

William E. McIntyre—for Defendant—Cross

on the adjoining area? A. Well, I think it forms a different use district but I wouldn't say that it's a buffer. Again, I don't regard industrial districts as a buffer in that context.

Q. Now, looking on the west side of Griertown, I believe there are only two entrances into the Griertown area, or perhaps one off Randolph Road. A. Yes.

Q. It wouldn't be necessary to have a buffer or anything in that area, would it? . . . between the black residents of Griertown and the white residents in the adjacent areas. A. It wouldn't be necessary as far as I'm concerned. It's not necessary to have a buffer anyplace for that purpose.

Q. I don't believe that anywhere along the railroad track on the eastern part of Griertown other than adjacent to Griertown that the Planning Commission planned any industrial zoning. A. To the east of Griertown?

Q. Right. [675] A. How far east are you including in your view?

Q. I'm looking basically at the street Beale Road and going as far north as Briarcreek.

Court: Going which way?

Mr. Chambers: Going northwest.

Court: Along 7th Street?

Mr. Chambers: Along Seaboard Railroad from Beale Road to Briarcreek.

Court: Coming back into town.

Mr. Chambers: Yes, sir.

Q. Nowhere else along that railroad track is there any industrial zoning in that area, is there? A. Not within that area.

Q. Now, running down Southern. . . .

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Court: Is Briarcreek the road which crosses 7th Street at Firemen's Hall or is Briarcreek the one further down?

A. It crosses at the Firemen's Hall.

Court: You're talking about a distance of a half-mile or less?

Mr. Chambers: I think it is.

Q. Mr. McIntyre, you indicated that you determined blighted areas for the Urban Renewal Commission in the City of Charlotte. A. Uh huh.

Q. And you determined that Brooklyn and First Ward and Greenville and I guess an area we might describe as Dilworth were [676] considered blighted areas. A. Yes.

Q. Did you determine also in your investigation whether there were available homes to which the residents in these areas could move into? A. No.

Q. You indicated a moment ago that when you closed out or changed an area from residential to commercial or industrial you didn't really create another area residentially into which these people could move but anticipated that you had enough residentially zoned areas for the residences that would be necessary. A. Right.

Q. Do you know, Mr. McIntyre, whether Negroes in this community have had some difficulty in securing homes in white or predominantly white residential areas? A. I don't know personally. I understood this to be the case but not through my own professional experience.

Q. You also have seen, have you not, Mr. McIntyre, that at least up through 1968 the Charlotte News and Observer, the Charlotte News advertised homes and apartments for

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sale on the basis of race. A. Yes.

Q. Is it not also true, Mr. McIntyre, that many of the developers for private homes have developed sections for Negroes and [677] sections for whites? A. That appears to be the case.

Q. Now, in the Urban Renewal that has taken place in the City of Charlotte did you know that the Negroes who have been relocated have been relocated in predominantly or all Negro residential areas?

Mr. Waggoner: Objection, he already stated he didn't know where they went.

Court: Overruled.

A. I don't know personally where they went.

Q. If the Court were to find, Mr. McIntyre, from the evidence that's already in the record that the Negroes who were relocated from Brooklyn and who have been relocated from First Ward and from some other residences that have been effected by the expressway in all Negro areas, in your opinion would this further segregate the racial housing pattern? A. Certainly, if this were true.

Q. Now, in the relocation of these families has the City Planning Office taken into consideration the fact that the people involved might not be able to secure homes in any area of the city but would be limited to certain areas? A. No. We have not been particularly concerned with this because this is again the responsibility of the Redevelopment Commission to provide for the relocation of families.

Q. You therefore did not consider whether without adequate [678] planning and preparation Urban Renewal of particular areas would create more blighted areas in the city rather than really relieve the city of blighted areas?

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Mr. Barkley: I believe I'll object to that. That's an assumption.

Court: Objection is overruled.

A. Restate the question, please.

Q. I'll withdraw the question.

Court: Mr. Chambers, are you anywhere near finished?

Mr. Chambers: Yes, sir.

Court: I have an appointment that I made before we set this hearing and I ought to leave if this is going to take more than five minutes or so.

Mr. Chambers: As a matter of fact, I'll stop now.

Court: Do you have any further direct examination?

Mr. Waggoner: No, sir.

Court: I don't want to shut you off. I want you to make a record I can read and I had in mind if it's going to go on more than another five minutes or so I'll ask Mrs. Berger to write this up today. But if you think we'll be through in another five minutes or so, I'll stay.

Mr. Waggoner: We have no further questions, Your Honor.

Mr. Chambers: We have no further questions.

Court: Thank you all for coming early, I appreciate it.

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**Opinion and Order dated April 23, 1969 Regarding
Desegregation of Schools of Charlotte and
Mecklenburg County, North Carolina**

PRELIMINARY SUMMARY

The case, originally filed in 1965, is now before the court under the "MOTION FOR FURTHER RELIEF" filed by the plaintiffs on September 6, 1968. The motion seeks greater speed in desegregation of the Charlotte-Mecklenburg schools, and requests elimination of certain other alleged racial inequalities. Evidence was taken at length on March 10, 11, 12, 13, 17 and 26, 1969. The file and the exhibits are about two and one-half feet thick, and have required considerable study. In brief, the results of that study are as follows:

The Charlotte-Mecklenburg schools are not yet desegregated. Approximately 14,000 of the 25,000 Negro students still attend schools that are all black, or very nearly all black, and most of the 24,000 have no white teachers. As a group Negro students score quite low on school achievement tests (the most objective method now in use for measuring educational progress); and the results are not improving under present conditions. The system of assigning pupils by "neighborhoods," with "freedom of choice" for both pupils and faculty, superimposed on an urban population pattern where Negro residents have become concentrated almost entirely in one quadrant of a city of 270,000, is racially discriminatory. This discrimination discourages initiative and makes quality education impossible. The quality of public education should not depend on the economic or racial accident of the neighborhood in which a child's parents have chosen to live—or find they must live—nor on the color of his skin. The neighborhood school concept never *prevented* statutory racial segrega-

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tion; it may not now be validly used to *perpetuate segregation.*

Since this case was last before this court in 1965, the law (or at least the understanding of the law) has changed. School boards are now clearly charged with the affirmative duty to desegregate schools "*now*" by positive measures. The Board is directed to submit by May 15, 1969 a positive plan for faculty desegregation effective in the fall of 1969, and a plan for effective desegregation of pupil population, to be predominantly effective in the fall of 1969 and to be completed by the fall of 1970. Such plan should try to avoid any re-zoning which tends to perpetuate segregated pupil assignment. The Board is free to consider all known ways of desegregation, including bussing (the economics of which might pleasantly surprise the taxpayers); pairing of grades or of schools; enlargement and re-alignment of existing zones; freedom of transfer coupled with free transportation for those who elect to abandon *de facto* segregated schools; and any other methods calculated to establish education as a public program operated according to its own independent standards, and unhampered and uncontrolled by the race of the faculty or pupils or the temporary housing patterns of the community.

THE LAW WHICH GOVERNS

This case vitally affects 83,000 school children of Charlotte and Mecklenburg County—and their families. That means virtually all of us. The School Board and this court are bound by the Constitution as the Supreme Court interprets it. In order that we think in terms of law and human rights instead of in terms of personal likes and preferences, we ought to read about what the Supreme Court has said.

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Before 1954, public education in North Carolina was segregated by law. "Separate but equal" education was acceptable. This *de jure* segregation was outlawed by the two decisions of the Supreme Court in *Brown v. Board of Education*, 347 U. S. 483 (1954) and 349 U. S. 294 (1955).

The first *Brown* opinion held that racial segregation of schools by law was unconstitutional because racial segregation, even though the physical facilities and other tangible factors might be equal, deprives Negro children of equal educational opportunities. The Court recalled prior decisions that segregation of graduate students was unlawful because it restricted the student's "ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession." The Court said:

"Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."

Quoting a lower court opinion, the Supreme Court continued:

"Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard]

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the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system.'

"We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. . . ."

The second *Brown* case, decided May 31, 1955, directed school boards to do whatever was necessary to carry out the Court's directive as to the pending cases "with all deliberate speed" (349 U. S. 301).

North Carolina's most significant early response to *Brown* was the Pupil Assignment Act of 1955-56,¹ under which local school boards have the sole power to assign pupils to schools, and children are required to attend the schools to which they are assigned.

It is still to this day the local School Board, and not the court, which has the duty to assign pupils and operate the schools, subject to the requirements of the Constitution.

¹ N.C.G.S., § 115-176. Authority to provide for assignment and enrollment of pupils; rules and regulations.—Each county and city board of education is hereby authorized and directed to provide for the assignment to a public school of each child residing within the administrative unit who is qualified under the laws of this State for admission to a public school. Except as otherwise provided in this article, *the authority of each board of education in the matter of assignment of children to the public schools shall be full and complete*, and its decision as to the assignment of any child to any school shall be final. . . . No child shall be enrolled in or permitted to attend any public school other than the public school to which the child has been assigned by the appropriate board of education. In exercising the authority conferred by this section, each county and city board of education shall make assignments of pupils to public schools so as to provide for the *orderly and efficient administration* of the public schools, and *provide for the effective instruction*, health, safety, and general welfare of the pupils. Each board of education may adopt such reasonable rules and regulations as in the opinion of the board are necessary in the administration of this article. (Emphasis added.)

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It is the court's duty to assess any pupil assignment plan in term of the Constitution, which is still the Supreme law of the land.

Some token desegregation of Charlotte city schools occurred during the late 1950's. In 1961, upon economic and administrative grounds not connected with questions of segregation, the Charlotte City schools and the Mecklenburg County schools were consolidated into one school administrative unit under one nine-member board known as the Charlotte-Mecklenburg Board of Education. By 1964 a few dozen out of more than 20,000 Negro school children were attending schools with white pupils.

This suit was filed on January 19, 1965, by Negro patrons, to seek orders expediting desegregation of the schools. At that time, serious questions existed whether *Brown* required any positive action by school boards to eliminate segregated schools or whether it simply forbade active discrimination. An order was entered in 1965 by the then District Judge in line with the law as then understood, substantially approving the Board's plan for desegregation. The Fourth Circuit Court of Appeals affirmed the order.

Pursuant to the approved plan the Board closed certain all-Negro schools, established school zones, built some new schools, and set up a freedom of choice arrangement for the entire system. The students in a zone surrounding each school are assigned to that school: a period is allotted each spring to request assignment to another school; no reason for transfer need be given; all transfer requests are honored unless the requested schools are full; no transportation is available to implement such transfer.

In appraising the results under this plan in 1969, four years later, we must be guided by some other and more recent things the Supreme Court has said.

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In *Green v. New Kent County School Board*, 391 U. S. 430 at 435 (1968), the Supreme Court held unlawful a county school pupil assignment system which maintained a black school and a white school for the same grades. The Court said:

"It was such dual systems that 14 years ago *Brown I* held unconstitutional and a year later *Brown II* held must be abolished; school boards operating such school systems were *required* by *Brown II* 'to effectuate a transition to a racially nondiscriminatory school system.' 349 U. S., at 301. It is of course true that for the time immediately after *Brown II* the concern was with making an initial break in a long-established pattern of excluding Negro children from schools attended by white children. The principal focus was on obtaining for those Negro children courageous enough to break with tradition a place in the 'white' schools. See, e. g., *Cooper v. Aaron*, 358 U. S. 1. Under *Brown II* that immediate goal was only the first step, however. *The transition to a unitary, nonracial system of public education was and is the ultimate end to be brought about; . . .*"

* * * * *

"It is against this background that 13 years after *Brown II* commanded the abolition of dual systems we must measure the effectiveness of respondent School Board's 'freedom-of-choice' plan to achieve that end.

* * * * *

". . . In the light of the command of that case, what is involved here is the question whether the Board has achieved the 'racially nondiscriminatory school system' *Brown II* held must be effectuated in order

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to remedy the established unconstitutional deficiencies of its segregated system. *In the context of the state-imposed segregated pattern of long standing, the fact that in 1965 the Board opened the doors of the former 'white' school to Negro children and of the 'Negro' school to white children merely begins, not ends, our inquiry whether the Board has taken steps adequate to abolish its dual, segregated system. Brown II was a call for the dismantling of well-entrenched dual systems tempered by an awareness that complex and multifaceted problems would arise which would require time and flexibility for a successful resolution. School boards such as the respondent then operating state-compelled dual systems were nevertheless 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. . . ."*

* * * * *

" . . . 'The time for mere "deliberate speed" has run out,' Griffin v. County School Board, 377 U. S. 218, 234; 'the context in which we must interpret and apply this language [of Brown II] to plans for desegregation has been significantly altered.' "

* * * * *

" . . . The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now.

"The obligation of the district courts, as it always has been, is to assess the effectiveness of a proposed plan in achieving desegregation. . . ."

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"We do not hold that 'freedom of choice' can have no place in such a plan. We do not hold that a 'freedom-of-choice' plan might of itself be unconstitutional, although that argument has been urged upon us. Rather, all we decide today is that *in desegregating a dual system a plan utilizing 'freedom of choice' is not an end in itself*. As Judge Sobeloff has put it,

"'Freedom of choice' is not a sacred talisman; it is only a means to a constitutionally required end—the abolition of the system of segregation and its effects. If the means prove effective, it is acceptable, but if it fails to undo segregation, other means must be used to achieve this end. The school officials have the continuing duty to take whatever action may be necessary to create a 'unitary, nonracial system.' *Bowman v. County School Board*, 382 F. 2d 326, 333 (C. A. 4th Cir. 1967) (concurring opinion).

'... Although the general experience under 'freedom of choice' to date has been such as to indicate its ineffectiveness as a tool of desegregation, there may well be instances in which it can serve as an effective device. Where it offers real promise of aiding a desegregation program to effectuate conversion of a state-imposed dual system to a unitary, nonracial system there might be no objection to allowing such a device to prove itself in operation. On the other hand, if there are reasonably available other ways, such for illustration as zoning, promising speedier and more effective conversion to a unitary, nonracial school system, 'freedom of choice' must be held unacceptable."

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“. . . The Board must be required to formulate a new plan and, in light of other courses which appear open to the Board, such as zoning, fashion steps which promise realistically to convert promptly to a system without a ‘white’ school and a ‘Negro’ school, but just schools.”

(All emphasis added except for the word “required” in the first quoted paragraph and the word “now” in the fifth quoted paragraph.)

It is obvious that between 1955 and 1968 the meaning and the force of the constitutional guaranty that education if tax paid be equal for all has been intensified. The duty now appears as not simply a negative duty to refrain from active legal racial discrimination, but a duty to act positively to fashion affirmatively a school system as free as possible from the lasting effects of such historical *apartheid*. It is in this light that the actions of school boards must now be studied.

FINDINGS OF FACT

SOME FACTS ABOUT THE CHARLOTTE-MECKLENBURG
SCHOOL SYSTEM:

a) *General Information*.—The system covers 550 square miles and serves more than 82,000 pupils. It is 43rd in size among the school administrative units of the United States. The county population is over 335,000. The population of Charlotte is now about 270,000. The student population increases at a rate between 2,500 and 3,000 students per year. The schools are 107 in number, including 76 elementary schools (grades 1 through 6), 20 junior high

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schools (grades 7 through 9) and 11 senior high schools (grades 10 through 12). The Board also operates a learning academy, 4 child development centers (kindergartens for the underprivileged) and 3 psycho-educational clinics.

The students on the rolls as of January 1969 include 44,835 elementary students, 20,675 junior high students and 16,690 senior high students. Of these students, about 29% are Negro and about 71% are white. The ratio of black to white of all ages in the county is about one to three.

The 5,880 school employees include 3,553 classroom teachers; 404 other members of the instructional staff including principals, directors and special staff members. These include 60 guidance counselors and 114 librarians. Other employees include 325 secretaries and other clerical employees, 995 cafeteria employees, 357 janitors and maids, 219 maintenance and transportation workers and 27 people assigned to educational television work. The school system is the largest employer in the state's most populous county.

The nine members of the Board of Education are elected three every two years on a non-partisan basis for six-year terms.

Over 18% of the 3,553 classroom teachers have graduate certificates. Some 2,870 or nearly 81% have Class A certificates. Some 852 teachers are men.

Of 1968's 4,095 high school graduates, about 62% or 2,539 entered college. The drop-out rate for the past two years has been approximately 2.3% of the total enrollment of the schools.

The operating budget for the system (not counting construction costs) was nearly \$40,000,000 last year. Average per pupil expense was over \$530. Teachers' salaries range

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from \$5,669 to \$10,230.25. School funds come 58% from the state, 35% from local sources, and 7% from federal funds.

Class size averages approximately 28 students in elementary schools (the first six grades); 26.4 in junior high schools and 29.3 in senior high schools.

All schools have libraries. The total number of books in the libraries is over 806,000, which is nearly 10 books per pupil, with a value estimated at \$2,677,804. (This may be compared with the average of roughly one-half a book per pupil in the schools of the District of Columbia a couple of years ago.) These are not the textbooks which are furnished free by the state for individual use, but are library books for general circulation. Circulation last year was 2,884,252, or an average per pupil of 36 books.

The Board operates the largest food service industry in the state, serving over 70,000 meals a day on a budget of four and one-half million dollars.

Nearly one-fourth of the students (almost 20,000 last year) attend classes at the planetarium in the Children's Nature Museum. This is reportedly more children than attend regular classes at any other planetarium in the country.

Special consultants and teachers are provided in special areas such as art, music, languages, social studies, science, mathematics and physical education. Special teachers are employed to teach classes for the gifted, the mentally retarded and the physically handicapped. Guidance counselors, school psychologists and social workers are available where needed.

Faculty salaries are higher in Mecklenburg County than in most other counties of the state, by virtue of a substantial salary supplement from local taxpayers.

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b) *History and Geography; Background of De Facto Segregation.*—Charlotte (270,000-plus) sits in the center of Mecklenburg County (550 square miles, total population over 335,000). The central city may be likened to an automobile hub cap, the perimeter area to a wheel, and the county area to the rubber tire. Tryon Street and the Southern Railroad run generally through the county and the city from northeast to southwest. Trade Street runs generally northwest to southeast and crosses Tryon Street at the center of town at Independence Square. Charlotte originally grew along the Southern railroad tracks. Textile mills with mill villages, once almost entirely white, were built. Business and other industry followed the highways and the railroad. The railroad and parallel highways and business and industrial development formed something of a barrier between east and west.

By the end of World War II many Negro families lived in the center of Charlotte just east of Independence Square in what is known as the First Ward—Second Ward—Cherry—Brooklyn area. However, the bulk of Charlotte's black population lived west of the railroad and Tryon Street, and north of Trade Street, in the northwest part of town. The high priced, almost exclusively white, country was east of Tryon Street and south of Trade in the Myers Park—Providence—Sharon—Eastover areas. Charlotte thus had a very high degree of segregation of housing before the first *Brown* decision.

Among the forces which brought about these concentrations should be listed the original location of industry along and to the west of the Southern railroad; the location of Johnson C. Smith University two miles west of Tryon Street; the choice of builders in the early 1900's to go south and east instead of west for high priced dwelling construction; the effect of private action and public law on choice of dwelling sites by black and by white pur-

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chasers or renters; real estate zoning which began in 1947; and the economics of the situation which are that Negroes have earned less money and have been less able to buy or rent expensive living quarters.

Local zoning ordinances starting in 1947 generally allow more varied uses in the west than in the east. Few if any areas identified as black have a residential restriction stronger than R-6, which means that a house can be built on a lot as small as 6,000 square feet. Zoning restrictions in other areas go as high as 12,000 and 15,000 square feet per lot. Nearly all industrial land in the city is in the west. The airport in the southwest with its jet air traffic inhibits residential development. Many black citizens live in areas zoned industrial, which means that the zoning law places no restriction on the use of the land. The zoning laws follow the pattern of low cost housing and industry to the west and high cost housing with some business and office developments to the east.

City planning has followed the same pattern.

Tryon Street and the Southern railroad were not built to segregate races. In the last fifteen years grade crossings have been eliminated at great expense at Fourth Street, Trade Street, Twelfth Street and Independence Boulevard; and an elevated half-mile bridge, the Brodie Griffith Skyway, is now being built across the railroad in North Charlotte at a cost of more than three million dollars. The ramparts are being pierced in many spots and inner-city highways now under construction will make communication much simpler.

However, concentration of Negroes in the northwest continues. Under the urban renewal program thousands of Negroes were moved out of their shotgun houses in the center of town and have relocated in the low rent areas to the west. This relocation of course involved many ad

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hoc decisions by individuals and by city, county, state and federal governments. Federal agencies (which hold the strings to large federal purses) reportedly disclaim any responsibility for the direction of the migration; they reportedly say that the selection of urban renewal sites and the relocation of displaced persons are matters of decision ("freedom of choice"?) by local individuals and governments. This may be correct; the clear fact however is that the displacement occurred with heavy federal financing and with active participation by local governments, and it has further concentrated Negroes until 95% or so of the city's Negroes live west of the Tryon—railroad area, or on its immediate eastern fringes.

Onto this migration the 1965 school zone plan with freedom of transfer was superimposed. The Board accurately predicted that black pupils would be moved out of their midtown shotgun housing and that white residents would continue to move generally south and east. Schools were built to meet both groups. Black or nearly black schools resulted in the northwest and white or nearly all white schools resulted in the east and southeast. Freedom of students of both races to transfer freely to schools of their own choices has resulted in resegregation of some schools which were temporarily desegregated. The effect of closing the black inner-city schools and allowing free choices has in overall result tended to perpetuate and promote segregation.

SOME BOARD ACTIONS FOUND NOT TO BE DISCRIMINATORY

No racial discrimination or inequality is found in the following disputed matters:

1. *The use of federal funds for special aid to the disadvantaged.* The testimony and the exhibits failed to show

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that federal money was used with any discrimination by race or with any improper displacement of local money.

2. *Use of mobile classrooms.* In recent years the system has required the addition of nearly two classrooms per week. Mobile classrooms have been used to provide extra space temporarily to cope with shifts and growth in school population. Mobiles are not inferior in quality and comfort to permanent classrooms, and recent models are superior in many ways to many existing permanent classrooms. Their use and location are matters to be determined by the Board in light of the court's instructions hereafter on the preparation of a new plan for pupil assignment.

3. *The quality of the school buildings and equipment.* The evidence showed the per pupil value of the land and buildings and equipment of the various schools. Average value of these items per pupil for elementary schools was \$861; for junior high schools \$1,229; and for senior high schools \$1,567. Schools described by witnesses as "white" ranged well up and down on both sides of that average figure and schools described by witnesses as "black" showed a similar variation. Several of the oldest and most respected "white" elementary schools in the county (Sharon Road and Steele Creek, for example) have very low per pupil facilities values. One of the newest but still all black high schools (West Charlotte) has one of the highest per pupil facilities values. The highest priced school (Olympic High) is totally desegregated (522 white and 259 black students). No racial discrimination in spending money or providing facilities appears.

4. *Coaching of athletics.* Coaches at the predominantly black schools are usually black. Coaches at the predomi-

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antly white schools are usually white. Several black coaches have been employed at "white" schools. No black coach was shown to have applied and been refused a job. No pattern of discrimination appears in the coaching ranks.

5. *Parent-Teacher Association contributions and activities.* Parents contribute to school projects through voluntary Parent-Teacher Associations. This voluntary parental action is not racial discrimination against children whose parents are less able to make such contributions, and it does not come about through state action.

6. *School fees.* It was contended that the school fee system is discriminatory. For example, at the elementary level, grades 1 through 6, each student is supposed to bring a dollar to school at the beginning of the year to provide some extra learning aids in the form of paper, art materials and the like. In poor communities collection of this fee averages only about 50%, whereas nearly all wealthy children pay all the fees assessed in their schools. This non-payment of school fees by the poor is not a racial discrimination against the poor. The schools where people are poorer have other funds by which this 50¢ per pupil can be made up.

7. *School lunches.* School lunches are provided free to needy students. The court finds that no one has ever knowingly been denied a free lunch on racial grounds if he could not pay for it.

8. *Library books.* Library books of comparable quality and content are available to all students, black and white, in all schools in an average number of nearly ten per pupil.

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9. *Elective courses.* Some elective courses such as German are offered at some but not all of the high schools. They are offered at a school only if enough students express a desire for the course. Not all schools therefore have all elective courses every year. This situation is not the result of discrimination on account of race.

10. *Individual Evaluation of Students.* Individual students are evaluated annually in terms of achievement in particular subjects, and divided into groups for the study of particular subjects in accordance with their achievement. (This is not, truly described, the "track" system which was elaborately criticized by Judge Skelly Wright in his 119-page opinion in *Hobson v. Hansen*, 269 F. Supp. 401 (D.C. D.C., 1967).) Few black students are in the advanced sections and most are in regular or slow sections. Assignments to sections are made by the various schools based not on race but on the achievement of the individual students in a particular subject. There is no legal reason why fast learners in a particular subject should not be allowed to move ahead and avoid boredom while slow learners are brought along at their own pace to avoid frustration. It is an educational rather than a legal matter to say whether this is done with the students all in one classroom or separated into groups.

11. *Gerrymandering.* Gerrymandering was contended in the 1965 hearing of this case. Perhaps the evidence comes closer to proving it this time. The court is not by this order foreclosing the later assertion of that contention or for that matter any other contention which may be advanced, because it is the court's duty to keep the matter under advisement. However, in view of the court's orders herein which are expected to produce substantial changes in the

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pupil assignment system and a reappraisal of all zoning considerations, it is believed that nothing in particular need be said here about specific school district lines.

SOME COMMENT ON SPECIFIC ISSUES

a) *The Present State of Desegregation.*—Defendant's Exhibit Seven (attached as an appendix to this opinion) shows pupil and faculty population for each school in the system, by races, in March of 1965 and in October of 1968. From this and other evidence the following facts are apparent:

1) *The Rural Schools Are Largely Desegregated.*

Of the 32,000 rural children of all twelve grades, some 23,000, black and white, are being hauled by bus to desegregated schools. No rural schools are all-black. The only all-white county schools are four new schools in the south and east portions of the county: Beverly Woods, Devonshire, Idlewild and Lansdowne.

2) *The City Schools are Still Largely Segregated.*

A few city schools, Elizabeth (58% Negro); Highland (13% Negro); Plaza Road (19% Negro); Randolph (28% Negro); Sedgefield (19% Negro); Spaugh (18% Negro) and Harding (17% Negro) have a substantial degree of apparently stabilized desegregation. However, most of the fully desegregated city schools are not stable in that situation, but are rapidly moving (through a temporary desegregation) from an all-white to an all-black condition. Dramatic examples are Barringer (84% Negro); Villa Heights (86% Negro); Piedmont (89% Negro); Tryon Hills (50% Negro); Hawthorne Junior High (52% Negro); Lakeview (65% Negro); and apparently Dilworth (39% Negro) and Wilmore (33% Negro).

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3) *More Than Three-Fourths of the Children Attend Schools Which Have One or More Children of the Opposite Race.* In Cornelius (49% Negro), Dilworth (39% Negro), Elizabeth (58% Negro) and a few others, the races are close to being balanced in numbers. However, most schools have only a small handful of the minority race. Illustrations are: Second Ward High School (1,139 black and three white); Midwood (522 white, one black); Lincoln Heights (817 black, two white).

4) *Most Black Students Attend Totally or Almost Totally Segregated Schools.* Out of 24,000 black students:

- 4,780 attend nine all-black elementary schools;
- 3,380 attend six elementary schools which are more than 99% black;
- 2,491 attend three all-black junior high schools;
- 727 attend York Road with only six white fellow junior high students;
- 1,569 high school students attend all-black West Charlotte; and
- 1,139 black Second Ward High School students have only three white classmates.

14,086

In other words, of the 24,000 or so black students, 14,086 of them attend school daily in schools that are all-black unless at York Road they see one of the six white students or at Second Ward they see one of the three white students, who were enrolled there last October.

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5) *Most White Students Attend Largely or Completely Segregated Schools.* Thirteen elementary schools with 8,044 pupils are 100% white; eighteen other elementary schools with a pupil enrollment of 10,651 have only 150 black students. The total number of white elementary students is only 31,545. At the junior high level, 7,641 out of 14,741 white students attend school with only 193 black students in six schools. In the high schools, 12,310 white students attend school with 1,642 blacks, while 2,735 black students at West Charlotte and Second Ward attend school with three white students.

b) *The Opinions of Experts.*—Doctors Larson, Finger and Passy, all from Rhode Island College, of Providence, Rhode Island, testified at length. They submitted a 55-page report which outlines several possible plans for realignment of school zones and for provision of transportation; for pairing schools; for setting up feeder systems; for educational parks; and other approaches towards desegregation. None was as familiar with the local situation as the local Board and school administrators. All drew certain conclusions from the Coleman Report, which is a collection of statistics on performance of school children in certain areas about the country. Some said that kindergarten for all children would help the situation. Some said underprivileged children should start getting public education several years before first grade age. Some said that improving the faculty was important. Available statistics and expert opinion agreed that Negro students as a group do noticeably worse on achievement tests than students generally. The experts agreed that if children are underprivileged and undercultured, their school performance will be generally low. One expert, Dr. Passy, said that socio-

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economic-cultural background is the sole major determinant of school performance. The Abraham Lincoln-Charles Kettering theory of the rise of Americans from poor backgrounds received small support.

One point on which the experts all agree (and the statistics tend to bear them out) is that a racial mix in which black students heavily predominate tends to retard the progress of the whole group, whereas if students are mingled with a clear white majority, such as a 70/30 ratio (approximately the ratio of white to black students in Mecklenburg County), the better students can hold their pace, with substantial improvement for the poorer students.

c) *The "Neighborhood School" Theory.*—Recently, the School Board has followed what it calls the "neighborhood school" theory. Efforts have been made to locate elementary schools in neighborhoods, within walking distance of children. The theory has been cited to account for location and population of junior and senior high schools also.

"Neighborhood" in Charlotte tends to be a group of homes generally similar in race and income. Location of schools in Charlotte has followed the local pattern of residential development, including its *de facto* patterns of segregation. With a few significant exceptions, such as Olympic High School (about $\frac{1}{3}$ black) and Randolph Road Junior High School (28% black), the schools which have been built recently have been black or almost completely black, or white or almost completely white, and this probability was apparent and predictable when the schools were built. Specific instances include Albemarle Road Elementary (99%+ white); Beverly Woods (100% white); Bruns Avenue (99%+ black); Hidden Valley (100% white); Olde Providence (98% white); Westerly Hills (100+ white); Albemarle Road Junior High (93% white).

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Today people drive as much as forty or fifty miles to work; five or ten miles to church; several hours to football games; all over the county for civic affairs of various types. The automobile has exploded the old-fashioned neighborhood. Parents with children of all ages may be members of two or three separate and widely scattered school "communities." *Putting a school in a particular location is the active force which creates a temporary community of interest among those who at the moment have children in that school.* The parents' community with the school ordinarily ends the day the youngest child graduates.

If this court were writing the philosophy of education, he would suggest that educators should concentrate on planning schools as educational institutions rather than as neighborhood proprietorships. The neighborhood school concept may well be invalid for school administrative purposes even without regard for racial problems. The Charlotte-Mecklenburg School Board today, for example, is transporting 23,000 students on school buses. First graders may be the largest group so transported. If a first grader lives far enough from school to ride a bus, the school is not part of his neighborhood.

When racial segregation was required by law, nobody evoked the neighborhood school theory to permit black children to attend white schools close to where they lived. The values of the theory somehow were not recognized before 1965. It was repudiated by the 1955 North Carolina General Assembly and still stands repudiated in the Pupil Assignment Act of 1955-56, which is quoted above. The neighborhood school theory has no standing to override the Constitution.

d) *Bussing.*—Under North Carolina General Statutes, §115-180, the Board is expressly authorized to operate

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school busses to transport school children. The state pays bus expenses only for rural children and for some who have been annexed into the city in recent years. This apparent discrimination against city dwellers is reportedly under attack in another court. This Board already transports 23,000 students to school every day out of the 32,000 who live in the area presently eligible for bus service. The present cost of school bussing is about \$19 for bus operation plus the cost of the bus which at \$4,500 per bus should not exceed \$20 per pupil a year. In other words, it costs about \$40 a year per pupil to provide school bus transportation, out of total per pupil school operating costs of about \$540. The income of many black families is so low they are not able to pay for the cost of transportation out of segregated schools to other schools of their choice.

The Board has the power to use school buses for all legitimate school purposes. Buses for many years were used to operate segregated schools. There is no reason except emotion (and I confess to having felt my own share of emotion on this subject in all the years before I studied the facts) why school busses cannot be used by the Board to provide the flexibility and economy necessary to desegregate the schools. Busses are cheaper than new buildings; using them might even keep property taxes down.

e) *Faculty Desegregation.*—The Board employs over 2,600 white teachers and over 900 black teachers. New teachers hired last year numbered 700. Technically their contracts are with the Board of Education to teach where assigned. The Board makes no sustained effort to desegregate faculties. The choice where to teach is a matter between the principal and the prospective teacher. The Board assumes white teachers will tend to choose white schools and black teachers black schools.

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The results of this passive selection policy are obvious. Of the thirteen all-black schools in the system serving 8,840 students, only four have any white teachers. Those four have ten white teachers and 161 black teachers for 3,662 students. Few predominantly black schools have any substantial number of white teachers, except a few schools which serve areas rapidly turning from white to black. Eight other schools 99% or more black had only six white teachers among them for 5,246 black and 24 white pupils. Second Ward and West Charlotte High Schools, with 2,700 black students and three white students, have 131 black teachers and only nine white teachers.

All of the white elementary schools have at least one and in a few cases as many as three or four black teachers. The proportions of black teachers in the junior and senior high schools run slightly higher. The system has not operated, however, to produce any substantial teaching of black students by white teachers.

Desegregation of faculties does not depend upon proof of superiority of one group of teachers or students over the other. Whatever the discrimination that may result from a segregated faculty, it will be eliminated only when a child attending any school in the system will face about the same chances of having a black or a white teacher as he would in any other school. Mecklenburg schools pay a sizeable salary supplement. Desegregation is proceeding in other counties and school districts. It can not be assumed and should not be a tacit part of Board policy that white school teachers are opposed to equality of education or that they will refuse to teach in black schools. In fact, white and black teachers are working together in substantial numbers in several schools of this system and there was no evidence at the hearing of any friction or

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difficulty caused by a bi-racial faculty. It is from the teachers that children learn their first glimmerings of the right to equality of opportunity which still constitutes America's chief contribution to modern civilization. The right of all children to equal education is part of that right. It is believed that if the Board takes a stand that requires faculty desegregation and treats all teachers equally in working towards that end, the teachers will participate wholeheartedly.

f) *Metropolitan High School*.—Supported by impressive recommendations from Engelhart, Engelhart & Leggett, educational consultants, the Board has planned and has two million dollars on hand to build Metropolitan High School at or near the location of present Second Ward High School. In addition to being a school for conventional high school work, it is to be a center for vocational training and special courses in music, the creative and performing arts and other special subjects not practical to offer in all the high schools. Second Ward is now a 99%+ black school in the Brooklyn urban renewal area four or five blocks south of the Court House and City Hall. The First Baptist Church and the School Board itself have buildings under way on adjacent or nearby land. This is near the geographical and traffic center of the city and county, one-half a mile from the central business district, a few blocks from Central Piedmont Community College and within easy travel distance of most of the city. The location and proposed purposes appear ideal.

Plaintiffs' attorneys object to Metropolitan High School. Some present school patrons want the school built. The School Board has announced a stoppage of work on that school pending this decision.

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All three groups may be proceeding upon an erroneous assumption—that the school if built will be a black school because the pupil and faculty populations will be governed by freedom of transfer and school zones as presently administered. That assumption should no longer be entertained. Pupils for regular and vocational subjects can travel or be transported to and from this area, in all directions, with greater ease than is true of any other location in the county. The nearest other high schools, Harding, West Charlotte, Garinger, East and Myers Park, form a hollow pentagon six or seven miles on the side surrounding Second Ward. It would be tragic to refrain from building a needed educational facility simply upon the assumption that it has to be an all-black school and therefore either unlawful or unattractive. The School Board is advised to make plans for desegregation of this school along with other schools in the system. With the unrestricted statutory power to assign pupils and provide transportation, the only thing necessary to build Metropolitan High School according to the dreams of its planners is the decision to do so.

g) *The Percentage Racial Mix.*—Counsel for the plaintiffs says that since the ratio of white to black students is about 70/30, the School Board should assign the children on a basis 70% white and 30% black, and bus them to all the schools. This court does not feel that it has the power to make such a specific order. Nevertheless, the Board does have the power to establish a formula and provide transportation; and if this could be done, it would be a great benefit to the community. It would tend to eliminate shopping around for schools; all the schools, in the *New Kent County* language, would be “just schools”; it would make all schools equally “desirable” or “undesirable” de-

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pending on the point of view; it would equalize the benefits and burdens of desegregation over the whole county instead of leaving them resting largely upon the people of the northern, western and southwestern parts of the county; it would get the Board out of the business of law-suits and real estate zoning and leave it in the education business; and it would be a tremendous step toward the stability of real estate values in the community and the progress of education of children. Though seemingly radical in nature, if viewed by people who live in totally segregated neighborhoods, it may like surgery be the most conservative solution to the whole problem and the one most likely to produce good education for all at minimum cost. It would simply put the all-white and all-black school people in the same school situation now being experienced by patrons of Cornelius, Davidson, Ranson, Long Creek, Dilworth, Olympic, Huntersville, Pineville, Randolph Road Junior High, Statesville Road, and similar schools. Such action would be supported by the unanimous testimony of all the experts and by inferences from the Coleman Report that although mixing a few whites and a heavy majority of blacks retards the whole group, nevertheless mixing a *substantial majority of whites* and a few blacks helps the blacks to advance without retarding the whites.

h) *A Word About the School Board.*—The observations in this opinion are not intended to reflect upon the motives or the judgment of the School Board members. They have operated for four years under a court order which reflected the general understanding of 1965 about the law regarding desegregation. They have achieved a degree and volume of desegregation of schools apparently unsurpassed in these parts, and have exceeded the performance of any school board whose actions have been re-

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viewed in appellate court decisions. The Charlotte-Mecklenburg schools in many respects are models for others. They are attractive to outside teachers and offer good education. The problem before this court is only one part (albeit a major part) of the educational problem. The purpose of this court is not to criticize the School Board, but to lay down some legal standards by which the Board can deal further with a most complex and difficult problem. The difference between 1965 and 1969 is simply the difference between *Brown* of 1955 and *Green v. New Kent County* of 1968. The rules of the game have changed, and the methods and philosophies which in good faith the Board has followed are no longer adequate to complete the job which the courts now say must be done "now."

CONCLUSIONS OF LAW

1. Since 1965, the law has moved from an attitude barring discrimination to an attitude requiring active desegregation. The actions of school Boards and district courts must now be judged under *Green v. New Kent County* rather than under the milder lash of *Brown v. Board of Education*. The court has outlined changes which should be made in the activity and theory of the local Board.

2. The manner in which the Board has located schools and operated the pupil assignment system has continued and in some situations accentuated patterns of racial segregation in housing, school attendance and community development. The Board did not originate those patterns; however, now is the time to stop acquiescing in those patterns.

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3. Freedom of transfer as operated in this system does not answer the problems of racial segregation. The evidence shows that the black students as a group have very low incomes. Freedom of transfer without transportation is to such a student often an empty right.
4. The faculties have not been adequately desegregated as directed. This permits and promotes inequality of education.
5. The court does not find any inequality based upon racial motives or reasons in the use of federal funds; the use of mobile classrooms; quality of school buildings and facilities; athletics; PTA activities; school fees; free lunches; books; elective courses; nor in individual evaluation of students. The problem of alleged gerrymandering of district lines need not be covered separately from the general order herein made.
6. There has been substantial desegregation in many areas—mostly the rural areas—of this large and complicated school system. A majority of the black students, however, still attend segregated schools and seldom, if ever, see a white fellow student. Many all-black and all-white schools still remain. The neighborhood school concept and freedom of choice as administered are not furthering desegregation.
7. The School Board has an affirmative duty to promote faculty desegregation and desegregation of pupils, and to deal with the problem of the all-black schools.
8. The School Board is free and encouraged to use school busses or other public transportation and to use

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mobile classrooms as needed to provide equality of educational opportunity.

9. The Board has assets and experience beyond the reach of a judge to deal with all these problems, and should be requested to formulate a plan and time table of positive action.

ORDER

1. All findings or statements of fact in this opinion and order shall be deemed conclusions of law, and all conclusions of law shall be deemed to be findings of fact as necessary in support and furtherance of this order. All competent and relevant evidence in the record has been considered in support of this order.

2. The defendant is directed to submit by May 15, 1969, a plan for the active and complete desegregation of teachers in the Charlotte-Mecklenburg school system, to be effective with the 1969-70 school year. Such plan could approach substantial equality of teaching in all schools by seeking to apportion teachers to each school on substantially the same ratio (about three to one) as the ratio of white teachers and black teachers in the system at large. It is suggested that teachers' preferences not be especially sought and that teachers be assigned as a routine matter for the purpose of accomplishing this equalization of the application of educational manpower and womanpower in the public schools. Such a plan should provide safeguards against racial discrimination in the discharge of any teachers whose jobs might be changed or abolished. Such safeguards should include provisions that if anyone has to be discharged, his qualifications will be weighed against

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those of all personnel in the system rather than simply against those in the capacity in which he has been working; no teacher should be dismissed or demoted or denied employment or promotion because of race or color. In other words, the Board will be expected to see to it that teachers displaced by virtue of this order will not be discriminated against on account of race.

3. The defendant is directed to submit by May 15, 1969, a plan and a time table for the active desegregation of the pupils, to be predominantly effective in the fall of 1969 and to be completed by the fall of 1970. Freedom of choice and zoning may be used in such a plan provided they promote rather than defeat desegregation. If freedom of choice is retained in such plan, it should include provision for transportation free for any student who requests transfer out of a school where his race is in the majority, and to any school where his race is in the minority, and a means of insuring that all students have full and timely knowledge of the availability of such transportation.

4. In formulating its plan the Board is, of course, free to use all of its own resources and any or all of the numerous methods which have been advanced, including pairing of grades and of schools; feeding elementary into junior high and into senior high; combinations of zone and free choice where each method proceeds logically towards eliminating segregation; and bussing or other transportation. The Board may also consider setting up larger consolidated school units freely crossing city-county lines to serve larger areas. There is no magic in existing school zone lines nor in the present size of any school. The Board is encouraged to get such aid as may be available from state and federal agencies including the offices

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of the Department of Health, Education and Welfare. The court does not direct a treaty with the Department, but does suggest that since its employees are in the business of dealing with these problems, they have a store of technical assets and manpower and information which could be useful in the Board's making any particular judgment or analysis.

5. The plan should be the plan of the Board for the effective operation of the schools in a desegregated atmosphere, removed to the greatest extent possible from entanglement with emotions, neighborhood problems, real estate values and pride. The court's task has not been easy, but it is fully realized that the task facing the Board is far more difficult and will require a conspicuous degree of further public service by the Board's members.

This the 23rd day of April, 1969.

/s/ JAMES B. McMILLAN
James B. McMillan
United States District Judge

APPENDIX

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The Charlotte-Mecklenburg Schools

RACIAL DISTRIBUTION OF PUPILS AND PROFESSIONAL STAFF
1965 (March) and 1968-69 (Oct. 1, '68)

Grade	No. School	1965 Pupils		No. School	1968 Pupils		Professional Staff		1968	
		N	W		N	W	1965	W	N	W
1-6	72	9,364	27,696	76-	13,290	31,545	377+	1161½	478	1329
7-9	17	2,475	11,804	21	5,934	14,741	111-	533	228	706
10-12	8	1,625	10,677	11	4,377	12,313	65	479½	178	644
	97	13,464	50,177	108-	23,601	58,599	553½	2184	884	2679
Other	12	6,877	1,818	4+	28.7% 640	82,200 271	74.3% 323½	79	23	27
: Kgn. + Trainable										
1-4	1	360					15½			
1-7	2	431	207				17	9½		
1-9	3	729	1611				32	68		
5-9	1	505					25½			
1-12	3	2400					113½			
7-12	2	2452					120	1½		
Total	109	20,341	51,995	112	24,241	58,870	877	2263	907	2706
		↑ 28.1%	↑ 71.9%		↑ 29.2%	↑ 70.8%			Include Part-time	Not Include Part-time

Among teachers assigned to
more than one school

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COMPARISON OF PUPILS AND PROFESSIONAL STAFFING BY RACE
March 6, 1965 and 1968-69 *

School	1965 Pupils			1968-69 Pupils			Professional Staff		
	Elementary			1965			1968-69*		
	N	%	W	N	%	W (other)	N	%	W
Albemarle Rd.				4	1%	499			
Alexander Street	342	100%		257	100%		14.1	100%	13
Allenbrook				50	10%	452			18
Ashley Park	0%	694		0%	553		0%	22.9	20
<u>1-9</u> Bain	0%	674		25	3%	699	0%	28.2	28
<u>'65</u>									
Barringer	0%	604		668	84%	131	0%	24.8	18
Berryhill	0%	1026		119	15%	685	0%	39.6	32
Bethune	343	91%	9	223	99%	3	17.6	100%	
Beverly Woods				0%	286				12
Biddleville	434	100%					17.2	100%	
<u>1-9</u> Billingsville	729	100%		619	100%	2	32.1	100%	
<u>'65</u> Briarwood	2	0%	582	8	1%	640	0%	23.9	22
Bruns				740	99%	4			2
<u>1-7</u> Chantilly	0%	445		2	0%	491	0%	18.8	21
<u>'65</u> Clear Creek	0%	207		58	20%	225	0%	9.6	12
Collinswood	0%	375		72	13%	490	0%	16.1	21
Cornelius	0%	241		239	49%	252	0%	11.3	14
Cotswold	0%	631		11	2%	567	0%	25.0	21
Crestdale	97	100%					5.0	100%	
Davidson	0%	178		101	35%	186	0%	7.8	11
Marie Davis	808	100%		705	100%		34.3	100%	
Derita	6	1%	892	165	18%	728	0%	35.4	32
Devonshire	2	0%	474	0%	889		0%	19.5	37
Dilworth	100	20%	401	223	39%	355	0%	23.8	22
Double Oaks	703	100%		800	100%		28.2	100%	
Druid Hills	520	100%		504	99%	3	20.7	100%	
Eastover	0%	704		49	8%	580	0%	27.1	24
Elizabeth	5	1%	448	270	58%	194	0%	22.9	21
Enderly Park	0%	368		2	1%	374	0%	14.9	15
Fairview	702	100%		363	100%		28.0	100%	

1-12	First Ward	473 100%	749 100%	22.8 100%	30 100%
1-12	J. H. Gunn	696 100%		33.6 100%	
1-12	Hickory Grove	0% 530	80 13% 531	0% 21.7	1 4% 23
1-12	Hidden Valley		0% 977		2 5% 35
1-12	Highland	2 1% 273	47 13% 324	0% 14.0	1 1% 14

* Does not include staff assigned to more than one school per HEW request.

% N is nearest whole per cent that N is of total

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**COMPARISON OF PUPILS AND PROFESSIONAL STAFFING BY RACE
March 6, 1965 and 1968-69 ***

School	1965 Pupils						1968-69 Pupils						Professional Staff					
	Elementary			1965			1968-69			Elementary			1965			1968-69*		
	N	%	W	N	%	W	N	%	W	N	%	W	N	%	W	(other)		
Hoskins	0% 342			18	6%	261				0% 14.7			2	15%	11			
Huntersville	0% 553			162	22%	560				0% 22.9			2	7%	25			
Huntingtowne Farms	0% 358			7	1%	695				0% 15.1			1	4%	26			
Idlewild	0% 592			2	0%	521				0% 23.9			1	4%	22			
1-12	Amay James	360 100%		477 100%	1		15.5 100%			19	100%							
1-7	Ada Jenkins	431 100%					17.0 100%											
1-7	Lakeview	0% 400		269	15%	147				0% 18.5			14	74%	5			
1-7	Lansdowne	0% 633			0%	758				0% 23.9			1	31%	30			
1-7	Lincoln Heights	783 100%		817 100%	2		29.1 100%			30	100%							
1-7	Long Creek	0% 423		250	35%	466				0% 17.6			2	71%	26			
1-9	Matthews	0% 937	(1-6) 93	11% 742			0% 39.7			1	31%							
1-9	Merry Oaks	0% 538		0% 469			0% 21.9			1	57%							
1-9	Midwood	0% 560		1	0%	522				0% 24.9			2	9%	21			
1-9	Montclaire	0% 720			0%	722				0% 29.1			1	4%	27			
1-9	Morgan	305 100%					14.9 100%											

Myers Park	0%575	23	47543	0% 24.9	1	4% 23
Myers Street	820 100%			32.2 100%		
Nations Ford	0%513	63	10%585	0% 21.6	1	4% 25
Newell	0%463	73	15%423	0% 18.3	1	5% 18
Oakdale	0%402	72	13%480	0% 17.2	1	5% 21
Oakhurst	0%548	2	0%615	0% 22.8	1	4% 23
Oaklawn	666 100%	650	100%	26.0 100%	25	93% 2
Olde Providence		10	2%34		1	6% 17
Park Road	0%583		0%551	0% 22.7	1	5% 21
Paw Creek	0%793	63	7%861	0% 30.3	1	3% 31
Pineville	0%364	168	32%363	0% 16.2	1	5% 21
Pinewood	0%719		0%707	0% 28.1	1	4% 26
Plaza Road	0%400	99	19%409	0% 17.7	1	5% 21
Rama Road	0%442	2	0%777	0% 18.7	2	7% 27
Sedgefield	3 1%526	7	1%545	0% 21.8	2	9% 20
2-9 Plato Price	505 100%			25.4 100%		
Selwyn	0%531	5	1%598	0% 21.9	1	4% 22
Seversville	96 30%229			0% 14.8		
Shamrock Gardens	0%536		0%539	0% 21.9	1	5% 20
Sharon	0%591		0%519	0% 22.9	1	5% 20

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COMPARISON OF PUPILS AND PROFESSIONAL STAFFING BY RACE
March 6, 1965 and 1968-69 *

School	1965 Pupils			1968-69 Pupils			Professional Staff		
	Elementary	N	% N	W	N	% N	W	N	% N
		↓		↓		↓		↓	
Starmount		0% 481		25 3% 713		0% 20.9		1 3% 28	
Statesville Road		0% 650		295 36% 534		0% 25.9		3 9% 29	
1-12 Steele Creek		0% 222		12 2% 531		0% 10.7		1 5% 20	
1-12 Sterling	699 100%					33.9 100%			
Thomasboro		0% 885		0% 705		0% 34.3		2 7% 25	
1-12 Torrence-Lytte	1005 100%					46.1 100%			
Tryon Hills		0% 324		241 50% 245		0% 15.0		1 5% 20	
Tuckaseegee		0% 631		61 10% 553		0% 23.9		1 4% 23	
University Park	700 100%			777 100%		25.8 100%		30 97% 1	
Zeb Vance	465 100%			257 100%		19.5 100%		11 100%	

Villa Heights	23	4%	594	796	96%	126	0%	28.3	23	62%	14
Wesley Heights	214	100%					8.3	19%	2.2		
Westerly Hills										1	47% 22
Wilmore	6	2%	323	145	33%	293		0%	15.4	8	40% 12
Windsor Park	1	0%	679	2	0%	737		0%	25.8	1	47% 27
Winterfield										1	47% 26
Woodland	360	100%						0%	18.7		
Woodlawn							14.8	100%			
Isabella Wyche	383	100%		222	100%			0%	14.0		
							18.6	100%		12	100%

Child Development (Kgn.)

Davidson, Center #1	83	41%	117				3	30%	7
Pineville, Center #2	166	82%	37				2	20%	8
Seversville, Center #3	174	97%	26				8	80%	2
Morgan, Center #4	188	97%	6				8	80%	2

APPENDIX

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COMPARISON OF PUPILS AND PROFESSIONAL STAFFING BY RACE
March 6, 1965 and 1968-69 *

School	1965 Pupils			1968-69 Pupils			Professional Staff		
	N	%	W	N	%	W	N	%	W
			↓			↓			N (other)
Junior High									
Albemarle Road				66	7%	881			
Alexander	0%	577		347	31%	755	0%	28.9	6
Cochrane	0%	872		76	5%	1444	0%	35.4	6
Coulwood	3	1%	574	119	14%	727	0%	27.1	4
Eastway	0%	1046		3	0%	1364	0%	43.2	3
Alex. Graham	0%	1048		8	1%	1084	0%	43.8	4
Hawthorne	25	4%	670	492	52%	447	0%	33.9	12
Irwin Ave.	785	100%		666	100%		42.7	100%	32
McClintock	0%	1273		46	4%	1228	0%	51.5	2
Northwest	773	100%		932	100%		33.7	100%	39

Piedmont	121	29%	291	428	89%	53	0%	26.8	13	52%	12
Quail Hollow		0%	766	171	12%	1261	0%	35.2	3	57%	61
Randolph				272	28%	711			2	5%	38
Ranson	9	1%	658	253	30%	586	0%	30.0	6	16%	31
Sedgefield	6	1%	920	189	19%	802	0%	40.5	5	11%	39
Smith		0%	1115		0%	1389	0%	48.6	3	51%	57
Spaugh	1	0%	930	186	18%	871	0%	42.5	6	12%	43
Williams	752	100%		893	100%		34.9	100%	37	100%	
Wilson		0%	1064	60	57%	1132	0%	45.6	4	8%	45
York Rd.	(7-12)	1041	100%	727	99%	6	49.9	100%	32	97%	1

Learning Academy - 7th & 8th grades
counted in JH, above,
5 19% 21

APPENDIX

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COMPARISON OF PUPILS AND PROFESSIONAL STAFFING BY RACE
March 6, 1965 and 1968-69 *

School	Professional Staff											
	1965 Pupils			1968-69 Pupils			1965			1968-69*		
	N	%	W	N	%	W	N	%	W	N	%	W
Senior High	N	N	W	N	N	W	N	N	W	N	N	W
	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓
East Mecklenburg	0%	1782		155	81%	1739	0%	79.2	6	71%	85	
Garinger	2	0%	2266	202	9%	2157	0%	100.0	6	67%	102	
Harding		0%	1002	169	11%	814	0%	48.0	4	8%	49	
Independence				92	9%	962			6	9%	59	
Myers Park	31	2%	1772	158	8%	1855	0%	76.7	6	6%	87	
North Mecklenburg	1	0%	1155	410	21%	1109	0%	51.8	6	9%	63	
Olympic				259	33%	522			5	11%	39	
<u>7-12</u> Second Ward	1411	100%		1139	100%	3	70.0	98%. 1.5	57	95%	3	
<u>7-12</u> South Mecklenburg	30	2%	1430	106	67%	1812	0%	72.0	4	5%	78	
West Charlotte	1560	100%		1569	100%		65.0	97%. 2.0	74	93%	6	
West Mecklenburg	1	0%	1270	118	8%	1340	0%	61.4	4	5%	73	

Motion for Temporary Restraining Order

(Filed May 15, 1969)

Plaintiffs, by their undersigned counsel, respectfully move the Court for an order temporarily restraining the defendants from initiating or continuing the construction of new schools or new facilities at any existing schools without the specific prior approval of the Court and, as grounds therefor, show the following:

1. This action was initially filed in 1965 by forty-two black parents and students in the Charlotte-Mecklenburg School System seeking the elimination of racial segregation in the Charlotte-Mecklenburg Public Schools. An order was entered by this Court on July 14, 1965, from which the plaintiffs appealed. The Court of Appeals for the Fourth Circuit issued its opinion in 1966. *Swann v. Charlotte-Mecklenburg Board of Education*, 369 F.2d 29 (4th Cir. 1966).

The plaintiffs moved this Court for further relief on September 6, 1968, contending that the Board had failed to meet its affirmative duty to adopt and implement plans for the total and complete desegregation of the Charlotte-Mecklenburg Public Schools. (A more detailed history of this litigation is contained in plaintiffs' motion for further relief.)

2. On April 23, 1969, this Court filed an opinion and order requiring the defendant to submit plans, by May 15, 1969, "for the active and complete desegregation of teachers in the Charlotte-Mecklenburg school system, to be effective with the 1969-70 school year" and "for the active desegrega-

Motion for Temporary Restraining Order

tion of the pupils, to be predominantly effective in the fall of 1969 and to be completed by the fall of 1970."

3. The Court concluded as a matter of law:

"2. The manner in which the Board has located schools and operated the pupil assignment system has continued and in some situations accentuated patterns of racial segregation in housing, school attendance and community development. The Board did not originate those patterns; however, now is the time to stop acquiescing in those patterns."

4. The plaintiffs contended and offered evidence in support of their contention that attendance lines had been gerrymandered to foster segregation within the various schools. The Court reserved judgment on this issue:

"11. *Gerrymandering.* Gerrymandering was contended in the 1965 hearing of this case. Perhaps the evidence comes closer to proving it this time. The court is not by this order foreclosing the later assertion of that contention or, for that matter, any other contention which may be advanced, because it is the court's duty to keep the matter under advisement. *However, in view of the court's orders herein which are expected to produce substantial changes in the pupil assignment system and a reappraisal of all zoning considerations, it is believed that nothing in particular need be said here about specific school district lines.*" (Emphasis added.)

5. The Court's expectation that its order would produce "substantial changes in the pupil assignment system and a reappraisal of all zoning considerations" was entirely rea-

Motion for Temporary Restraining Order

sonable. The order required as much and a United States District Court should expect compliance with its orders. However, the actions of the defendant since April 23, 1969, when the Court entered its order, strongly suggest that what was expected—and required—is unlikely to occur.

The administration, in response to the Court's order and under the direction of the Board, spent approximately two weeks preparing a plan. In light of the *Green* trilogy decided approximately one year ago, the Norfolk, Virginia school case (*Brewer v. School Board of the City of Norfolk*, 397 F.2d 37 (4th Cir. 1968)) decided in June of 1968 and the pendency of plaintiffs' motion for further relief, (see also, *Felder v. Harnett County Board of Education*, — F.2d — (No. 12,894, 4th Cir., April 22, 1969)) a school board acting in good faith would be expected to have developed some contingency plans. There is no evidence of such planning.

The plan which is now before the Board and which apparently is the only plan under consideration, is totally unresponsive to the directions of this Court. It does not call for "substantial changes in the pupil assignment system" and reflects no "reappraisal of all zoning considerations." It contains no hint of "active desegregation of the pupils" for the 1969-70 school year. There is no plan for pupil desegregation for the 1970-71 school year as required by the order. There is, at best, a plan to develop a plan *if* a consensus can be reached.

6. The Board has neither accepted the decision of the Court as a statement of the applicable law under the facts of the case nor has it sought review. Instead, it has held public meetings to hear expressions from citizens as to the social wisdom of this Court's decision. It has failed to assume its responsibility to educate the public as to the re-

Motion for Temporary Restraining Order

quirements of the law as enunciated by this Court (and the Supreme Court of the United States) but has offered a forum to those who disagree with the law. In fact, members of the Board, including its Chairman, have encouraged and joined those who express resistance to the kinds of changes required by the Constitution of the United States. (See *Monroe v. Board of County Commissioners*, 391 U.S. 450, where the Court reasserted and quoted from *Brown v. Board of Education*, 349 U.S. 249 (Brown II) a fundamental principal: “‘But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them.’”)

7. The Board has had before it at its two most recent meetings the plan which was prepared by the administration—a plan which is totally unresponsive to the order of this Court. The Board has yet to act upon or even discuss the plan submitted by the administration. At the most recent meeting, on Tuesday, May 13, 1969, the Board decided only that it would ask for an extension of time within which to submit plans to the Court. (The Court has now granted a two-week extension.) No instruction was given to the administration as to the preparation of any other plan and no decision was reached as to the plan before the Board. No date was set for a further meeting of the Board.

8. At the meeting of May 13, 1969, the Board, while failing to take action upon a desegregation plan, did take action on further construction of school facilities. It approved bids on “Project 600,” a new facility, and bids for renovations and additions to Wilson Junior High School,

Motion for Temporary Restraining Order

Clear Creek Elementary School and Myers Park Senior High School. These projects involve more than two million dollars in construction costs. The action taken on each of these projects was done without having adopted a plan or even a policy for the desegregation of the Charlotte-Mecklenburg Schools and, of course, no such plan had been approved by, or even filed with, this Court.

9. Plaintiffs contend that the construction of new school facilities in the absence of a legally acceptable plan for desegregation should be temporarily enjoined until it is demonstrated to the satisfaction of the Court that such facilities would contribute to, rather than detract from, the desegregation of the schools. Plaintiffs sought such relief in their motion filed in September of 1968. Plaintiffs submit that such an order was appropriate then and that such an order is required now. See, e.g., *Kelley v. Altheimer*, 378 F.2d 483 (8th Cir. 1967); *Wheeler v. Durham City Board of Education*, 346 F.2d 768 (4th Cir. 1965); *Brewer v. School Board of the City of Norfolk*, *supra*.

The Court has suggested that “[t]he Board may also consider setting up larger consolidated school units freely crossing city-county lines to serve larger areas.” It may be that the Board will be required to take this course of action as part of its legal obligation to desegregate the schools. However, in continuing to plan and approve new school constructions without having adopted an effective desegregation plan, the Board is foreclosing its options in this respect. This would be true even if the Court’s assumption were correct that the Board has proceeded and would continue to proceed in a good faith effort to comply with the requirements of the law. We submit that the Court can no longer indulge in such an assumption. It is crucial at

Motion for Temporary Restraining Order

this time that the Board be enjoined from continuing or initiating any further construction where evidence of good faith compliance is absent. A new school stands for generations. The course of action taken by the Board since the order was entered on April 23 is entirely inconsistent with the Board's constitutional duties and legal obligations to the Court; rather, the Board's actions have been consistent with a policy of delay and resistance to the requirements of the law.

WHEREFORE, plaintiffs respectfully pray that this motion be heard at the earliest practicable time and that upon hearing of this motion the defendant be temporarily enjoined from initiating or continuing the construction of new schools or new facilities at any existing schools.

Respectfully submitted,

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Plan for Desegregation of Schools

(Filed May 28, 1969)

In compliance with the order of the Court dated April 23, 1969, the Board of Education proposes to amend and modify the plan or policy adopted by the Board on March 11, 1965, which plan was approved by the Court, and which plan was amended by action of the Board of Education on June 13, 1967, by substituting therefor the following provisions:

PUPIL ASSIGNMENT GUIDELINES

1.

Attendance Areas

Attendance areas are hereby established for all schools within the Mecklenburg County Administrative School Unit and the boundaries thereof are hereby established as shown on those three certain maps this day exhibited to the Board and approved by the Board. These maps are identified and designated as follows: "Map No. 1, Attendance Areas for Elementary Schools," "Map No. 2, Attendance Areas for Junior High Schools" and "Map No. 3, Attendance Areas for Senior High Schools." The Chairman and Secretary of this Board shall each affix his signature to each map in his official capacity and the official seal of the Board shall be affixed, as evidence of its adoption by the Board. A copy of each map shall be kept at each school in the attendance areas shown thereon. The maps shall be open to public inspection in the office of the Superintendent and at the schools.

Plan for Desegregation of Schools

2.

Assignment of Pupils

All pupils within any attendance area shall be assigned to the school of his or her grade within such attendance area. Assignment for any forthcoming school term shall be made not later than the last school day or as soon thereafter as possible. In the case of children enrolled during such term, notice of assignment may be given by noting the same on the report card of the pupil thereof or any other means that will adequately insure the delivery of written notice to the parent. Except for beginners, pupils not then enrolled shall be assigned at the time of their application for enrollment.

3.

Assignment from Pre-School Clinics

Beginners (children entitled to enrollment under G.S. 115-162) may attend any pre-school clinic but shall be assigned to the first grade of the school in the attendance area where the parent resides. Written notice of each assignment shall be given by mail to the parent at the same time as the report card or other written notice to pupils already enrolled. (The word parent as used in these regulations shall denote the parents, if living together, or the parent or person in loco parentis with whom the pupil resides.)

4.

Free Choice or Transfer

After original assignment, the parent of any pupil may apply to the Board for reassignment of such pupil to any school serving his or her grade and located in any other

Plan for Desegregation of Schools

attendance area. Any such request for transfer shall be allowed as of course to the extent that the facilities and accommodations of the chosen school will permit. Application may be made for Choice I, Choice II and Choice III and transfer will be permitted, in the order of choice, to the school having the facilities and accommodations to admit such child or children. Requests for transfer shall be on a printed form available at the office of the Superintendent or at any school office. When signed, the form may be delivered or mailed to the principal of the school of original assignment or to the office of the Superintendent. No reason need be given therefor. Application for a transfer or reassignment shall be made within ten days after the date of the original assignment. If there should be requests for transfer to a particular school by more pupils from other attendance areas than the transferee school can accommodate, proximity to the school shall be the controlling factor. To encourage transfer by students from schools in which their race is in the majority to a school in which their race is in the minority, free transportation will be provided for students exercising and granted such transfer.

5.

Transfers Limited in Case of New Schools

In the case of mass assignments of pupils to newly (newly described to mean the first full year of operation) opened schools in newly created attendance areas, the Board may deny the request for the transfer of any pupil back to the school in which he was previously enrolled, if in the judgment of the Board it appears that the number of transfer requests is of such volume as to unduly reduce the enrollment in such new school or interfere with the orderly administration thereof.

Plan for Desegregation of Schools

6.

Varsity Athletics

A student who exercises the privilege of free choice under these regulations and is granted transfer to a senior high school (grades, 10, 11 or 12) other than the senior high school serving the attendance area in which he resides, shall not be eligible for participation in varsity or junior varsity athletics for the duration of the first school year of assignment in the chosen school: Except that where by reason of changes in the boundaries of attendance areas a pupil is originally assigned to a school other than the one in which he was previously enrolled, such pupil, if he chooses to return to said school and is assigned accordingly, shall be immediately eligible for varsity participation.

When a student returns to the school of original assignment, he may exercise all the privileges at said school without penalty.

The Director of Physical Education and Athletics shall administer the above regulations pertaining to athletic participation and shall maintain appropriate records in his office and shall require that similarly appropriate records be kept in the individual senior and junior high school offices pertaining to total athletic participation eligibility.

7.

School Capacity to be Determined

A rated capacity shall be established and adopted by the Board for each school facility in the Mecklenburg County School Administrative Unit prior to the date of initial assignments for any ensuing school term. Under normal

Plan for Desegregation of Schools

circumstance, additional assignments of students from outside the official attendance area of each specific school will be limited to a total anticipated enrollment to be established within 10 days after the close of the school term in each year not to exceed the maximum capacity of the school plus ten per cent of such capacity in the school. All requests from a majority race to a minority race will be granted within 20 per cent of such capacity before other transfers are granted.

The determination of the majority race will be based upon the pupil enrollment of the school at the time original assignments are made.

The limitation of school capacity shall not apply to new residents in an attendance area.

The Board will act upon transfer requests immediately after determination of such anticipated enrollment for an ensuing term, as hereinabove provided for, and the determination at that time shall control notwithstanding subsequent changes in enrollment at any school.

8.

Transportation

Where transportation is provided in any school attendance area, the school buses will not normally operate beyond the boundaries of such attendance area, and therefore, it will not be practicable to transport a pupil residing in one attendance area to the school of his choice in another attendance area. The only exception to this provision will be that for pupils who have exercised free choice of transfer from a school in which their race is in the majority to a school in which their race is in the minority, free trans-

Plan for Desegregation of Schools

portation will be provided. Provided, however, that any other pupil residing in any attendance area and attending school in another attendance area may have transportation to such school from any regular stop for receiving pupils and from the school to any regular stop for discharging pupils within such attendance area.

9.

Enrollment Continues for School Term

Any child enrolled in any school after original assignment or by transfer after original assignment shall remain in the school of enrollment for the school term, and no subsequent transfer will be permitted except for a change of residence from one attendance area to another, or for a return to the original assignment as provided in Section 4, or for other good cause shown. In the event of change of residence, the pupil may elect to remain in the school of enrollment for the remainder of the school term. A pupil enrolled in a school in an attendance area other than that of his or her residence shall be advanced, at the appropriate time, to junior or senior high school, as the case may be, serving the attendance area in which the pupil resides. This provision shall not have the effect of denying such pupil the right to transfer to another school of his grade and choice at the end of the term of the school in which the pupil is enrolled.

In the event a student has dropped out of school and then desires readmittance, requesting a transfer to a school other than the school to which he was last assigned, a period of at least one semester must have lapsed since last date of attendance and the request must follow the procedure heretofore outlined in these guidelines.

Plan for Desegregation of Schools

10.

*Special Education and Special Abilities and
Talents Students*

When children are identified as eligible for Special Education and SAT classes, they will be assigned to the suitable class in their attendance areas or, if no space is available, they will be placed on the appropriate waiting list for assignment as space is available. Currently applicable attendance areas are identified on attendance area maps for Special Education and SAT. While administrative responsibility for assignment to Special Education or SAT classes is shared by the home school principal and the pupil assignment office, the recommendation for such assignment must come from the Special Education or SAT Department. Such recommendations are made to the home school principal after the prescribed identification and evaluation procedures have been completed.

Freedom of choice as outlined elsewhere in this document will apply to Special Education and SAT pupils insofar as comparable class placement is available in the schools of choice.

Requests for assignment from Special Education or SAT classes to regular classes will be received and acted upon by the principal of the school in which the pupil is enrolled. Decision of such requests can be made only after appropriate involvement of and recommendations from the Director of Special Education or the Director of SAT.

Plan for Desegregation of Schools

11.

Tuition Students

No student residing outside of Mecklenburg County shall be permitted to attend the Charlotte-Mecklenburg Schools. If a student is living within Mecklenburg County but his parents or legal guardians are living outside the county, said student may attend the Charlotte-Mecklenburg Schools upon payment of a \$100 tuition fee for the school year subject to approval by the Superintendent of Schools. This tuition fee is to be collected by the principal of the school the student is entering and forwarded to the Treasurer of the Charlotte-Mecklenburg Schools.

If a parent owns property on which he resides and it is partially in Mecklenburg County and partially in another county but it is a continuous piece of property, the child or children of said parent would be permitted to attend the Charlotte-Mecklenburg Schools. Students of parent residing outside of Mecklenburg County but who own a separate piece of property in Mecklenburg County are not eligible for attendance in the Charlotte-Mecklenburg Schools.

Determining legal residence of a student shall be the responsibility of the principal in the school where the child is requesting entrance.

12.

Effective Date and Duration of Rules and Regulations

These policies and guidelines shall control the assignment and reassignment of pupils for the forthcoming 1969-1970 school term and shall be and remain in full force and

Plan for Desegregation of Schools

effect until amended, modified or altered by the Board and due public notice thereof given. Upon the opening of new schools, the policies set forth herein shall prevail in the establishment of new attendance areas for such schools.

13.

Notice of Rules and Regulations

These policies and guidelines shall be spread upon the Minutes of this Board and notice of their adoption by the Board shall be given promptly once a week for two weeks in the Charlotte Observer and the Charlotte News and by such other means as the Board may consider desirable to give adequate and effective notice of the same.

II

METROPOLITAN HIGH

The Board of Education has determined that Second Ward High School shall be converted into a model specialized school serving all students residing with Mecklenburg County. The high school attendance areas surrounding Second Ward High School will be redrawn in order that students attending Second Ward High School may be reassigned to the school serving the district in which they reside. It is anticipated that as a result of the elimination of the present Second Ward High School a large majority of the Second Ward students would be reassigned to predominantly white schools.

Plan for Desegregation of Schools

III

FACULTY DESEGREGATION

The Board of Education in recognition of its duty to achieve substantial faculty desegregation within the school system, will carry out the following procedures:

1. Teachers having a high degree of motivation and an interest in volunteering for service in achieving this objective will be actively sought.
2. Currently employed teachers will be allowed to move with co-workers wherever possible.
3. Currently employed teachers will be given an opportunity to indicate their choices of schools and consideration will be given to these insofar as possible.
4. Newly employed teachers will be carefully assigned in an effort to further desegregate faculties.

In the event the above procedures fail to achieve a substantial faculty desegregation, the Board will exercise its power to assign faculty for this purpose.

These policies and guidelines shall control the assignment and reassignment of teachers for the forthcoming 1969-70 school term and shall be and remain in full force and effect until amended, modified or altered, by the Board of Education and due public notice thereof given. These policies and guidelines shall be spread upon the Minutes of this Board.

Plan for Desegregation of Schools

IV

EDUCATIONAL ASSISTANCE TO UNDER-ACHIEVERS

The Board of Education recognizes that it has a responsibility to provide the best educational program possible for all students. It further recognizes that there are some students who are served less effectively than others and that the system has a unique responsibility to these students. The Board of Education intends to make every effort to offer supplementary support to these young people by providing additional funds to the extent that they can be made available for use in employing additional staff, providing a broader range of curricular offerings and developing learning materials for pupils of varying levels of educational maturity.

I, William C. Self, Superintendent of the Charlotte-Mecklenburg school system and Secretary to its Board of Education, do hereby certify that the foregoing is a true, perfect and correct copy of the plan for further desegregation of the Mecklenburg School Unit as adopted by the Board of Education on the 21st day of May, 1969, and spread upon its minutes, as amended on May 27, 1969.

This the 28th day of May, 1969.

Secretary to the Board
William C. Self

**Report in Connection With Submission of
Plan of Desegregation**

(Filed May 28, 1969)

The defendant, through its attorneys of record, respectfully submits to the Court its plan, the same being attached, for further desegregation of the schools of the Charlotte-Mecklenburg School Administrative Unit as approved by the Board of Education.

With reference to pupil desegregation, the Board held extensive deliberations and study of the alternative suggestions by the Court and other alternatives and reached the conclusion that there were no possible means of getting the children together without substantial compulsory bussing and, in effect, destroying the neighborhood system, whereby, in the City of Charlotte, children in general attended those schools near to their homes as has been the practice in the City of Charlotte for many years.

It is the judgment of the Board that the plan submitted herewith will accomplish further desegregation of pupils within the various schools. Under this plan, after the construction of Metropolitan High School, less than 500 Negro students (some West Charlotte High School graduates) during the course of their education may finish school without attending a predominantly white school. By continuing freedom of transfer and providing free transportation for students transferring from a majority race to a minority race school, these students, as is the case with all students within the system, may attend desegregated schools at all levels of their education. All white students will continue attending some desegregated schools in the course of their education. The Board and its staff will give reasonable publicity and notice of its free transportation offer.

*Report in Connection With Submission of
Plan of Desegregation*

With reference to Metropolitan High School, the plan provides for establishing a county-wide attendance area for this school. Upon construction of the school, students of Second Ward High School will be assigned to those schools with attendance lines adjoining those of Second Ward High School, most of which have predominantly white student enrollment. The student and faculty population of the new Metropolitan High School is expected to be substantially desegregated.

In connection with faculty desegregation, it is believed that the present plan offers substantial progress in achieving a reasonable degree of faculty desegregation. The plan embodies a voluntary approach to teachers in seeking their agreement to transfer, assignment of new personnel and assignment of teachers in the event reasonable desegregation is not achieved. It was reported that the Classroom Teachers Association out of a survey of 1,300 teachers reporting indicated that 240 teachers were agreeable to transfer to schools in which their race was in a minority. By projecting this figure, it would appear that in excess of 600 teachers in the system would be willing to voluntarily transfer. In addition, the school system expects to employ 700 new teachers to fill an expected 600 vacancies and 100 positions created by growth in the student population, such new teachers to be assigned in such manner as to achieve further racial balance of faculties. In the event the foregoing procedures do not insure substantial desegregation of faculties, the Board will then reassign faculty members to achieve this result.

The Board of Education's staff proposes to implement faculty desegregation in the following manner:

*Report in Connection With Submission of
Plan of Desegregation*

1. Solicit the help of the presidents of the local professional organizations.
2. Use the facilities of the educational television station to encourage teachers to volunteer.
3. Make available to teachers a form requesting voluntary reassignment. (See attached copy.)
4. Call together those who are presently teaching in opposite race situations to request their assistance.
5. Seek to retain in their present positions as many as possible of those who are teaching in opposite race situations.
6. No faculty member will be dismissed or demoted or denied employment or promotion because of race or color.
7. Encourage schools to invite volunteers to meet faculty members prior to the end of the school term.

During the 1969-70 school year, the Board of Education will carry on an intensive in-service education program for volunteers and newly assigned personnel who are teaching in opposite race situations. To accomplish this:

1. Teachers who are transferred and newly assigned teachers will be offered a two weeks' summer workshop. Those who participate will receive a stipend of \$100 per week. The cost of such a program is estimated as \$200,000. An extensive effort will be made to underwrite the cost with funds from federal and state sources. If this attempt is unsuccessful, the project will be supported by local funds.

*Report in Connection With Submission of
Plan of Desegregation*

2. The Board of Education will renew the request for curriculum planning time for teachers which was approved by the Board of Education on October 8, 1968. The original plan which provided for planning time twice a month will be amended to provide for dismissal of pupils at approximately 1:00 p.m. one day per week. If necessary, the Board will petition the legislative delegation for emergency enabling legislation.
3. The in-service education department will be assigned a sum of \$10,000 for the employment of substitute teachers. The substitutes will be used to free experienced and highly qualified staff members for a period of time so that they may give added support to their fellow teachers through in-service workshops.

Attached to this report is a form for voluntary reassignment which the Board presently contemplates using in the faculty assignment. The Board does not represent that the procedures are inflexible or fixed as conditions in the future may warrant change as circumstances may dictate.

In further improving the quality of education, the Board will seek to secure supplementary support for schools with pupils having test scores which are two years or more below the Charlotte-Mecklenburg median on paragraph meaning. In order to bring the expenditure for these pupils up to the national average per pupil, expenditure will require an additional \$100 per pupil. Since approximately 13 per cent of the pupils in the system are in this category, the total expenditure will be about \$1,100,000. A small percentage of this amount will be used to employ staff support not assigned to a specific school, and the remainder will be apportioned among the schools on the basis of the per-

*Report in Connection With Submission of
Plan of Desegregation*

centage of qualifying pupils enrolled in each school. The principal and his teachers will be asked to submit a plan outlining how the allocation is to be spent. By a special formula, the allocation for supplementary support will be determined.

Submitted for information of the Court are proposed letters to be delivered to the child for delivery to the parent with respect to free choice of transfer, marked Exhibit "B", notice of assignment, marked Exhibit "C", tabulation of school capacities and projected enrollment, marked Exhibit "D" and data on effect of free choice of transfer, marked Exhibit "E".

The Board is not unmindful of the suggestions by the Court in its order and therefore sought the assistance of the State Department of Public Instruction prior to formulation of the attached plan. At a recent conference of the National School Board Association attended by several School Board members, it was reported by a representative of the Department of Health, Education and Welfare that his department regarded desegregation under court orders as basically a local matter, and therefore, no real assistance was offered to local school boards in preparing plans for compliance with court orders. It was, therefore, deemed fruitless to pursue the suggestion of the Court in this regard.

Respectfully submitted,

/s/ Brock Barkley
818 Law Building
Charlotte, North Carolina

/s/ William J. Waggoner
1100 Barringer Office Tower
Charlotte, North Carolina

CHARLOTTE-MECKLENBURG SCHOOLSVOLUNTARY REASSIGNMENT**I Staff Member's Statement**

Recognizing my professional responsibility to teach young people of all races and the value which an integrated faculty can have for the total education of pupils, I volunteer for reassignment to a school where the majority of the current staff is of a race other than mine. I shall appreciate consideration being given to the following requests

1. To be reassigned to one of the following schools:

1st choice _____	Grade/Subject _____
2nd choice _____	Grade/Subject _____
3rd choice _____	Grade/Subject _____

2. To be reassigned with the following co-workers who have volunteered for similar school assignments:

1.	3.
2.	4.

Certification: Class "A" Class "G" Other: _____

Record of service in the Charlotte-Mecklenburg Schools:

School	Grade/Subject	Dates of employment
_____	_____	From _____ To _____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Mr., Mrs., Miss: _____
(signature)

Address: _____
(street)

(city) _____ (state) _____

Race: _____

Telephone: _____

Date: _____

Please send one copy of this form to the personnel office by June 4, 1969
One copy should also be filed with your principal.

II Administrative action by the Personnel Department
School assignment for 1969-70: _____ Grade/Subject: _____

Signature: _____ Date: _____

Exhibit "A"

May 27, 1969

Dear Staff Members:

As the first step in achieving substantial faculty integration for 1969-70, the Board of Education has directed that we actively seek volunteers for reassignment from our current staff.

We ask that you consider the importance of this undertaking and the role which you may have in it. If you are willing to volunteer for this service, please complete the form on the reverse side and return it to the personnel office by June 4.

We appreciate your cooperation and your understanding as we seek the attainment of this goal.

Sincerely,

William C. Self
William C. Self
Superintendent

J. L. Anderson Jr.

W. L. Anderson, Jr.
Assistant Superintendent
Personnel

THE CHARLOTTE-MECKLENBURG SCHOOLS

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Pupil's last name _____ First name _____ Middle name _____

Address _____ Telephone number _____

School last attended _____

Original Assignment for 1969-70: Grade:
(Please so indicate if in Special Education or SAT Program.)

School: _____

Date of original assignment: June 5, 1969 School Address Code

Race: _____

Request for Transfer:

First Choice: _____ School

Second Choice: _____ School

Third Choice: _____ School

Signature of adult with whom pupil lives: _____

Relationship to pupil: _____

Mail or deliver by June 15, 1969 to any school office or to the Pupil Assignment Office, Charlotte-Mecklenburg Schools, P.O. Box 149, Charlotte, North Carolina 28201

Do not write in space below this line

Assignment: _____

Date: _____

Signature: _____

For school official receiving request:

Date received or Postmarked

By Whom Received: _____

CHARLOTTE-MECKLENBURG SCHOOLS
ROBINSON CHURCH ROAD
CHARLOTTE, NORTH CAROLINA

Notice to All Parents:

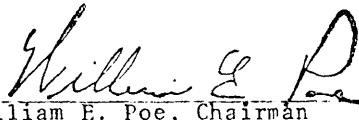
Your child has been assigned on the back of this notice to the school serving the attendance area in which you live or to the school which your child attended through free choice during the 1968-69 school year. The Board of Education policy states that "After original assignment the parent of any pupil may apply to the Board for reassignment in any other attendance area" and that "any such request for transfer shall be allowed - to the extent that the facilities and accommodations of the chosen school will permit." The only exception to this is in newly constructed schools for which attendance areas have been created.

FREE TRANSPORTATION SHALL BE PROVIDED TO ANY PUPIL WHO EXERCISES AND IS GRANTED A MAJORITY RACE TO MINORITY RACE TRANSFER.

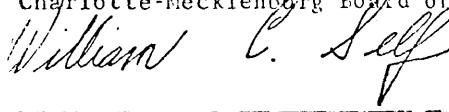
Provision is made on the back of this notice for your use if you are not satisfied with the assignment of your child and want to request reassignment. This request for reassignment must be made not later than June 15, 1969.

Parents are assured that school personnel will neither favor nor penalize any pupil because of the choice he makes in the exercise of his rights under this plan.

Maps showing school attendance areas may be found in the office of each school of the system and at the Board of Education office.



William E. Poe, Chairman
Charlotte-Mecklenburg Board of Education



William C. Self, Superintendent
Charlotte-Mecklenburg Schools

CHARLOTTE-MECKLENBURG SCHOOLS
Charlotte, North Carolina

NOTICE OF ORIGINAL ASSIGNMENT

The original assignment for your child _____
for the 1969-70 term is grade _____, _____ school

Date: _____ Signed: _____

MJK:mf

Exhibit "C"

CHARLOTTE-MECKLENBURG SENIOR HIGH SCHOOLS

1969 - 1970

NAME OF SCHOOL	TOTAL TEACHING SPACES	RATED CAPACITY (27)	(30)	MAXIMUM CAPACITY		PROJECTED ENROLLMENT	OPEN OR CLOSED
				+ 10%	+ 20%		
East Mecklenburg	70	1890	2100	2310	2520	2130	
Garinger	73	1971	2190	2409	2628	2515	
Harding	37	999	1110	1221	1332	1000	
Independence	41	1107	1230	1353	1476	1150	
Myers Park	60	1620	1800	1980	2160	1990	
North Mecklenburg	49	1323	1470	1617	1764	1670	
Olympic	31	837	930	1023	1116	785	
Second Ward	41	1107	1230	1353	1476	1135	
South Mecklenburg	55	1485	1650	1815	1980	2115	
West Charlotte	65	1755	1950	2145	2340	1475	
West Mecklenburg	55	1485	1650	1815	1980	1575	

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Exhibit "D"

CHARLOTTE-MECKLENBURG JUNIOR HIGH SCHOOLS

1969-70

NAME OF SCHOOL	TOTAL TEACHING SPACE	RATED CAPACITY (27)	MAXIMUM CAPACITY			PROJECTED ENROLLMENT	OPEN OR CLOSED
			(30)	+ 10%	+ 20%		
Albemarle Road	25	675	750	825	900	990	
Alexander	32	864	960	1056	1152	1150	
Cochrane	44	1188	1320	1452	1584	1590	
Coalwood	27	729	810	891	972	830	
Footaway	41	1107	1230	1353	1476	1360	
Alexander Graham	34	918	1020	1122	1224	1030	
Hawthorne	44	1188	1320	1452	1584	1075	
Irvin Avenue	29	783	870	957	1044	630	
McClintock	38	1026	1140	1254	1368	1465	
Northwest	40	1080	1200	1320	1440	940	

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CHARLOTTE-MECKLENBURG JUNIOR HIGH SCHOOLS

1969-70

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CHARLOTTE-MECKLENBURG ELEMENTARY SCHOOLS

1969-70

NAME OF SCHOOL	TOTAL TEACHING SPACE	RATED CAPACITY (28)	MAXIMUM CAPACITY (30) + 10% + 20%			PROJECTED ENROLLMENT	OPEN OR CLOSED
Albemarle Road	16	448	480	528	576	505	
Alexander	15	420	450	495	540	260	
Allenbrook	20	560	600	660	720	520	
Ashley Park	23	644	690	759	828	575	
Bain	22	616	660	726	792	760	
Barringer	19	532	570	627	684	805	
Berryhill	36	1008	1080	1188	1296	815	
Bethune	15	420	450	495	540	195	
Beverly Woods	20	560	600	660	720	550	
Billingsville	24	672	720	792	864	635	
Briarwood	20	560	600	660	720	675	
Bruns Avenue	26	728	780	858	936	780	
Chantilly	18	504	540	594	648	480	
Clear Creek	7	196	210	231	252	285	
Collinswood	23	644	690	759	828	580	
Cornelius	18	504	540	594	648	480	
Cotswold	20	560	600	660	720	555	
Davidson	12	336	360	396	432	285	

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CHARLOTTE-MECKLENBURG ELEMENTARY SCHOOLS

1969-70

NAME OF SCHOOL	TOTAL TEACHING SPACE	RATED CAPACITY (28)	MAXIMUM CAPACITY (30) + 10% + 20%	PROJECTED ENROLLMENT	OPEN OR CLOSED
Berita	31	868	930 1023 1116	895	
Devonshire	24	672	720 792 864	935	
Dilworth	24	672	720 792 864	580	
Double Oaks	25	700	750 825 900	810	
Druid Hills	18	504	540 594 648	505	
Eastover	24	672	720 792 864	540	
Elizabeth	21	588	630 693 756	490	
Enderly Park	12	336	360 396 432	375	
Fairview	26	728	780 858 936	330	
First Ward	28	784	840 924 1008	755	
Hickory Grove	17	476	510 561 612	585	
Hidden Valley	24	672	720 792 864	1055	
Highland	12	336	360 396 432	375	
Hoskins	12	336	360 396 432	280	
Huntersville	26	728	780 858 936	725	
Huntingtowne Farms	22	616	660 726 792	580	
Idlewild	24	672	720 792 864	575	
Amay James	10	280	300 330 360	505	

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CHARLOTTE-MECKLENBURG ELEMENTARY SCHOOLS

1969-70

NAME OF SCHOOL	TOTAL TEACHING SPACE	RATED CAPACITY (28)	MAXIMUM CAPACITY (30) + 10% + 20%			PROJECTED ENROLLMENT	OPEN OR CLOSED
Lakeview	16	448	480	528	576	430	
Lansdowne	28	784	840	924	1008	770	
Lincoln Heights	24	672	720	792	864	765	
Long Creek	19	532	570	627	684	735	
Marie Davis	30	840	900	900	1080	695	
Matthews	35	980	1050	1155	1260	850	
Merry Oaks	18	504	540	594	648	460	
Midwood	19	532	570	627	684	525	
Montclaire	25	700	750	825	900	730	
Myers Park	20	560	600	660	720	555	
Nations Ford	24	672	720	792	864	695	
Newell	22	616	650	726	792	525	
Oakdale	20	560	600	660	720	560	
Oakhurst	20	560	590	660	720	640	
Oaklawn	24	672	720	792	864	665	
Olde Providence	20	560	600	660	720	545	
Park Road	20	560	600	660	720	540	
Paw Creek	22	616	660	736	792	950	

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CHARLOTTE-MECKLENBURG ELEMENTARY SCHOOLS

1969-70

NAME OF SCHOOL	TOTAL TEACHING SPACE	RATED CAPACITY (28)	MAXIMUM CAPACITY (30) + 10%	+ 20%	PROJECTED ENROLLMENT	OPEN OR CLOSED
Pineville	20	560	600	660	720	550
Pinewood	24	672	720	792	864	715
Plaza Road	16	448	480	528	576	510
Rama Road	24	672	720	792	864	820
Sedgefield	21	588	630	693	756	565
Sealyan	20	560	600	660	720	620
Shamrock Gardens	18	564	540	594	648	535
Shaxon	20	560	600	660	720	410
Starmount	24	672	720	792	864	800
Statesville Road	24	672	720	792	864	825
Steele Creek	16	448	480	528	576	560
Thomassboro	27	736	610	691	972	690
Tryon Mills	20	560	600	660	720	470
Tuckaseegee	20	560	600	660	720	600
University Park	24	672	720	792	864	750
Villa Heights	25	700	750	825	900	930
Westerly Mills	16	448	480	528	576	605
Wilmore	17	476	510	561	612	440

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CHARLOTTE-MECKLENBURG ELEMENTARY SCHOOLS

1969-70

BW 5/26/59

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APRIL 1, 1969 SURVEY OF
PUPILS TO BE MOVED IF FREEDOM OF CHOICE IS ENDED*

Schools	Pupils to send to own district		Pupils to receive from another school (reside in district)		Total to Move	Net effect to minority (more desegregation)
	W	N	W	N		
76 Elementary	1530	292	1530	292	3644	+ 525
20 Junior High	1040	410	1040	410	2900	+ 495
11 Senior High	676	53	676	53	2513	+ 336
107 Schools	3246	1285	3246	1285	9062	+1356

NET EFFECT IN DETAIL

Schools	No. Pupils
<u>Elementary</u>	
1. To 15 schools (predominately Negro): Add 515 White pupils	
2. To 16 schools (predominately White): Add 83 Negro pupils	
3. In 16 schools (predominately White): Send 73 Negro pupils	
<u>Junior High</u>	
1. To 6 schools (predominately Negro): Add 501 White pupils	
2. To 6 schools (predominately White): Add 60 Negro pupils	
3. In 6 schools (predominately White): Send 66 Negro pupils	
<u>Senior High</u>	
1. To 2 schools (predominately Negro): Add 16 White pupils	
2. To 7 schools (predominately White): Add 253 Negro pupils	
3. In 2 schools (predominately White): Send 6 Negro pupils	

NET EFFECT

Add 1356 Pupils to Minority

* Based upon count of Pupil Accounting and Data Processing offices.
Count has errors due to limited time and difficulty to count pupils residing in grid squares on map which were crossed by school boundary.

Exhibit "E"

April 1, 1959
DATA ON EFFECT OF FREEDOM OF CHOICE

School	Predomi- nant race	Pupils attending from outside district*		Pupils in district attending another school*		Net Effect without Freedom of Choice to Minority
		()	W	N	W	
Elementary						
Albemarle Road	(W)	70	2	19	0	- 2 N
Alexander Street	N	0	33	0	3	-
Allenbrook	W	5	0	17	0	-
Ashley Park	W	77	0	14	0	-
Bain	W	15	1	15	0	- 1 N
Barringer	N	15	2	34	10	+19 W
Berryhill	W	157	2	26	0	- 2 N
Bethune	N	0	0	1	0	+ 1 W
Beverly Woods	W	7	0	7	1	+ 1 N
Billingsville	N	0	0	13	11	+13 W
Briarwood	W	16	7	11	0	- 7 N
Bruns Avenue	N	0	0	1	7	+ 1 W
Chantilly	W	7	0	34	0	-
Clear Creek	W	0	0	20	6	+ 6 N
Collinswood	W	11	0	11	0	-
Cornelius	W	6	12	27	5	- 7 N
Cotswold	W	12	9	1	0	- 9 N
Davidson	W	11	0	3	7	+ 7 N
Marie Davis	N	0	12	1	0	+ 1 W
Derita	W	51	9	32	12	+ 3 N
Devonshire	W	14	0	8	0	-
Dilworth	W	2	9	38	0	- 9 N
Double Oaks	N	0	36	0	6	-
Druid Hills	N	0	8	9	14	+ 9 W
Eastover	W	72	1	62	0	- 1 N
Elizabeth	N	0	0	40	1	+40 W
Enderly Park	W	7	0	23	1	+ 1 N
Fairview	N	0	3	35	2	+35 W
First Ward	N	0	3	0	24	-
Hickory Grove	W	32	5	18	2	- 3 N
Hidden Valley	W	76	0	8	0	-
Highland	W	34	1	4	0	- 1 N
Hoskins	W	16	0	27	17	+17 N
Huntersville	W	34	15	14	12	- 3 N
Huntingtowne Farms	W	24	0	17	1	+ 1 N

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School Elementary	Predomi- nant race ()	Pupils attending from outside district*		Pupils in district attending another school*		Net Effect without Freedom of Choice to Minority
	W	N	W	N		
Halewild	W 70	1	3	0	- 1 N	
Amay James	N 0	0	216	0	+216 W - 627	
Waterview	N 6	9	51	10	+45 W	
Lansdowne	W 50	1	1	0	- 1 N	
Lincoln Heights	N 0	11	0	4	-	
Long Creek	W 19	0	25	3	+ 3 N	
Matthews	W 11	0	26	0	-	
Merry Oaks	W 23	0	7	0	-	
Midwood	W 57	0	3	4	+ 4 N	
Montclaire	W 52	0	30	0	-	
Myers Park	W Have Adv. Classes		8	0	-	
Nations Ford	W 0	0	13	1	+ 1 N	
Reedell	W 37	4	13	0	- 4 N	
Oakdale	W 46	23	2	3	-20 N	
Bethurst	W 21	2	7	0	- 2 N	
Oaklawn	N 0	26	2	17	+ 2 W	
Olde Providence	W 26	0	12	0	-	
Rock Road	W 40	0	13	0	-	
Paw Creek	W 0	0	7	0	-	
Pineville	W 0	0	11	12	+12 N	
Pinewood	W 57	0	6	0	-	
Plaza Road	W 8	0	54	7	+ 7 N	
Roma Road	W 0	0	24	0	-	
Sedgefield	W 10	0	1	0	-	
Belwyn	W 13	0	5	0	-	
Diamond Rock Gardens	W 28	0	4	0	-	
Sharon	W 18	0	26	1	+ 1 N	
Starmount	W 15	0	72	0	-	
Statesville Road	W 11	11	35	24	+13 N	
Steele Creek	W 0	0	0	4	+ 4 N	
Thomasboro	W 35	0	19	0	-	
Tryon Hills (Trend to N) 2	W 0	0	91	6	+89 W -	
Kuckaseegee	W 36	0	1	0	-	
University Park	N 0	34	1	7	+ 1 W	
Zeb Vance	N 0	0	0	0	-	
Hilla Heights	N 0	0	42	6	+42 W	
Westerly Hills	W 63	0	3	0	-	
More	W 0	0	12	2	+ 2 N	
Windsor Park	W 0	0	20	0	-	
Interfield	W 5	0	73	0	-	
Isabeila Wyche	N 0	0	1	11	+ 1 W	

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School	Predomi-	Pupils attending		Pupils in district		Net Effect
	nant race	from outside		attending another	without	
Junior High	()	W	N	W	N	Freedom of Choice
Albemarle Road	W	52	2	17	0	- 2 N
Alexander	W	15	6	23	18	+12 N
Cochrane	W	73	0	29	19	+19 N
Coulwood	W	38	1	12	5	+ 4 N
Eastway	W	79	1	34	0	- 1 N
Alexander Graham	W	95	1	30	1	-
Hawthorne	N	30	12	174	54	+144 W--
Irwin Avenue	N	0	47	33	44	+33 W
McClintock	W	105	0	36	5	+ 5 N
Northwest	N	0	30	14	54	+14 W
Piedmont	N	21	21	131	29	+110 W
Quail Hollow	W	46	2	46	0	- 2 N
Randolph	W	73	6	45	7	+ 1 N
Ranson	W	46	40	15	17	-23 N
Sedgefield	W	105	45	102	8	-37 N
Smith	W	92	0	36	0	-
Spaugh	W	77	19	53	18	- 1 N
Williams	N	0	96	10	32	+10 W
Wilson	W	71	3	17	22	+19 N
York Road	N	0	74	190	67	+190 W

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School Senior High	Predomi- nant race ()	Pupils attending from outside district*		Pupils in district attending another school**		Net Effect without Freedom of Choice to Minority
		W	N	W	N	
East Mecklenburg	W	92	0	93	69	+69 N
Singer	W	81	13	138	66	+53 N
Harding	W	109	27	51	44	+17 N
Independence	W	128	3	35	0	- 3 N
Myers Park	W	78	21	55	82	+61 N
North Mecklenburg	W	49	19	22	30	+11 N
Olympic	W	25	16	58	40	+24 N
Second Ward	N	0	353	57	36	+57 W
South Mecklenburg	W	52	4	59	1	- 3 N
West Charlotte	N	0	111	29	189	+29 W
West Mecklenburg	W	62	5	62	26	+21 N



State of North Carolina

A. Craig Phillips
Superintendent of Public Instruction

May 22, 1969

Raleigh 27602

Mr. William E. Poe, Chairman
Charlotte-Mecklenburg Board of Education
Box 149
Charlotte, North Carolina 28201

Dear Mr. Poe:

This letter is to indicate to all concerned that you and several members of the Charlotte-Mecklenburg school staff have consulted with me and members of my staff regarding the recent Court Decision handed down by Judge James B. McMillan.

While we were not able to find a perfect solution to the tremendous problem which you face, I do hope that our comments were of some help to you.

You and your Board are faced with a most difficult task. The entire State will be interested in the steps you take to deal with it.

You have our best wishes.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Craig Phillips".

A. Craig Phillips
State Superintendent of Public Instruction

ACP/jt

Response to Motion for Temporary Restraining Order

(Filed May 29, 1969)

The defendant, by and through its counsel, responding to the plaintiffs' motion for a temporary restraining order dated May 15, 1969, respectfully shows unto the Court as follows:

1. Paragraphs 1 through 7 of the plaintiffs' motion for a temporary restraining order relate to plaintiffs' contentions and conclusions with respect to the present posture of this action and also contains plaintiffs' erroneous conception of action taken by the Board of Education subsequent to entry of the order of April 23, 1969. Suffice it to say, the Board of Education has been moving diligently in an effort to review not only the various alternatives suggested by the Court, but also other alternatives.
2. The construction of Project 600 and renovations to Wilson Junior High School, Clear Creek Elementary School and Myers Park Senior High School represent the culmination of extensive planning, representations to voters, representations to communities within the system, and expenditure of substantial time, not only by the school staff and affected principals, but also by architects who are now entitled to and have been paid substantial commissions for the services performed thus far.
3. In 1967, prior to the \$35,000,000 school bond vote, the School Board gave extensive publicity by way of newspaper, television, public meetings throughout the county and other methods by which specific use of the proceeds of the proposed bond issue was outlined with reference to how it would affect and improve educational facilities in the various areas of the school district. Substantial reli-

Response to Motion for Temporary Restraining Order

ance by the voters upon the proposed allocation and use of funds is believed to be a major factor in the passage of the bond issue. The proposal specifically covered the schools and the approximate amount of funds to be expended at the various schools. To halt the construction proposed at these schools would, in effect, amount to a breach of trust to the voters of this school district.

4. It is submitted that the \$35,000,000 bond issue as approved represents a most minimal capital funds program to provide an upgrading of schools in the school district. The school staff initially proposed a building program of \$70,000,000 to be expended over a five-year period beginning 1967. After evaluating the proposed program and the anticipated voter response, the Board of Education reduced the bond request to \$35,000,000 to cover the most acute building needs in the community. The building program sought to be enjoined represents some of the most pressing needs as indicated by the following:

A. Project 600—This facility will be a junior high school located in the Carmel Road area, which is one of the fastest growing areas in the school district. It is projected for the school year beginning September, 1969, that Smith Junior High School will be overcrowded by 230 pupils, McClintock Junior High School will be overcrowded by 350 pupils. It is contemplated that the attendance lines will be adjusted in such manner as to place approximately 600 students in this facility by relocating the Smith Junior High, Alexander Graham Junior High, Quail Hollow Junior High and McClintock Junior High attendance lines. It is estimated that a minimum of 125 Negro children will attend the new facility.

Response to Motion for Temporary Restraining Order

B. Clear Creek Elementary—This school will be replaced as it represents one of the oldest facilities in the school system. It was previously examined by architects, structural, electrical and mechanical engineers who determined that the structure should be replaced at the earliest opportunity. The students now utilize an old auditorium which was divided into three classroom teaching spaces, the school cannot conduct an adequate library program and it is projected that the school will need four additional classrooms for the next year. All mobiles owned by the county are now in service and it will be difficult to provide relief with mobile units. During the current school year, the school has a student population of 58 Negro and 225 white students.

C. Wilson Junior High—Renovations proposed for this building relate to doubling the library, art and science facilities. The present facilities are based on a school having a 600 student enrollment and it is projected that the 1969-70 enrollment will be approximately double this amount. This school has the most severe shortage of the facilities proposed for construction of any junior high school in the system. The present student population is comprised of 60 Negro and 1,132 white students.

D. Myers Park Senior High—This school has inadequate physical education facilities and the proposed construction would provide additional dressing rooms and showers which would bring it on a par with other senior high schools in the system. Enrollment consists of 158 Negro and 1,855 white students.

Response to Motion for Temporary Restraining Order

5. The school system, in the past four years, has experienced a rise in construction costs of approximately 25 per cent. In view of the continued spiraling costs of construction, any delay in the building program will in all likelihood create substantial additional costs in providing much needed educational facilities.

6. Each of the projects has been bid by the contractors, the bids have been accepted by the Board of Education (except for Myers Park High School, which was rejected and will be offered for rebidding) and the contractors have scheduled material and personnel to commence immediate construction and any delay imposed on the School Board may give rise to claims to be asserted by the various contractors or subject the projects to rebidding at increased cost.

7. The continued construction of new schools and additions to existing schools is consistent with the duty of the Board of Education to provide equal educational facilities for all students served by the school system.

WHEREFORE, the defendant respectfully prays that the motion for a temporary restraining order be denied; and in the event the restraining order should be allowed, then in such event, the plaintiff be required to post good and sufficient bond to indemnify the defendant from any loss

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it may sustain by reason of the improvident granting of such restraining order.

Respectfully submitted,

s/ **BROCK BARKLEY**
Brock Barkley
818 Law Building
Charlotte, North Carolina

s/ **WILLIAM J. WAGGONER**
William J. Waggoner
1100 Barringer Office Tower
Charlotte, North Carolina
Attorneys for Defendant

Order dated June 3, 1969

The defendants have filed a proposed plan of action pursuant to the court order of April 23, 1969. The plaintiffs have filed a motion requesting restraint on further school construction until the school board has dealt satisfactorily with the segregation question. A further hearing is indicated. The court has two weeks of criminal court starting June 2; and Monday, June 16, 1969 is the earliest predictable time that a hearing could be conducted.

All parties are therefore notified that a hearing will be held in the United States Court House in Charlotte starting on Monday, June 16, 1969, at 10:00 a.m. All parties are requested to be present.

Under the law the burden is upon the school board to come forward with a plan which "promises realistically to work now" to eliminate segregation in the Charlotte-Mecklenburg schools. The obligation of the court under the law is "to assess the effectiveness of a proposed plan in achieving desegregation." Evidence will be received from all parties on these general subjects.

Without limiting any party in the scope and type of relevant evidence which he may wish to produce, the court directs the parties to come forward with exhibits, statistics, records, and other information so that the court will be in adequate position to make findings upon the following subjects, among others:

1. What has been accomplished, by June 16, toward achieving the duty which the defendants have accepted of "achieving substantial faculty desegregation," and what the plan proposed by the defendants may be expected to accomplish further along that line by September, 1969.
2. What school zones may fairly be said to have been gerrymandered (either by control of their boundary lines

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14. Scholastic aptitude tests and achievement tests and intelligence tests for all grades for which such data are available in all schools in the county and city since 1954.

15. What concrete and specific steps, if any, plaintiffs would have the defendants adopt in order to comply with the Constitution. The court is not interested in a restatement of the previous demand of plaintiffs that all the schools in the system be populated on a 70/30 basis, because as previously stated the court does not have the power to make such an order and the defendants have served notice that they will not undertake such an assignment themselves. What is desired is some tough and detailed thinking and planning as to detailed methods to reduce and promptly eliminate segregation in the Charlotte-Mecklenburg schools.

The above questions and requests, insofar as they call for facts and figures, call for the production—not the creation—of the desired information. Counsel are requested to advise the court immediately if the production of already existing records does not provide any of the statistical information mentioned above. It is not the intention of the court to put the parties to work creating new charts nor re-assembling existing statistics, but rather to make available existing information.

This the 3rd day of June, 1969.

/s/ James B. McMillan
James B. McMillan
United States District Judge

Order Adding Additional Parties dated June 3, 1969

Several changes in the personnel of the defendant school board have taken place since this suit was instituted. In order that all parties may be fully before the court and that there be no avoidable technical irregularity.

IT IS ORDERED that all the present members of the Charlotte-Mecklenburg Board of Education be and they are hereby made formal parties to this action; that copies of the MOTION FOR FURTHER RELIEF filed September 6, 1968 be served upon them and that there also be served upon them copies of all orders and motions that have been filed since that time.

Service of these motions and orders (including this order making new parties and the order of this same date regarding the further hearing of June 16, 1969) should be made by the United States Marshal. The members of the school board and their addresses are:

Mr. William E. Poe, Chairman
2101 Coniston Place (Home)
1014 Law Building (Office)
Charlotte, North Carolina

Mr. Henderson Belk 529 Hempstead Place (Home)	Rev. Coleman W. Kerry, Jr. 1022 Kohler Avenue Charlotte, North Carolina
308 East Fifth Street (Office)	
Charlotte, North Carolina	

Mr. Dan Hood Route 4 Matthews, North Carolina	Mrs. Julia Maulden Box 6 Davidson, North Carolina
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Order Dated June 3, 1969

8. Statistics on school population by race in the system for the years since consolidation and similar statistics for the separate county and city units from 1954 until consolidation.
9. The facts about school bussing operations of the Charlotte-Mecklenburg school system, including such records as already exist on bus routes, year by year, since 1961, including where the busses get the pupils and where they take them, and the races of the pupils transported.
10. The pupil attendance zones or school zones, year by year, for all years since 1954.
11. What the pending school construction programs will do in terms of creating pupil accommodations, and whether the programs will tend to perpetuate or to alleviate segregation in the schools.
12. Why decision on the construction and purposes of Metropolitan High School should not be postponed until after a final court ruling, appellate or otherwise, has been rendered, so that the decision on the educational questions can be made in a quieter and non-racial atmosphere. Also, why the defendants should not retain any land or control over any land they may now have, pending such decision.
13. Why no action has been taken by the defendants on the various possible methods for further reduction of segregation such as re-examination of zones, enlargement or combination of school zones, reorganizing the existing 23,000 pupil bus system, pairing of schools, consultation with the Department of Health, Education and Welfare, and other possible methods.

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or by control of their student capacity or both) so as to fit a particular pocket or community of all- or nearly all-black or all- or nearly all-white students; and what could be done to reduce or eliminate segregation in those zones.

3. What progress if any toward desegregation of pupils may reasonably and predictably be expected by September, 1969, from the pupil plan presented by the defendants.

4. What effect if any the pupil plan may be expected to have upon the present large group of all-black or 99%+ black schools, and upon the more than 14,000 children who still attend them.

5. Why students allowed to transfer from one zone to another to avoid racial discrimination should be penalized by being required to wait a year before taking part in varsity athletics, as the proposed pupil plan requires, which self-admitted "penalty" is lifted if they return to the zone originally assigned by the defendants.

6. The actual meaning of the "free transfer" plan—the numerical extent to which the plan requires that students wishing to transfer and being supplied transportation to transfer will actually find space in the schools of choice if they exercise their option to transfer. This is not a trick question but one directed to the ambiguity of the plan and the conflicts in the language used in the plan. Clarification is requested.

7. What steps will be followed to insure that the transfer-with-transportation choice is actually communicated personally to children who may be entitled to the choice, and to their parents, and affirmatively accepted or rejected by them.

Order Adding Additional Parties Dated June 3, 1969

Mr. Ben F. Huntley Box 128 8301 Pineville Road (Office) Pineville, North Carolina	Mr. Sam S. McNinch, III 2914 Hampton Avenue (Home) 4037 E. Independence Blvd. (Office) Charlotte, North Carolina
Mrs. Betsey Kelly 3501 Mountainbrook Road Charlotte, North Carolina	Dr. Carlton G. Watkins 1223 Marlwood Terrace (Home) 1630 Mockingbird Lane (Office) Charlotte, North Carolina

This the 3rd day of June, 1969.

/s/ JAMES B. McMILLAN
James B. McMillan
United States District Judge

**Motion to Set Aside Order Joining Additional
Parties Defendant**

(Filed June 12, 1969)

The defendants, corporate and individual, by and through their attorneys, respectfully request the Court to set aside the order entered on the Court's own motion, without notice and hearing, wherein Mr. William E. Poe, Chairman, Mr. Henderson Belk, Mr. Dan Hood, Mr. Ben F. Huntley, Mrs. Betsey Kelly, Rev. Coleman W. Kerry, Jr., Mrs. Julia Maulden, Mr. Sam S. McNinch, III, and Dr. Carlton G. Watkins were added as parties defendant and served with copies of all orders and motions that have been filed since September 6, 1968, and in support thereof respectfully show unto the Court as follows:

1. Rule 17-B of the Federal Rules of Civil Procedure dealing with the capacity of parties plaintiff and defendant states as follows:

“(b) CAPACITY TO SUE OR BE SUED. The capacity of an individual other than one acting in a representative capacity, to sue or be sued shall be determined by the law of his domicile. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized . . .”

2. The defendant, Charlotte-Mecklenburg Board of Education, is a corporate body as provided by G.S. 115-27, which provides as follows:

“115-27 BOARD A BODY CORPORATE.—The Board of Education of each county in the state shall be a body corporate by the name and style of ‘The . . . county board of education’ and the board of education of each city administrative school unit in the state shall be a body

*Motion to Set Aside Order Joining Additional
Parties Defendant*

corporate by the name and style of 'The city board of education'. The several boards of education, both county and city, shall hold all school property and be capable of purchasing and holding real and personal property, building and repairing school houses, selling and transferring the same for school purposes, and of prosecuting and defending suits for or against the corporation . . ."

3. In *Kistler v. Board of Education*, 233 N. C. 400, the plaintiff instituted suit against the Board of Education and others including the members of the Board of Education seeking to restrain the purchase of a site for a new school. Mr. Justice Denny of the Supreme Court stated:

"The Board of Education of Randolph County is the body corporate and by that name it shall hold all school property belonging to Randolph County, and it is authorized to purchase and hold real and personal property, build and repair school houses and to prosecute and defend suits for or against it in its corporate capacity. G.S. 115-45.

"The demurrer ore tenus to the complaint by the individual defendants was properly sustained. These defendants as individuals possessed no authority to exercise any of the powers that the plaintiffs seek to enjoin. *Board of Education v. Commissioners*, 192 N.C. 274, 134 SE 852."

In *McLaughlin v. Beasley*, 250 N.C. 221, suit was instituted against the individual members of the county board of education and others to enjoin the Union County Board of Education from proceeding with plans to acquire a school

*Motion to Set Aside Order Joining Additional
Parties Defendant*

site. Again, the North Carolina Supreme Court through Justice Bobbitt stated:

"As to the individuals, who, according to the caption, constitute the members of the Board of Education, the demurrer ore tenus was properly sustained. *Kistler v. Board of Education*, supra as stated by Denny, J. 'These defendants as individuals possessed no authority to exercise any of the powers the plaintiff seeks to enjoin.'"

4. Under the pleadings and evidence in this action, the Court is without authority to join the individual members of the Charlotte-Mecklenburg Board of Education as they have no capacity to be sued under the state and federal law applicable to this action.

WHEREFORE, the defendants pray that the order dated June 4, 1969, entered by the Court in this action joining the individual members of the Board of Education as parties defendant be set aside and that this action be dismissed as to such individual defendants.

/s/ BROCK BARKLEY
Brock Barkley
808 Law Building
Charlotte, North Carolina

/s/ WILLIAM J. WAGGONER
1100 Barringer Office Tower
Charlotte, North Carolina

*Attorneys for Charlotte-Mecklenburg
Board of Education, Defendant*

**Response to Defendants' Motions to Strike
Additional Parties Defendant**

(Filed June 16, 1969)

Plaintiffs, by their undersigned attorneys, respectfully move the Court to deny defendants' motions to strike the Court's order adding them as additional parties defendant, and as grounds therefor, respectfully show the Court as follows:

1. This action was brought by Negro plaintiffs seeking an order enjoining further racially discriminatory policies and practices by the School Board in the operation of the Charlotte-Mecklenburg Public Schools. On April 23, 1969, the Court entered an Opinion and Order in connection with plaintiffs' motion for further relief, finding that the Board had failed to take effective steps to desegregate the school system. The Court accordingly enjoined the defendant to present plans for complete desegregation of the system. On May 28, 1969, the Board filed its proposed plan which completely ignored the instructions of the Court and proposed to do nothing further than provide free transportation for students moving from racial majority to racial minority situations. By order, date June 4, 1969, the Court noted that there had been several changes in the personnel of the School Board since this action was instituted and ordered that all present members of the School Board be made parties-defendant to the action in order that they may be fully before the Court and aware of all proceedings in this matter. The Court directed that copies of the Pleadings, Motions and Orders, be served upon the new parties. The new parties defendant have now moved the Court that the Court strike its order adding them as parties defendant contending that they have no capacity to sue or to be sued in this proceeding

*Response to Defendants' Motions to Strike
Additional Parties Defendant*

and that the Court is without the authority to add them as parties defendant.

2. In view of the numerous cases, particularly school cases, in which individual members of school boards have been added and found to be proper parties defendant in a school desegregation case, one is hardput to understand defendants sincerity with their motion to strike their additions as parties defendant. Rules 19 and 20 permit joinder of parties whose additions are considered necessary or proper in order to provide complete relief in pending proceedings. These rules permit joinder of parties by the Court, with or without a motion by either party, if the Court should deem their additions proper for effective disposition of the pending action. 3A Moore's Federal Practice §§ 19.18, 19.19, 20.06; 2 Barron and Holtzoff, Federal Practice and Procedure, §§ 513.7, 533. See e.g., *Griffin v. County School Board of Prince Edward County*, 377 U.S. 218, 12 L. ed. 2d 256; *Coppedge v. Franklin County Board of Education*, 273 F. Supp. 289 (E.D.N.C., 1967), aff'd 394 F. 2d 410 (4th Cir., 1968); *Scott v. Winston-Salem/Forsyth County Board of Education*, — F. Supp. — (M.D.N.C., 1968), proper not only to join the Board of Education, but also County Board of Commissioners, State Board of Education, and State Superintendent of Public Instruction. It is patently clear that the Court has authority to join as parties all persons having responsibility for implementing the Court decree or who might interfere with others having the responsibility to implement the decree. *Lee v. Macon County Board of Education*, 267 F. Supp. 458 (M.D.N.C., 1967), aff'd; *Wallace v. United States*, 389 U.S.