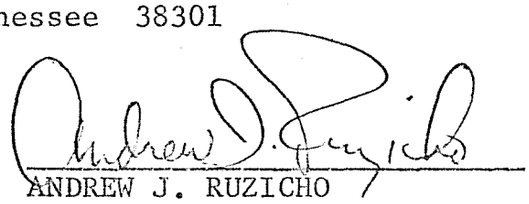

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EXHIBIT A

92D CONGRESS
2D SESSION

H. R. 13915

IN THE HOUSE OF REPRESENTATIVES

MARCH 20, 1972

Mr. MCCULLOCH (for himself, Mr. QUIE, and Mr. GERALD R. FORD) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To further the achievement of equal educational opportunities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Educational Opportunities Act of 1972".

POLICY AND PURPOSE

SEC. 2. (a) The Congress declares it to be the policy of the United States that—

(1) all children enrolled in public schools are entitled to equal educational opportunity without regard to race, color, or national origin; and

(2) the neighborhood is an appropriate basis for determining public school assignments.

(b) In order to carry out this policy, it is the purpose of this Act to provide Federal financial assistance for educationally deprived students and to specify appropriate remedies for the orderly removal of the vestiges of the dual school system.

FINDINGS

SEC. 3. (a) The Congress finds that—

(1) the maintenance of dual school systems in which students are assigned to schools solely on the basis of race, color, or national origin denies to those students the equal protection of the laws guaranteed by the fourteenth amendment;

(2) the abolition of dual school systems has been virtually completed and great progress has been made and is being made toward the elimination of the vestiges of those systems;

(3) for the purpose of abolishing dual school systems and eliminating the vestiges thereof, many local educational agencies have been required to reorganize their school systems, to reassign students, and to engage in the extensive transportation of students;

(4) the implementation of desegregation plans that require extensive student transportation has, in

many cases, required local educational agencies to expend large amounts of funds, thereby depleting their financial resources available for the maintenance or improvement of the quality of educational facilities and instruction provided;

(5) excessive transportation of students creates serious risks to their health and safety, disrupts the educational process carried out with respect to such students, and impinges significantly on their educational opportunity;

(6) the risks and harms created by excessive transportation are particularly great for children enrolled in the first six grades; and

(7) the guidelines provided by the courts for fashioning remedies to dismantle dual school systems have been, as the Supreme Court of the United States has said, "incomplete and imperfect," and have failed to establish a clear, rational, and uniform standard for determining the extent to which a local educational agency is required to reassign and transport its students in order to eliminate the vestiges of a dual school system.

(b) For the foregoing reasons, it is necessary and proper that the Congress, pursuant to the powers granted to

it by the Constitution of the United States, specify appropriate remedies for the elimination of the vestiges of dual school systems.

DECLARATION

SEC. 4. The Congress declares that this Act is the legislation contemplated by section 2 (a) (4) of the "Student Transportation Moratorium Act of 1972."

TITLE I—ASSISTANCE

CONCENTRATION OF RESOURCES FOR COMPENSATORY EDUCATION

SEC. 101. (a) The Secretary of Health, Education, and Welfare (hereinafter in this Act referred to as the "Secretary") and the Commissioner of Education shall—

(1) in the administration, consistent with the provisions thereof, of the program established by title I of the Elementary and Secondary Education Act of 1965; and

(2) in the administration of any program designed to assist local educational agencies in achieving desegregation or preventing, reducing, or eliminating isolation based on race, color, or national origin in the public schools;

take such action consistent with the provisions of this title, as the Secretary deems necessary to provide assistance under such programs (notwithstanding any provision of law which

establishes a program described by clause (2) of this subsection) in such a manner as to concentrate, consistent with such criteria as the Secretary may prescribe by regulation, the funds available for carrying out such programs for the provision of basic instructional services and basic supportive services for educationally deprived students.

(b) A local educational agency shall be eligible for assistance during a fiscal year under any program described by clause (2) of subsection (a) of this section (notwithstanding any provision of law which establishes such program) if it—

(1) is eligible for a basic grant for such fiscal year under title I of the Elementary and Secondary Education Act of 1965;

(2) operates a school during such fiscal year in which a substantial proportion of the students enrolled are from low-income families; and

(3) provides assurances satisfactory to the Secretary that services provided during such fiscal year from State and local funds with respect to each of the schools described in clause (2) of this subsection of such agency will be at least comparable to the services provided from such funds with respect to the other schools of such agency.

(c) In carrying out this section, the Secretary and the

Commissioner of Education shall seek to provide assistance in such a manner that—

(1) the amount of funds available for the provision of basic instructional services and basic supportive services for educationally deprived students in the school districts of local educational agencies which receive assistance under any program described in clause (1) or (2) of subsection (a) of this section is adequate to meet the needs of such students for such services; and

(2) there will be adequate provision for meeting the needs for such services of students in such school districts who transfer from schools in which a higher proportion of the number of students enrolled are from low-income families to schools in which a lower proportion of the number of students enrolled are from such families;

except that nothing in this title shall authorize the provision of assistance in such a manner as to encourage or reward the transfer of a student from a school in which students of his race are in the minority to a school in which students of his race are in the majority or the transfer of a student which would increase the degree of racial impaction in the schools of any local education agency.

(d) The Secretary shall prescribe by regulation the pro-

portions of students from low-income families to be used in the program established by this title and may prescribe a range of family incomes, taking into account family size, for the purpose of determining whether a family is a low-income family.

EFFECT ON ENTITLEMENTS AND ALLOTMENT FORMULAS

SEC. 102. Nothing in this title shall be construed to authorize the Secretary or the Commissioner of Education to—

(1) alter the amount of a grant which any local educational agency is eligible to receive for a fiscal year under title I of the Elementary and Secondary Education Act of 1965; or

(2) alter the basis on which funds appropriated for carrying out a program described by section 101 (a) (2) of this title would otherwise be allotted or apportioned among the States.

SEC. 103. Upon approval of a grant to a local educational agency to carry out the provisions of this title, the assurances required by the Secretary or the Commissioner of Education pursuant thereto shall constitute the terms of a contract between the United States and the local educational agency, which shall be specifically enforceable in action brought by the United States.

TITLE II—UNLAWFUL PRACTICES

DENIAL OF EQUAL EDUCATIONAL OPPORTUNITY PROHIBITED

SEC. 201. No State shall deny equal educational opportunity to an individual on account of his race, color, or national origin, by—

(a) the deliberate segregation by an educational agency of students on the basis of race, color, or national origin among or within schools;

(b) the failure of an educational agency which has formerly practiced such deliberate segregation to take affirmative steps, consistent with title IV of this Act, to remove the vestiges of a dual school system;

(c) the assignment by an educational agency of a student to a school, other than the one closest to his place of residence within the school district in which he resides, if the assignment results in a greater degree of segregation of students on the basis of race, color, or national origin among the schools of such agency than would result if such student were assigned to the school closest to his place of residence within the school district of such agency providing the appropriate grade level and type of education for such student;

(d) discrimination by an educational agency on the

basis of race, color, or national origin in the employment, employment conditions, or assignment to schools of its faculty or staff;

(e) the transfer by an educational agency, whether voluntary or otherwise, of a student from one school to another if the purpose and effect of such transfer is to increase segregation of students on the basis of race, color, or national origin among the schools of such agency; or

(f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.

RACIAL BALANCE NOT REQUIRED

SEC. 202. The failure of an educational agency to attain a balance, on the basis of race, color, or national origin, of students among its schools shall not constitute a denial of equal educational opportunity, or equal protection of the laws.

ASSIGNMENT ON NEIGHBORHOOD BASIS NOT A DENIAL OF EQUAL EDUCATIONAL OPPORTUNITY

SEC. 203. Subject to the other provisions of this title, the assignment by an educational agency of a student to the school nearest his place of residence which provides the appropriate grade level and type of education for such student

is not a denial of equal educational opportunity unless such assignment is for the purpose of segregating students on the basis of race, color, or national origin, or the school to which such student is assigned was located on its site for the purpose of segregating students on such basis.

TITLE III—ENFORCEMENT

CIVIL ACTIONS

SEC. 301. An individual denied an equal educational opportunity, as defined by this Act, may institute a civil action in an appropriate district court of the United States against such parties, and for such relief, as may be appropriate. The Attorney General of the United States (hereinafter in this Act referred to as the "Attorney General"), for or in the name of the United States, may also institute such a civil action on behalf of such an individual.

JURISDICTION OF DISTRICT COURTS

SEC. 302. The appropriate district court of the United States shall have and exercise jurisdiction of proceedings instituted under section 301.

INTERVENTION BY ATTORNEY GENERAL

SEC. 303. Whenever a civil action is instituted under section 301 by an individual, the Attorney General may intervene in such action upon timely application.

SUITS BY THE ATTORNEY GENERAL

SEC. 304. The Attorney General shall not institute a civil action under section 301 before he—

(a) gives to the appropriate educational agency notice of the condition or conditions which, in his judgment, constitute a violation of title II of this Act; and

(b) certifies to the appropriate district court of the United States that he is satisfied that such educational agency has not, within a reasonable time after such notice, undertaken appropriate remedial action.

ATTORNEYS' FEES

SEC. 305. In any civil action instituted under this Act, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorneys' fee as part of the costs, and the United States shall be liable for costs to the same extent as a private person.

TITLE IV—REMEDIES

FORMULATING REMEDIES; APPLICABILITY

SEC. 401. In formulating a remedy for a denial of equal educational opportunity or a denial of the equal protection of the laws, a court, department, or agency of the United States shall seek or impose only such remedies as are essential to correct particular denials of equal educational opportunity or equal protection of the laws.

SEC. 402. In formulating a remedy for a denial of equal educational opportunity or a denial of the equal protection of the laws, which may involve directly or indirectly the transportation of students, a court, department, or agency of the United States shall consider and make specific findings on the efficacy in correcting such denial of the following remedies and shall require implementation of the first of the remedies set out below, or on the first combination thereof, which would remedy such denial:

(a) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account school capacities and natural physical barriers;

(b) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account only school capacities;

(c) permitting students to transfer from a school in which a majority of the students are of their race, color, or national origin to a school in which a minority of the students are of their race, color, or national origin;

(d) the creation or revision of attendance zones or grade structures without exceeding the transportation limits set forth in section 403;

(c) the construction of new schools or the closing of inferior schools;

(f) the construction or establishment of magnet schools or educational parks; or

(g) the development and implementation of any other plan which is educationally sound and administratively feasible, subject to the provisions of sections 403 and 404 of this Act.

TRANSPORTATION OF STUDENTS

SEC. 403. (a) No court, department, or agency of the United States shall, pursuant to section 402, order the implementation of a plan that would require an increase for any school year in—

(1) either the average daily distance to be traveled by, or the average daily time of travel for, all students in the sixth grade or below transported by an educational agency over the comparable averages for the preceding school year; or

(2) the average daily number of students in the sixth grade or below transported by an educational agency over the comparable average for the preceding school year, disregarding the transportation of any student which results from a change in such student's residence, his advancement to a higher level of education,

or his attendance at a school operated by an educational agency for the first time.

(b) No court, department, or agency of the United States shall, pursuant to section 402, order the implementation of a plan which would require an increase for any school year in—

(1) either the average daily distance to be traveled by, or the average daily time of travel for, all students in the seventh grade or above transported by an educational agency over the comparable averages for the preceding school year; or

(2) the average daily number of students in the seventh grade or above transported by an educational agency over the comparable average for the preceding school year, disregarding the transportation of any student which results from a change in such student's residence, his advancement to a higher level of education, or his attendance at a school operated by an educational agency for the first time,

unless it is demonstrated by clear and convincing evidence that no other method set out in section 402 will provide an adequate remedy for the denial of equal educational opportunity or equal protection of the laws that has been found by such court, department, or agency. The implementation of a plan calling for increased transportation, as described in

clause (1) or (2) of this subsection, shall be deemed a temporary measure. In any event such plan shall be subject to the limitation of section 407 of this Act and shall only be ordered in conjunction with the development of a long term plan involving one or more of the remedies set out in clauses (a) through (g) of section 402. If a United States district court orders implementation of a plan requiring an increase in transportation, as described in clause (1) or (2) of this subsection, the appropriate court of appeals shall, upon timely application by a defendant educational agency, grant a stay of such order until it has reviewed such order.

(c) No court, department, or agency of the United States shall require directly or indirectly the transportation of any student if such transportation poses a risk to the health of such student or constitutes a significant impingement on the educational process with respect to such student.

DISTRICT LINES

SEC. 404. In the formulation of remedies under section 401 or 402 of this Act, the lines drawn by a State, subdividing its territory into separate school districts, shall not be ignored or altered except where it is established that the lines were drawn for the purpose, and had the effect, of segregating children among public schools on the basis of race, color, or national origin.

VOLUNTARY ADOPTION OF REMEDIES

SEC. 405. Nothing in this Act prohibits an educational agency from proposing, adopting, requiring, or implementing any plan of desegregation, otherwise lawful, that is at variance with the standards set out in this title, nor shall any court, department, or agency of the United States be prohibited from approving implementation of a plan which goes beyond what can be required under this title, if such plan is voluntarily proposed by the appropriate educational agency.

REOPENING PROCEEDINGS

SEC. 406. On the application of an educational agency, court orders or desegregation plans under title VI of the Civil Rights Act of 1964 in effect on the date of enactment of this Act and intended to end segregation of students on the basis of race, color, or national origin shall be reopened and modified to comply with the provisions of this Act.

TIME LIMITATION ON ORDERS

SEC. 407. Any court order requiring, directly or indirectly, the transportation of students for the purpose of remedying a denial of the equal protection of the laws shall, to the extent of such transportation, terminate after it has been in effect for five years if the defendant educational agency is found to have been in good faith compliance with such order for such period. No additional order requiring

such educational agency to transport students for such purpose shall be entered unless such agency is found to have denied equal educational opportunity or the equal protection of the laws subsequent to such order, nor remain in effect for more than five years.

SEC. 408. Any court order requiring the desegregation of a school system shall terminate after it has been in effect for ten years if the defendant educational agency is found to have been in good faith compliance with such order for such period. No additional order shall be entered against such agency for such purpose unless such agency is found to have denied equal educational opportunity or the equal protection of the laws subsequent to such order, nor remain in effect for more than ten years.

SEC. 409. For the purposes of sections 407 and 408 of this Act, no period of time prior to the effective date of this Act, shall be included in determining the termination date of an order.

TITLE V—DEFINITIONS

SEC. 501. For the purposes of this Act—

(a) The term "educational agency" means a local educational agency or a "State educational agency" as defined by section 801 (k) of the Elementary and Secondary Education Act of 1965.

(b) The term "local educational agency" means a local

educational agency as defined by section 801 (f) of the Elementary and Secondary Education Act of 1965.

(c) The term "segregation" means the operation of a school system in which students are wholly or substantially separated among the schools of an educational agency or within a school on the basis of race, color, or national origin.

(d) The term "desegregation" means "desegregation" as defined by section 401 (b) of the Civil Rights Act of 1964.

(e) An educational agency shall be deemed to transport a student if any part of the cost of such student's transportation is paid by such agency.

(f) The term "basic instructional services" means instructional services in the field of mathematics or language skills which meet such standards as the Secretary may prescribe.

(g) The term "basic supportive services" means noninstructional services, including health or nutritional services, as prescribed by the Secretary.

(h) Expenditures for basic instructional services or basic supportive services do not include expenditures for administration, operation and maintenance of plant, or for capital outlay, or such other expenditures as the Secretary may prescribe.