

**Supplementary Findings of Fact
dated March 21, 1970**

Pursuant to the March 5, 1970 order of the Fourth Circuit Court of Appeals, the court makes the following supplemental findings of fact:

1. Paragraph seven of this court's order of February 5, 1970, as amended, reads:

"7. That transportation be offered on a uniform non-racial basis to all children whose reassignment to any school is necessary to bring about the reduction of segregation, and who live farther from the school to which they are assigned than the Board determines to be walking distance. Estimates of the number of children who may have to be transported have run as high as 10,000 or more. Since the cost to the local system is about \$18 or 20 a year per pupil, and the cost to the state in those areas where the state provides transportation funds is about another \$18 or \$20 a year per pupil, the average cost for transportation is apparently less than \$40 per pupil per year. The local school budget is about \$45,000,000 a year. It would appear that transporting 10,000 additional children, if that is necessary, and if the defendants had to pay it all, would add less than one per cent to the local cost of operating the schools. The significant point, however, is that cost is not a valid legal reason for continued denial of constitutional rights."

2. A bird's-eye picture of the indispensable position of the school bus in public education in North Carolina, and especially in the school life of grades one through six (elementary students) is contained in a summary by the de-

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fendant Dr. Craig Phillips entitled "RIDING THE SCHOOL BUSES" (Plaintiffs' Exhibit 15), published January 1, 1970, which reads as follows:

"The average school bus transported 66 students each day during the 1968-69 school year; made 1.57 trips per day, 12.0 miles in length (one way); transported 48.5 students per bus trip, including students who were transported from elementary to high schools.

"During the 1968-69 school year:

610,760 pupils were transported to public schools by the State

54.9 percent of the total public school average daily attendance was transported

70.9 percent were elementary students

29.1 percent were high school students

3.5 students were loaded (average) each mile of bus travel

The total cost of school transportation was \$14,293,272.80, including replacement of buses: The average cost, including the replacement of buses, was \$1,541.05 per bus for the school year—181 days; \$8.51 per bus per day; \$23.40 per student for the school year; \$.1292 per student per day; and \$.2243 per bus mile of operation." (Emphasis added.)

In Mecklenburg County, the average daily number of pupils currently transported on state school busses is approximately 23,600—plus another 5,000 whose fares are paid on the Charlotte City Coach Lines.

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3. Separate bus systems for black students and white students were operated by the defendant Mecklenburg County Board of Education for many years up until 1961. Separate black and white bus systems were operated by the combined Charlotte-Mecklenburg Board from 1961 until 1966 (Defendants' answers to Plaintiffs' requests for admissions, Nos. 1 and 8, filed March 13, 1970).

4. Pertinent figures on the local school transportation system include these:

Number of busses	280
Pupils transported on school busses daily	23,600
Pupils whose fares are paid on Charlotte City Coach Lines, Inc.	5,000
Number of trips per bus daily	1.8
Average daily bus travel	40.8 miles
Average number of pupils carried daily, per bus	83.2
Annual per pupil transportation cost	\$19—\$20
Additional cost (1968-69) per pupil to state	\$19.92
Total annual cost per pupil transported	\$39.92
Daily transportation cost per pupil transported	\$0.22

5. Information about North Carolina:

Population	4,974,000
1969-71 total state budget	\$3,590,902,142

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1969-71 total budgeted state funds for public schools	\$1,163,310,993
1968-69 amount spent by state on transportation (including replacement busses)	\$14,293,272.80
1969-71 appropriation for purchase of school busses	\$6,870,142
Average number of pupils transported daily, 1968-69	610,760
Average number of pupils transported daily per bus—statewide	66

6. The 1969-70 budget of the Charlotte-Mecklenburg school system is \$57,711,344, of which nearly \$51,000,000 represents operational expense and between \$6,000,000 and \$7,000,000 represents capital outlay and debt service. These funds come from federal, state and county sources, as follows:

FEDERAL	STATE	COUNTY	TOTAL
\$2,450,000	\$29,937,044	\$25,324,300	\$57,711,344

The construction of school buildings is not included in these budget figures (see Plaintiffs' Exhibit 6).

7. State expenditures in the past ten years have usually not equalled appropriations. There has been a sizeable operating surplus in the state budget for every biennium since 1959-60 (State Budget, page 86).

8. The state superintendent of public instruction in his biennial report (Plaintiffs' Exhibit 12) for the years 1966-68 recommended that "city transportation should be pro-

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vided on the same basis as transportation for rural children as a matter of equity.”

9. The 1969 report of the Governor’s Study Commission on the Public School System of North Carolina (Plaintiffs’ Exhibit 13) recommended that transportation be provided for all school children, city as well as rural, on an equal basis. Signatory to that report was one of the present defendants, the state superintendent of public instruction.

10. The basic support for the public schools of the state comes from the State Legislature.

11. Some 5,000 children travel to and from school in Mecklenburg County each day in busses provided by contract carriers such as Charlotte City Coach Lines, Inc. (Morgan’s deposition of February 25, 1970, page 36).

12. Upon the basis of data furnished by the school board and on the basis of statistics from the National Safety Council, it is found as a fact that travel by school bus is safer than walking or than riding in private vehicles.

13. Traffic is of course heavy all over the 540 square miles of the county. Motor vehicle registration for 1969 was 191,165 motor vehicles (161,678 automobiles and 29,487 trucks).

14. Many children eligible for transportation do not accept that transportation. Estimates have been made that this number of those who do not accept transportation is in the neighborhood of 50% of those who are eligible.

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15. Approximately 5,000 children in the system attend school outside the school zone in which they reside. Although requested of the defendants by the court on March 7, 1970, information as to where these children go to school has not been forthcoming and the defendants have indicated that it is impossible to produce it.

16. As the state transportation regulations* are understood by the court, the state will bear its share (about half) of transportation costs for children who live more than 1½ miles from their school, as follows:

- (a) All rural children, wherever they attend school;
- (b) All perimeter children (those living in territory annexed by the city before 1957), wherever they attend school; and
- (c) All inner city children assigned to schools in either the perimeter or the rural areas of the system.

17. The defendants submitted information on the number of children who live within 1½ miles of the schools which are to be desegregated by zoning. This information shows that East Mecklenburg, Independence, North Mecklenburg, Olympic, South Mecklenburg and West Mecklenburg high schools, and Quail Hollow and Alexander junior high schools, with total student populations of 12,184, have in the aggregate only 96 students who live within 1½ miles from the schools. Some 12,088 then are eligible for transportation. These same schools among them provide bus transportation for 5,349 students. This information illustrates the importance of the bus as one of the essential

* General Statutes of North Carolina, Chapter 115, §180-192.

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elements in the whole plan of operation of the schools. It also shows the wide gap between those entitled to transportation and those who actually claim it. There is no black school in the system which depends very much upon the school bus to get the children to school. The total number of children transported in October, 1969, to schools identifiable as black was 541 out of total population in those black schools of over 17,000. Black schools, including the new black schools, have been located in black areas where busses would be unnecessary. Suburban schools, including the newest ones, have been located far away from black centers, and where they can not be reached by many students without transportation.

18. Bus travel in both urban and rural areas takes time. An analysis of the records of bus transportation, based upon the reports of school principals, is contained in the extensive exhibits bearing Plaintiffs' Exhibit numbers 22, 23, 24, 25, 26 and 27. For the month of October, 1969, by way of illustration, these principals' reports when analyzed show that out of some 279 busses carrying more than 23,000 children both ways each day:

The average one way trip is one hour and fourteen minutes;

80% of the busses require more than one hour for a one way trip;

75% of the busses make two or more trips each day; Average miles traveled by busses making one round trip per day is 34½; and

Average bus mileage per day for busses making two trips is 47.99.

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19. It was the testimony of Dr. Self and Dr. Finger, and the courts finds as a fact, that transportation provided by the school board's plans, which include narrow corridors several miles long and in places only one-half mile wide, proceeding in straight lines diagonally across streets and other obstacles, would be more expensive per capita than transportation under the satellite zone plan. The court plan calls for pick-ups to be made at a few points in each school district, as testified to by Dr. Self, and for non-stop runs to be made between satellite zones and principal zones. There will be no serious extra load on downtown traffic because there will be no pick-up and discharge of passengers in downtown traffic areas.

20. The court finds that from the standpoint of distance travelled, time en route and inconvenience, the children bussed pursuant to the court order will not as a group travel as far, nor will they experience more inconvenience than the more than 28,000 children who are already being transported at state expense.

21. On July 29, 1969 (pursuant to the court's April 23, 1969 order that they frame a plan for desegregation and that school busses could be used as needed), the defendants proposed a plan for closing seven inner-city black schools and bussing 4,200 students to outlying schools. The plan was approved. It had some escape clauses in it, and the defendants in practice added some others; but *as presented*, and as approved by the court, the "freedom of choice" contemplated was very narrowly restricted; and bussing of several hundred students has taken place under that plan.

22. Evidence of property valuations produced by the defendants shows that the value of the seven school proper-

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ties closed under the July 29, 1969 plan, and now for the most part standing idle, was over three million dollars.

23. The all-black or predominantly black elementary schools which the board plan would retain in the system are located in an almost exclusively Negro section of Charlotte, which is very roughly triangular in shape and measures about four or five miles on a side. Some are air-conditioned and most are modern. Virtually none of their patrons now ride busses; the schools were located where the black patrons were or were expected to be. These schools, their completion dates, and representative academic performances of their sixth grade graduating classes are shown in the following table:

The information shown in the first three columns below was taken from answers to interrogatories, Nos. 1-f, 1-g and 1-h, filed October 25, 1968.

GRADE 6 AVERAGE ACHIEVEMENT TEST SCORES, SHOWN IN GRADE EQUIVALENT (such as 6.2 = 6th grade, 2nd month), 1968-69.

<u>SCHOOL</u>	<u>YEAR BUILT</u>	<u>YEARS OF ADDITIONS</u>	<u>NO. OF MOBILE UNITS</u>	<u>WORD MEANING</u>	<u>PARAGRAPH MEANING</u>	<u>SPELLING</u>	<u>LANGUAGE</u>	<u>ACM (MATH)</u>	<u>ACN (MATH)</u>	<u>SAED (MATH)</u>
BRUNS AVENUE	1968	--	0	4.1	4.1	4.7	4.1	4.0	4.7	4.1
MARIE DAVIS	1951	1953 1957 1959	0	4.3	4.4	4.8	4.1	4.5	4.8	4.1
DOUBLE OAKS	1952	1955 1965	1	4.0	4.0	4.6	3.6	3.9	4.4	3.7
DRUID HILLS	1960	1964	0	4.0	4.2	4.5	3.9	3.9	4.5	4.1
FIRST WARD	1912	1950 1961 1968	0	4.0	4.1	4.8	3.6	3.9	4.6	4.1
LINCOLN HEIGHTS	1956	1958	5	4.4	4.4	4.9	4.2	4.3	4.8	4.1
OAKLAWN	1964	--	0	4.4	4.5	5.2	4.7	4.5	4.9	4.4
UNIVERSITY PARK	1957	1958 1964	5	4.4	4.7	4.8	4.3	4.4	4.8	4.4
VILLA HEIGHTS	1912	1934 1937	3	4.3	4.4	4.7	3.6	4.4	4.7	4.2

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24. Both Dr. Finger and the school board staff appear to have agreed, and the court finds as a fact, that for the present at least, there is no way to desegregate the all-black schools in Northwest Charlotte without providing (or continuing to provide) bus or other transportation for thousands of children. All plans and all variations of plans considered for this purpose lead in one fashion or another to that conclusion.

25. In the court's order of April 23, 1969, a suggestion was made that the board seek consultation or assistance from the office of Health, Education and Welfare. The board refused to do this, and as far as the court knows has not sought help from HEW.

26. Some 600 or more pupils transfer from one school to another or register for the first time into the system during the course of each month of the typical school year. It is the assignment of these children which is the particular subject of the reference in paragraph 13 of the order to the manner of handling assignments within the school year.

27. No plan for the complete desegregation of the schools was available to the court until the appointment of Dr. John A. Finger, Jr. and the completion of his tactful and effective work with the school administrative staff in December 1969 and January 1970. Dr. Finger has a degree in science from Massachusetts Institute of Technology and a doctor's degree in education from Harvard University, and twenty years' experience in education and educational problems. He has worked in a number of school desegregation cases and has a rare capacity for perception and solution of educational problems. His work with the staff had

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the catalytic effect of freeing and inducing the staff to work diligently in the preparation of plans that would accomplish the result required, and which would be cohesive and efficient from an educational point of view.

28. Hearings on the "Finger" plans and on the board's proposed plans were conducted on February 2 and February 5, 1970. These plans may best be understood if they are considered in four divisions:

29. *The plan for senior high schools.*—The plan ordered to be put into effect May 4, 1970 is the board's own plan for desegregation of the senior high schools in all particulars except that the order calls for the assignment to Independence High School of some 300 black children. The board contends the high school plans will call for additional transportation for 2,497 students and will require 69 busses. The court is unable to accept this view of the evidence. All transportation under both the board and the court plan is covered by state law.

30. *The plan for junior high schools.*—A plan for junior high schools was prepared by the board staff and Dr. Finger and was submitted to the court as Dr. Finger's plan. The board submitted a separate plan. Both plans used the technique of re-zoning. The school board's plan after all of their re-zoning had been done left Piedmont Junior High School 90% black and shifting towards 100% black. The plan designed by Dr. Finger with staff assistance included zoning in such a way as to desegregate all the schools. This zoning was aided by a technique of "satellite" districts. For example, black students from satellite districts in the central city area around Piedmont Courts will be assigned to Alexander Graham Junior High,

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which is predominantly white. Black students from the area around Northwest Junior High School (all-black) will be similarly transferred to Wilson Junior High, northwest of the air port. These one-way transfers, essentially identical in nature to the board's July 29, 1969 plan, will result in the substantial desegregation of all the junior high schools, which are left under this plan with black student populations varying from 9% at J. H. Gunn to 33% at Alexander and Randolph.

The court order did not require the adoption of the Finger plan. In paragraph 19 of the order the board were given four choices of action to complete the process of desegregating the junior high schools. These choices were (1) Re-zoning; (2) Two-way transporting of pupils between Piedmont and white schools; (3) Closing Piedmont and assigning the black students to other junior high schools; or (4) Adoption of the Finger plan.

The board elected to adopt and did adopt the Finger plan by resolution on February 9, 1970.

The defendants have offered figures on the basis of which they ask the court to find that 4,359 students will have to be transported under the junior high school plan and that 84 busses will be required. The court is unable to find that these contentions are borne out by the statistics and other evidence offered.

Dr. Self, the school superintendent, and Dr. Finger, the court appointed expert, both testified that the transportation required to implement the plan for junior highs would be less expensive and easier to arrange than the transportation proposed under the board plan. The court finds this to be a fact.

Two schools may be used to illustrate this point. Smith Junior High under the board plan would have a contigu-

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ous district six miles in length extending 4½ miles north from the school itself. The district throughout the greater portion of its length is one-half mile wide and all roads in its one-half mile width are diagonal to its borders. Eastway Junior High presents a shape somewhat like a large wooden pistol with a fat handle surrounding the school off Central Avenue in East Charlotte and with a corridor extending three miles north and then extending at right angles four miles west to draw students from the Double Oaks area in northwest Charlotte. Obviously picking up students in narrow corridors along which no major road runs presents a considerable transportation problem.

The Finger plan makes no unnecessary effort to maintain contiguous districts, but simply provides for the sending of busses from compact inner city attendance zones, non-stop, to the outlying white junior high schools, thereby minimizing transportation tie-ups and making the pick-up and delivery of children efficient and time-saving.

It also is apparent that if the board had sought the minimum departure from its own plan, such minimum result could have been achieved by accepting the alternative of transporting white children into and black children out of the Piedmont school until its racial characteristics had been eliminated.

In summary, as to junior high schools, the court finds that the plan chosen by the board and approved by the court places no greater logistic or personal burden upon students or administrators than the plan proposed by the school board; that the transportation called for by the approved plan is not substantially greater than the transportation called for by the board plan; that the approved plan will be more economical, efficient and cohesive and easier to administer and will fit in more nearly with the

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transportation problems involved in desegregating elementary and senior high schools, and that the board made a correct administrative and educational choice in choosing this plan instead of one of the other three methods.

31. *The plan for elementary schools.*—The elementary school desegregation program is best understood by dividing it into two parts: (a) The 27 schools being desegregated by zoning; and (b) The 34 schools being desegregated by grouping, pairing and transportation between school zones.

32. *The re-zoned group.* Two plans were submitted to the court. The school board plan was prepared for the board by its staff. It relied entirely upon zoning with the aid of some computer data supplied by Mr. Weil, a board employed consultant. It did as much as could reasonably be accomplished by re-zoning school boundaries. It would leave nine elementary schools 83% to 100% black. (These schools now serve 6,462 students—over half the black elementary pupils.) It would leave approximately half the white elementary students attending schools which are 86% to 100% white. In short, it does not tackle the problem of the black elementary schools in northwest Charlotte.

The “Finger plan” was the result of nearly two months of detailed work and conference between Dr. Finger and the school administrative staff. Dr. Finger prepared several plans to deal with the problem within the guidelines set out in the December 1, 1969 order. Like the board plan, the Finger plan does as much by re-zoning school attendance lines as can reasonably be accomplished. However, unlike the board plan, it does not stop there. It goes further and desegregates all the rest of the elementary schools by the technique of grouping two or three outlying schools with one black inner city school; by transporting black

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students from grades one through four to the outlying white schools; and by transporting white students from the fifth and sixth grades from the outlying white schools to the inner city black school.

The "Finger plan" itself in the form from which in principle the court approved on February 5, 1970, was prepared by the school staff and was filed with the court by representatives of the school board on February 2, 1970. It represents the combined thought of Dr. Finger and the school administrative staff as to a valid method for promptly desegregating the elementary schools, if such desegregation is required by law to be accomplished.

This plan was drafted by the staff and by Dr. Finger in such a way as to make possible immediate desegregation if it should be ordered by an appellate court in line with then current opinions of appellate courts.

The testimony of the school superintendent, Dr. Self, was, and the court finds as a fact, that the zoning portion of the plan can be implemented by April 1, 1970 along educationally sound lines and that the transportation problems presented by the zoning portion of the plan can be solved with available resources.

The court has reviewed the statistics supplied to it by the original defendants with regard to elementary schools to be desegregated by re-zoning. These schools have been zoned with compact attendance areas and with a few exceptions they have no children beyond 1½ miles distance from the school to which they are assigned. Although some transportation will be required, the amount is not considerable when weighed against the already existing capacity of the system. The court specifically finds that not more than 1,300 students will require transportation under this portion of the program and that the bus trips would be so

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short and multiple bus runs so highly practical that 10 school busses or less will be adequate.

33. *The pairing and grouping of 34 elementary schools.*—This part of the plan as previously described would group an inner city black school with two or more outlying white schools and assign children back and forth between the two so that desegregated fifth and sixth grades would be established in the presently black schools and desegregated grades one through four would be established in the presently white schools. The estimate of Dr. Finger and Dr. Self, the superintendent, was that this program would require transporting roughly 5,000 white pupils of fifth and sixth grade levels into inner city schools. The board in its latest estimate puts the total figure at 10,206. Just what is the net additional number of students to be transported who are not already receiving transportation is open to considerable question.

34. *The Discount Factors.*—The court accepts at face value, for the most part, the defendants' evidence of matters of independent fact, but is unable to agree with the opinions or factual conclusions urged by counsel as to the numbers of additional children to be transported, and as to the cost and difficulty of school bus transportation. The defendants in their presentation have interpreted the facts to suggest inconvenient and expensive and burdensome views of the court's order. Their figures must be discounted in light of various factors, all shown by the evidence, as follows:

(a) Some 5,000 children daily are provided transportation on City Coach Lines, in addition to the

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23,600 and more who ride school busses. These have not been considered in the defendants' calculations.

(b) Not all students eligible for transportation actually accept it. The board's estimates of transportation, however, assume that transportation must be provided daily for all eligible students.

(c) Not all registered students attend all schools every day. The board's figures appear to assume they do. Statewide, average daily attendance is less than 94% of initial registration.

(d) The present average number of students transported round trip, to and from school, per bus, per day, is more than 83. The board's estimates, however, are based on the assumption that they can transport only 44 or 46 pupils, round trip, per bus, per day when the bus serves a desegregation role.

(e) Busses now being used make an average of 1.8 trips per day. Board estimates to implement the desegregation plan contemplate only one trip per bus per day!

(f) The average one-way bus trip in the system today is over 15 miles in length and takes nearly an hour and a quarter. The average length of the one-way trips required under the court approved plan for elementary students is less than seven miles, and would appear to require not over 35 minutes at the most, because no stops will be necessary between schools.

(g) The board's figures do not contemplate using busses for more than one load of passengers morning or afternoon. Round trips instead of one-way trips morning and afternoon could cut the bus requirements sharply.

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(h) The number of busses required can be reduced 35% to 50% by staggering the opening and closing hours of schools so that multiple bus trips can be made. This method is not considered in the board's estimates, according to testimony of J. D. Morgan, bus superintendent.

(i) Substantial economies may reasonably be expected when all phases of the bussing operation have been coordinated instead of being considered separately.

(j) In estimating how many children live more than a mile and a half from schools, and therefore are entitled to transportation, the board's transportation people have used some very short measurements. As the court measures the maps, very few of the students in the re-zoned elementary schools, for example, live more than $1\frac{1}{2}$ miles from their assigned schools. If the board wants to transport children who live less than $1\frac{1}{2}$ miles away they may, but if they do, it is because of a board decision rather than because of the court's order.

(k) Transportation requirements could be reduced by raising the walking distance temporarily from $1\frac{1}{2}$ to perhaps $1\frac{3}{4}$ miles. This has apparently not been taken into account.

(l) Testimony of J. D. Morgan shows that busses can be operated at a 25% overload. Thus a 60-passenger bus (the average size) can if necessary transport 75 children. Some busses in use today transport far more.

35. *Findings of Fact as to Required Transportation.*—
After many days of detailed study of maps, exhibits and

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statistics, and after taking into account all the evidence, including the "discount factors" mentioned above, the court finds as facts that the maximum number of additional children who may conceivably require transportation under the court ordered plans, and the maximum numbers of additional busses needed are as follows:

	<i>Net Additional Transportees</i>	<i>Number of Busses Needed</i>
Senior Highs	1,500	20
Junior Highs	2,500	28
Elementaries:		
Re-zoned	1,300	10
Paired and Grouped	8,000	80
Totals	<hr style="width: 50%; margin: 0 auto;"/> 13,300	<hr style="width: 50%; margin: 0 auto;"/> 138

36. These children (all but a few hundred at Hawthorne, Piedmont, Alexander Graham, Myers Park High School, Eastover, West Charlotte and a few other places), *if assigned to the designated schools, are entitled to transportation under existing state law, independent of and regardless of this court's order respecting bussing.*

37. The court also finds that the plan proposed by the board would have required transportation for at least 5,000 students in addition to those now being transported.

38. *Separability.*—*Each of the four parts of the desegregation plan is separable from the other.* The re-zoning of elementaries can proceed independent of the pairing and grouping. The pairing and grouping can take place independent of all other steps. *The implementation of the*

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pairing and grouping plan itself can be done piecemeal, one group or several groups at a time, as transportation becomes available. It was planned that way.

39. *The Time Table.*—The February 5, 1970 order followed the time table requested by the defendants. At the February 2 hearing, the school board attorney requested until April 1, 1970 to desegregate the elementary schools (T. 20); he requested that high school seniors be allowed to graduate where they are (T. 21); he proposed continuing junior high students and grades 10 and 11 in their present schools until the third week before the end of school (T. 21). The request of Dr. Self, the school superintendent, was identical as to elementaries and 12th graders; he preferred to transfer 10th and 11th graders about two weeks before school was over (T. 95). Availability of transportation was the only caveat voiced at the hearing.

40. The February 5 order expressly provided that “racial balance” was not required. The percentage of black students in the various parts of the plans approved vary from 3% black at Bain to 41% black at Cornelius.

41. *Cost.*—Busses cost around \$5,400.00 each, varying according to size and equipment. Total cost of 138 busses, if that many are needed, would therefore be about \$745,200.00. That is much less than one week’s portion of the Mecklenburg school budget. Busses last 10 to 15 years. The state replaces them when worn out.

Some additional employees will be needed if the transportation system is enlarged.

Defendants have offered various estimates of large increased costs for administration, parking, maintenance, driver education and other items. If they choose to incur

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excess costs, the court can not prevent it. However, the evidence shows that school bus systems in Charlotte and other urban North Carolina counties tend to operate at lower costs per student than rural systems. Adding a larger number of short-range capacity loads should not tend to increase the present overall per capita cost of \$40 a year.

It is the opinion and finding of the court that the annual transportation cost per student, including amortization of the purchase price of the busses, will be at or close to \$40.00, and that the total annual cost, which is paid about half by the state and half by the county, of implementing this order, will not exceed the following:

For zoned Elementaries	(1,300)	\$ 52,000
For paired Elementaries	(8,000)	320,000
For Junior Highs	(2,500)	100,000
For Senior Highs	(1,500)	60,000
		\$532,000*

41. *Availability.*—The evidence shows that the defendant North Carolina Board of Education has approximately 40 brand new school busses and 375 used busses in storage, awaiting orders from school boards. None had been sold at last report. The state is unwilling to sell any of them to Mecklenburg because of the “anti-bussing” law. No orders for busses have been placed by the school board.

If orders to manufacturers had been placed in early February, delivery in 60 or 90 days could have been anticipated. The problem is not one of availability of busses

* The local system's share of this figure would be \$266,000.00, which at current rates is only slightly more than the annual interest or the value of the \$3,000,000.00 worth of school properties closed in 1969.

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but of unwillingness of Mecklenburg to buy them and of the state to furnish or make them available until final decision of this case.

This the 21 day of March, 1970.

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