

Order dated August 29, 1969

The School Board's amended plan for desegregation of the Charlotte-Mecklenburg schools was approved by order of court dated August 15, 1969. The Board has now tendered a modification to this plan which was filed today, August 29, 1969.

The modification relates to the facilities to be provided for those black children whose parents exercise freedom of choice to attend a black elementary school in the inner city instead of attending the white schools listed in the July 29, 1969 plan which has already been approved by the court.

The amendment calls for using the building of former Irwin Avenue Junior High School with certain minor renovations, instead of Zeb Vance School, and a limit of six hundred students upon those who would be admitted to this program at Irwin Avenue School. This part of the motion to amend is approved. The choice of building, *per se*, is a matter for the School Board, not the court.

The amendment proposes that the Irwin Avenue School would be operated "as an innovative school." The court does not know what this means. If by this phrase is meant that anything will be done to make this school more attractive to the black students than the black schools they have been attending, then the program will constitute the location and use of a school facility for the purpose of promoting segregation which by previous decisions of this and other courts the defendants have been fully advised is unconstitutional. *Felder, et al. v. Harnett County, North Carolina*, 409 F.2d 1070 (4th Circuit, 1969) (decided April 22, 1969), and cases cited therein. The addition of "innovations" at Irwin Avenue School will not be approved by the court unless these "innovations" have been arranged and

Order dated August 29, 1969

provided for all the black students who transfer to white schools under the July 29, 1969 plan of the Board previously approved. The phrase "innovative" may refer to what the Board has heretofore called "compensatory education." The court has not yet been advised of any performance by the Board in line with the undertaking in its July 29, 1969 plan to provide "compensatory education" for pupils who lag behind their classmates in academic achievement. Unless and until the court can be informed and satisfied that this "compensatory education" is provided in the other schools, the court is of the opinion that providing it in the Irwin Avenue School would set up a magnet to attract black children away from desegregated assignments and therefore on the present record at least that part of the plan is disapproved.

The proposal to provide transportation for any of the students attending Irwin Avenue School is expressly disapproved. The effect of providing transportation is to subsidize at tax payers' expense those who are actively seeking to defeat the constitutional mandate to desegregate the schools. No authority is advanced or suggested to justify such a flagrant violation of the law, and none has been imagined by the court. The Board is expressly restrained from and enjoined against providing transportation in any form to any student in the system, black or white, which may or might enable him to travel any part of the distance from his home to or from any school elected by or for him under "freedom of transfer" or "freedom of choice," except that the Board may provide transportation as previously ordered by this court to those students who elect to transfer or who are transferred by the Board from a school in which their race is in a majority to a school in which their race

Order dated August 29, 1969

is in the minority. As this court pointed out before, bus transportation has too long been used as a tool to promote segregation. The year 1969 is too late in the day to start using this tool for that purpose in new situations.

This the 29th day of August, 1969.

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