

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JOHNSON v. JACKSON PARISH SCHOOL BOARD	No. 23,173
BANKS v. CLAIBORNE PARISH SCHOOL BOARD	No. 23,192
UNITED STATES v. CADDO PARISH SCHOOL BOARD	No. 23,274
UNITED STATES v. FAIRFIELD BOARD OF EDUCATION	No. 23,331
BROWN v. BOARD OF EDUCATION OF THE CITY OF BESSEMER	No. 23,335
UNITED STATES v. JEFFERSON COUNTY BOARD OF EDUCATION	No. 23,345
UNITED STATES v. BOSSIER PARISH SCHOOL BOARD	No. 23,365
APPELLANTS	APPELLEES

APPENDIX TO BRIEFS
OF UNITED STATES

Volume IV

U.S. v. Jefferson County Bd. Of Ed.



SD-AL-001-005

U. S. COURT OF APPEALS

FILED

APR 26 1966

EDWARD W. WADSWORTH
CLERK

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A. PROPOSED DECREE

It is hereby ORDERED, ADJUDGED and DECREED that the defendants, their agents, officers, employees and successors and all those in active concert and participation with them, be and they hereby are permanently enjoined from discriminating on the basis of race or color in the operation of the _____ school system and shall take steps to eliminate the effects of past racial discrimination in the operation of the system, all in accordance with the following provisions:

I

SPEED OF DESEGREGATION

Commencing with the 1966-67 school year, grades _____ shall be desegregated and pupils assigned to schools in those grades without regard to race or color in accordance with the provisions of this decree. Commencing with the 1967-68 school year, all grades will be desegregated.

II

EXERCISE OF CHOICE

The following provisions shall apply in each desegregated grade:

(a) Who May Exercise Choice. A choice of schools may be exercised by a parent or other adult person serving as the student's parent. A student may exercise his own choice if he (1) is exercising a choice for the ninth or a higher grade, or (2) has reached the age of fifteen at the time of the exercise of choice. Such a choice by a student is controlling unless a different choice is exercised for him by his parent or other adult person serving as his parent during the choice period or at such later time as the student exercises a choice. Each reference in this decree to a student exercising a choice means the exercise of the choice, as appropriate, by a parent or such other adult, or by the student himself.

(b) Annual Exercise of Choice. All students, both white and Negro, shall be required to exercise a free choice of schools annually.

(c) Choice Period. The period for exercising choice for the 1966-1967 school year shall commence on July 15 and end on August 1, 1966. In years following, the period for exercising choice shall commence on March 1, and end on March 31, preceding the school year for which the choice is to be exercised. No student or prospective student who exercises his choice within the choice period shall be given any preference because of the time within the period when such choice was exercised.

(d) Mandatory Exercise of Choice. A failure to exercise a choice within the choice period shall not preclude any student from exercising a choice at any time before he commences school for the year with respect to which the choice applies, but such choice may be subordinated to the choices of students who exercised choice before the expiration of the choice period. Any student who has not exercised his choice of school within a week after school opens shall be assigned to the school nearest his home where space is available under standards for determining available space which shall be applied uniformly throughout the system.

(e) Public Notice. On or within a week before the date the choice period opens, the defendants shall arrange for the conspicuous publication of a notice describing the provisions of this decree in the newspaper most generally circulated in the community. The text of the notice shall be similar to the text of the explanatory letter sent home to parents. Publication as a legal notice will not be sufficient. Copies of this notice must also be given at that time to all radio and television stations serving the community. Copies of this decree shall be posted in each school in the school system and at the office of the superintendent.

(f) Mailing of Explanatory Letters and Choice Forms.

On the first day of the choice period there shall be distributed by first class mail an explanatory letter and a choice form to the parent or other adult person acting as parent of each student who will be entering a desegregated grade in the following year, together with a return envelope addressed to the superintendent. The text for the explanatory letter and choice form shall conform as nearly as possible to the sample letter and choice form appended to this decree (Appendices A and B).

(g) Extra Copies of the Explanatory Letter and Choice Form. Extra copies of the explanatory letter and choice form shall be freely available to parents, students, prospective students and the general public at each school in the system and at the office of the superintendent.

(h) Return of Choice Form. At the option of the person completing the choice form, the choice may be returned by mail, in person, or by messenger to any school in the school system or to the office of the superintendent.

(i) Choices not on Official Form. The exercise of choice may also be made by the submission in like manner of any other writing which contains information

sufficient to identify the student and indicates that he has made a choice of school.

(j) Choice Forms Binding. [Once] A choice form [has once been] submitted, and the choice period having expired, the choice is binding for the entire school year and may not be changed except in cases of parents making different choices than their children under the conditions set forth in paragraph II (a) of this decree and in cases where compelling hardship is shown by the student.

(k) Preferences in Assignment. In assigning students to schools, no preferences shall be given to any student for prior attendance at a school, and no choice shall be denied for any reason other than overcrowding. In case of overcrowding at any school, preference shall be given on the basis of the proximity of the school to the homes of the students choosing it, without regard to race or color.

(l) Second Choice where First Choice is Denied. Any student whose choice is denied must be promptly notified in writing and given his choice of any school in the school system serving his grade level where space is available.

(m) Transportation. If school bus transportation is provided, busses will be routed to the greatest extent which is reasonable in light of the geographic distribution of students, so as to serve each student choosing any school in the system.

(n) Official not to Influence Choice. At no time shall any official, teacher, or employee of the school system influence any parent, or other adult person serving as a parent, or any student, in the exercise of a choice, or favor or penalize any person because of a choice made. Information concerning individual choices made or schools to which individual students are assigned shall not be made public.

III

NEW STUDENTS

Each new student shall be required to exercise a choice of schools before enrollment. Each such student shall be furnished a copy of the prescribed letter to parents, and choice form, by mail or in person, on the date the choice period opens or as soon thereafter as the school system learns that he plans to enroll. Each shall be given an opportunity to exercise his choice during the choice period. A prospective student exercising his choice after the choice period shall be given at least one week to do so.

IV

TRANSFERS

(a) Transfers for Special Needs. Any student who requires a course of study not offered at the school to which he has been assigned, or who is physically handicapped,

may be permitted, upon his written application, to transfer to another school which is designed to fit or offer courses for his special needs.

(b) Transfers for Students in Non-Desegregated Grades. Any student entering a grade to which the choice provisions of this decree do not yet apply, shall have the right to transfer to any school from which he would otherwise be excluded on account of his race or color.

V

SERVICES, FACILITIES, ACTIVITIES AND PROGRAMS

No student shall be segregated or discriminated against on account of race or color in any service, facility, activity or program (including transportation, athletics, or other extra-curricular activity) that may be conducted or sponsored by, or affiliated with, the school in which he is enrolled. A student attending school for the first time on a desegregated basis may not be subject to any disqualification or waiting period for participation in activities and programs, including athletics, which might otherwise apply because he is a transfer student.

VI

SCHOOL EQUALIZATION

(a) Inferior Schools. In schools heretofore maintained for Negro students, the defendants shall take all

reasonable steps necessary to provide physical facilities, equipment, courses, and instruction of quality equal to that provided in schools previously maintained for white students. Conditions of overcrowding, as determined by pupil-teacher ratios and pupil-classroom ratios shall, to the extent possible, be distributed evenly between schools formerly maintained for Negro students and those formerly maintained for white students. If for any reason it is not feasible to improve sufficiently any school formerly maintained for Negro students, where such improvement would otherwise be required by this subparagraph, such school shall be closed as soon as possible, and students enrolled in the school shall be reassigned on the basis of freedom of choice.

(b) Remedial Programs. The defendants shall provide remedial education programs which permit students attending or who have previously attended all-Negro schools to overcome past inadequacies in their education.

VII

FACULTY AND STAFF

(a) Faculty Employment. Race or color shall not be a factor in the hiring, assignment, reassignment, promotion, demotion or dismissal of teachers and other professional staff members, except to correct the effects of past discriminatory assignments.

(b) Dismissals. Teachers and other professional staff members may not be dismissed, demoted, or passed over for retention, promotion or rehiring, on the ground of race or color. In any instance where one or more teachers or other professional staff members are to be displaced as a result of desegregation, no staff vacancy in the school system shall be filled through recruitment from outside the system unless no such displaced staff member is qualified to fill the vacancy. If, as a result of desegregation, there is to be a reduction in the total professional staff of the school system, the past assignment of any teacher or staff member, where such past assignment was based upon race or color, shall not be considered in determining whether he shall be released.

(c) Past Assignments. The defendants shall take steps to assign and reassign teachers and other professional staff members to eliminate past discriminatory patterns.

VIII

REPORTS TO THE COURT

(a) Report on Choice Period. The defendants shall serve upon the opposing parties and file with the Clerk of the Court on or before August 15, 1966, and in each subsequent year on or before June 1, a

report tabulating by race the number of choice applications received for enrollment in each grade in each school in the system, and the number of choices granted and the number denied in each grade of each school. The report shall also state any reasons relied upon in denying choice and shall tabulate, by school and by race of student, the number of choices denied for each such reason.

(b) Report After School Opening. The defendants shall serve upon opposing counsel and file with the Clerk of the Court fifteen days after the opening of schools for the fall semester each year, a report setting forth the following information:

(i) The name, address, grade, school of choice and school of present attendance of each student who has withdrawn or requested withdrawal of his choice of school or who has transferred after the start of the school year, together with a description of any action taken by the defendants on his request and the reasons therefor.

(ii) The number of faculty vacancies, by school, that have occurred or been filled by the defendants since the order of this Court or the latest report submitted pursuant to this subparagraph. This report shall state the race of the teacher employed to fill each such vacancy and indicate whether such teacher is newly employed or was transferred from within the system. The tabulation of the number of transfers within the system should indicate the schools from which and to which the transfers were made. The report shall also set forth the number of faculty members of each race assigned to each school for the current year.

(iii) A description of any steps or programs instituted by the defendants pursuant to paragraph VI of this decree.

No child will be denied his choice unless for reasons of overcrowding at the school chosen, in which case children living nearest the school will have preference.

Transportation will be provided, if reasonably possible, no matter what school is chosen. [Delete if the school system does not provide transportation.]

Your School Board and the school staff will do everything we can to see to it that the rights of all students are protected and that desegregation of our schools is carried out successfully.

Sincerely yours,

Superintendent

APPENDIX A

(School System Name and Office Address)

(Date Sent)

Dear Parent:

Grades _____ in our school system will be desegregated next year. Any student who will be entering one of these grades next year may choose to attend any school in our system, regardless of whether that school was formerly all-white or all-Negro. It does not matter which school your child is attending this year. You and your child may select any school you wish.

Every student, white and Negro, who is entering a desegregated grade must make a choice of schools. If a child is entering the ninth or a higher grade, or if the child is fifteen years old or older, he may make the choice himself. Otherwise a parent or other adult serving as parent must sign the choice form.

The form on which the choice should be made is attached to this letter. It should be completed and returned by August 1, 1966. You may mail it in the enclosed envelope, or deliver it by messenger or by hand to any school principal or to the Office of the Superintendent at any time between July 15 and August 1. No one may require you to return your choice form before August 1, and no preference is given for returning the choice form early.

No principal, teacher or other school official is permitted to influence anyone in making a choice or to require early return of the choice form. No one is permitted to favor or penalize any student or other person because of a choice made. A choice once made cannot be changed except for serious hardship.

Appendix B

CHOICE FORM

This form is provided for you to choose a school for your child to attend next year. You have 30 days to make your choice. It does not matter which school your child attended last year, and it does not matter whether the school you choose was formerly a white or Negro school. This form must be mailed or brought to the principal of any school in the system or to the office of the Superintendent, [address], by August 1, 1966. A choice is required for each child.

Name of child _____
(Last) (First) (Middle)

Address _____

Name of Parent or other adult serving as parent _____

If child is entering first grade, date of birth:

(Month) (Day) (Year)

Grade child is entering _____

School attended last year _____

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

Name of School	Grade	Location
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Signature _____

Date _____

To be filled in by Superintendent:

School Assigned _____

B. ANNOTATIONS TO PROPOSED DECREE

These annotations refer to decided cases in which the courts, in their decrees, have used provisions the same as, or similar to, the provisions of the decree here proposed.

I. SPEED OF DESEGREGATION

Carr v. Montgomery County Board of Education, Civil Action No. 2072-N (M.D. Ala., March 22, 1966);

Harris v. Bullock County Board of Education, Civil Action No. 2073-N (M.D. Ala., March 11, 1966);

United States v. Lowndes County Board of Education, Civil Action No. 2328-N (M.D. Ala., February 10, 1966);

Adams v. Mathews, (Longview Independent School District, Texas) Civil Action No. 3095 (E.D. Texas, 1965);

II. EXERCISE OF CHOICE

(a) Who May Exercise Choice

Carr v. Montgomery County Board of Education, Supra;

Lee v. Macon County Board of Education, (entered by Consent) Civil Action No. 604-E (M.D. Ala., March 11, 1966);

Harris v. Bullock County Board of Education, Supra;

United States v. Lowndes County Board of Education, Supra;

Adams v. Mathews, Supra.

(b) Annual Exercise of Choice

Carr v. Montgomery County Board of Education, Supra;
Lee v. Macon County Board of Education, Supra;
Harris v. Bullock County Board of Education, Supra;
United States v. Lowndes County Board of Education, Supra;
Adams v. Mathews, Supra;
Turner v. County School Board of Goochland County, Va.,
Supra;
Bell v. School Board of the City of Staunton, Va.,
No. 65-C-H (W.D. Va., January 5, 1966);
United States v. North Pike Consolidated School District,
Civil Action No. 3807 (S.D. Miss., September 25, 1965);
United States v. Natchez Special Municipal Separate
School District, Civil Action No. 1120(W) (S.D. Miss.,
January 28, 1966 as amended April 15, 1966);
Barnhardt v. Meridian Separate School District, Civil
Action No. 1300(E) (S.D. Miss., August 5, 1965);
United States v. Aberdeen Municipal Separate School
Civil Action No. EC 6594 (N.D. Miss., September 10, 1965);
Anderson v. Canton Municipal Separate School District,
Civil Action No. JC 3700 (S.D. Miss., August 5, 1965 and
August 31, 1965).

(c) Choice Period

Carr v. Montgomery County Board of Education, Supra;
Harris v. Bullock County Board of Education, Supra;
Lee v. Macon County Board of Education, Supra;
United States v. Lowndes County Board of Education, Supra;
See Kier v. County School Board of Augusta County, Va.
249 F. Supp. 239 (W.D. Va., 1966);
Cf. Thompson v. County School Board of Hanover County, Va.
Civil Action No. 4274 (E.D. Va., January 27, 1966).

(d) Mandatory Exercise of Choice

Carr v. Montgomery County Board of Education, Supra;
Beckett v. School Board of the City of Norfolk, Va.,
(entered by Consent) Civil Action No. 2214 (E.D. Va.,
March 17, 1966);
Harris v. Bullock County Board of Education, Supra;
United States v. Lowndes County Board of Education, Supra.

(e) Public Notice

See Carr v. Montgomery County Board of Education, Supra;
Thompson v. County Board of Education of Hanover County,
Virginia, Supra;
Turner v. County Board of Education of Goochland County,
Virginia, Supra;
Cf. Adams v. Mathews, Supra;

United States v. North Pike Consolidated School District,

Supra;

Baird v. Benton County Board of Education, Civil Action

No. WC 6513 (N.D. Miss., August 3, 1965);

United States v. Natchez Special Municipal Separate

School District, Supra;

Mason v. Biloxi Municipal Separate School District,

Civil Action No. 2696 (S.D. Miss., August 5, 1965);

Killingsworth v. Enterprise Consolidated School District
and Quitman Consolidated School District, Civil Action No.

1302(E) (S.D. Miss., August 4, 1965 and August 14, 1965);

Hudson v. Leake County School Board, Civil Action No.

3382 (S.D. Miss., August 5, 1965);

Gladney v. Moss Point Municipal Separate School District,

Civil Action No. 3004(S)(C) (S.D. Miss., August 16, 1965);

Barnhardt v. Meridian Municipal Separate School District,

Supra.

(f) Mailing of Explanatory Letters and Choice Forms

Carr v. Montgomery County Board of Education, Supra;

Harris v. Bullock County Board of Education, Supra;

Lee v. Macon County Board of Education, Supra;

United States v. Lowndes County Board of Education, Supra;

Adams v. Mathews, Supra;

Turner v. County Board of Education of Goochland County,
Virginia, Supra;

United States v. Aberdeen Municipal Separate School
District, Supra;

See Wright v. County School Board of Greenville County, Va.,
Civil Action No. 4263 (E.D. Va., January 27, 1966);

United States v. North Pike Consolidated School District,
Supra;

Baird v. Benton County Board of Education, Supra;

United States v. Natchez Special Municipal Separate School
District, Supra;

Mason v. Biloxi Municipal Separate School District, Supra;

Hudson v. Leake County School Board, Supra;

Gladney v. Moss Point Municipal Separate School District,
Supra;

Cowan v. Bolivar County Board of Education, Civil Action
No. 6531 (N.D. Miss., August 27, 1965);

Barnhardt v. Meridian Municipal Separate School District,
Supra;

Alexander v. Holmes County Board of Education, Civil
Action No. 3779 (S.D. Miss., August 16, 1965);

United States v. Carroll County Board of Education, Civil
Action No. GC 6541 (N.D. Miss., September 3, 1965 as
amended January 20, 1966).

(h) Return of Choice Form

Carr v. Montgomery County Board of Education, Supra;
Harris v. Bullock County Board of Education, Supra;
United States v. Lowndes County Board of Education, Supra.

(i) Choices Not on Official Form

Carr v. Montgomery County Board of Education, Supra;
Harris v. Bullock County Board of Education, Supra;
United States v. Lowndes County Board of Education, Supra.

(j) Choice Forms Binding

Carr v. Montgomery County Board of Education, Supra;
Harris v. Bullock County Board of Education, Supra;
United States v. Lowndes County Board of Education, Supra;
Beckett v. School Board of the City of Norfolk, Va., Supra.

(k) Preferences in Assignment

Carr v. Montgomery County Board of Education, Supra;
See Harris v. Bullock County Board of Education, Supra;
Lee v. Macon County Board of Education, Supra;
United States v. Lowndes County Board of Education, Supra;
Adams v. Mathews, Supra;
Turner v. County School Board of Goochland County, Va., Supra.

(1) Second Choice Where First Choice Is Denied

Carr v. Montgomery County Board of Education, Supra;
See Adams v. Mathews, Supra;
Beckett v. School Board of the City of Norfolk, Va., Supra;

Anderson v. Canton Municipal Separate School District,
Civil Action No. JC 3700 (S.D. Miss., August 5, 1965 and
August 31, 1965);

United States v. North Pike Consolidated School District,
Supra;

Baird v. Benton County Board of Education, Supra;

United States v. Natchez Special Municipal Separate
School District, Supra;

United States v. Carroll County Board of Education, Supra;

Cowan v. Bolivar County Board of Education, Supra.

(m) Transportation

Carr v. Montgomery County Board of Education, Supra;

United States v. Lowndes County Board of Education, Supra;

Harris v. Bullock County Board of Education, Supra;

Wright v. County School Board of Greensville County, Va.,
Supra;

Turner v. County School Board of Goochland County, Va.,
Supra;

United States v. North Pike Consolidated School District,
Supra;

Baird v. Benton County Board of Education, Supra (non-racial
school transportation zones);

United States v. Natchez Special Municipal Separate School District, Supra;

Killingsworth v. Quitman Consolidated School District, Supra;

Barnhardt v. Meridian Separate School District, Supra (for desegregated grades);

United States v. Carroll County Board of Education, Supra;

Cowan v. Bolivar County Board of Education, Supra.

(n) Official Not to Influence Choice

Carr v. Montgomery County Board of Education, Supra;

Harris v. Bullock County Board of Education, Supra;

United States v. Lowndes County Board of Education, Supra;

Adams v. Mathews, Supra;

See Wright v. County School Board of Greensville County, Virginia, Supra;

Thompson v. County School Board of Hanover County, Va., Supra;

United States v. North Pike Consolidated School District,
Supra;

Baird v. Benton County Board of Education, Supra.

III. NEW STUDENTS

Carf v. Montgomery County Board of Education, Supra;

United States v. Lowndes County Board of Education, Supra;

Adams v. Mathews, Supra;

See Thompson v. County School Board of Hanover County, Va.,
Supra;

Turner v. County School Board of Goochland County, Va.,

Supra;

Stell v. Savannah-Chatham County Board of Education,

333 F. 2d 55 (5th Cir., 1964);

United States v. Natchez Special Municipal Separate

School District, Supra;

Baird v. Benton County Board of Education, Supra, (This

provision is applicable only to new students who

previously attended a school system where their grade

was desegregated);

United States v. North Pike Consolidated School District,

Supra.

IV. TRANSFERS

(a) Transfers for Special Needs

United States v. North Pike Consolidated School District,

Supra;

United States v. Natchez Special Municipal Separate

School District, Supra;

Mason v. Biloxi Municipal Separate School District, Supra;

United States v. Aberdeen Municipal Separate School

District, Supra;

Cowan v. Bolivar County Board of Education, Supra;

United States v. Carroll County Board of Education, Supra.

(b) Transfers of Students in Non-Desegregated Grades

Carr v. Montgomery County Board of Education, Supra;

Turner v. County School Board of Goochland County, Va.,
Supra;

See United States v. Natchez Special Municipal Separate
School District, Supra.

V. SERVICES, FACILITIES, ACTIVITIES, AND PROGRAMS

Carr v. Montgomery County Board of Education, Supra;

Harris v. Bullock County Board of Education, Supra;

Beckett v. School Board of the City of Norfolk, Va., Supra;

United States v. Lowndes County Board of Education, Supra;

See Wright v. County School Board of Greensville County,
Virginia, Supra;

United States v. North Pike Consolidated School District,
Supra;

Baird v. Benton County Board of Education, Supra.

VI. SCHOOL EQUALIZATION

Carr v. Montgomery County Board of Education, Supra;

Harris v. Bullock County Board of Education, Supra;

Lee v. Macon County Board of Education, supra;

United States v. Lowndes County Board of Education, Supra,

(closing of inferior rural schools and provisions for
remedial programs);

Baird v. Benton County Board of Education, Supra, (equalization of curricula and per pupil expenditures at each school as near as feasible);

United States v. Carroll County Board of Education, Supra, (equalization of commercial course equipment);

Cowan v. Bolivar County Board of Education, Supra, (equalization of pupil-teacher ratios, facilities, salaries, and curricula);

Anderson v. Canton Municipal Separate School District, Supra, (equalization of availability of plumbing facilities).

VII. FACULTY AND STAFF

Carr v. Montgomery County Board of Education, Supra;

See Beckett v. School Board of the City of Norfolk, Va.,
Supra;

United States v. Lowndes County Board of Education, Supra;

Harris v. Bullock County Board of Education, Supra;

Adams v. Mathews, Supra;

Gilliam v. School Board of City of Hopewell, Va., Supra;

Wright v. County School Board of Greensville County, Va.,
Supra;

Thompson v. County School Board of Hanover County, Va., Supra;

Kier v. County School Board of Augusta County, Va., Civil
Action No. 65-C5-H, 249 F. Supp. 239 (W.D. Va., January
5, 1966);

Turner v. County School Board of Goochland County, Va.,

Supra;

Lee v. Macon County Board of Education, Supra;

United States v. North Pike Consolidated School District,

Supra, (desegregation of faculty meetings and inservice training for the second semester of the 1965-66 school year and non-racial assignment of teachers commencing with the 1966-67 school year);

United States v. Natchez Special Municipal Separate School

District, Supra, (plan provides for "adequate start"

toward elimination of race as an employment factor;

meetings and inservice, training by 1966-67);

Mason v. Biloxi Municipal Separate School District, Supra,

(faculty meetings and inservice training by 1965-66 school year);

Barnhardt v. Meridian Separate School District, Supra,

(faculty meetings and inservice training by 1965-66);

vacancies to be filled without regard to race by the

1966-67 school year);

Baird v. Benton County Board of Education, Supra, (1965-66:

In the event of faculty reassignment, it will be done without regard to race. 1966-67: All appropriate steps shall be taken to prepare for desegregation of all school personnel).

VIII. REPORTS TO THE COURT

Beckett v. School Board of the City of Norfolk, Va., Supra;

Carr v. Montgomery County Board of Education, Supra;

Harris v. Bullock County Board of Education, Supra;

Lee v. Macon County Board of Education, Supra;

United States v. Aberdeen Municipal Separate School

District, Supra.