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Plaintiffs.

Plaintiff-Intervenor,

V.

Defendants.

NOTICE OF MOTION
AND MOTION FOR
SUPPLEMENTAL RELIEF

Please take notice that on _____
at _____, or as soon thereafter as counsel may be
heard, in the courtroom of the United States District
Court for the Southern District of Texas, Federal
Courthouse, Houston, Texas, the United States will move
this Court for supplemental relief in this action.

The United States, plaintiff-intervenor, moves this Court for an order supplementing the orders of this Court in this action dated August 12, 1960, and October 27, 1965, and, in support of this motion, states as follows:

I

Method of Student Assignment

This Court, on October 15, 1957, enjoined the defendants from requiring racial segregation in any school under their supervision and ordered them to make, with all deliberate speed, arrangements for the admission of children to schools on a nondiscriminatory basis.

On August 12, 1960, this Court entered another order granting students the option of attending the traditional white or Negro school serving their area of residence in accordance with transfer regulations to be promulgated by the defendants. Under that order this right to transfer was initially given to students entering the first regular grade and was to be extended to students entering the next higher grade each successive year until students in all grades would have this right by September 1972. Students who were not in a grade to which this right to transfer was extended or who did not exercise it would continue to be assigned to schools on the basis of race.

In the Summer of 1965, the defendants announced an acceleration of this grade-a-year transfer plan so that grades 7 and 10 would be covered in September 1965, grades 8 and 11 would be covered in September 1966, and grades 9 and 12 would be covered in September, 1967. On October 27, 1965, this Court further accelerated the coverage by requiring that the right to transfer be extended to the twelfth grade in September 1966. No change was made in this order as to the nature of the right to transfer established in the order of August 1960.

For the current school year a right to choose the school attended, which was more extensive than the right to transfer established in the 1960 order of this Court, was granted to all students other than those in the ninth grade. The terms of this right were generally set forth in two administrative bulletins distributed in August 1966 by defendants.

The first bulletin, Houston Independent School District Superintendent's Bulletin No. 4-E, (attached hereto as Exhibit A) was distributed to principals and teachers in the School District on August 4, 1966. It set forth procedures to be followed in the enrollment of students in elementary grades (kindergarten and grades 1-6) for the 1966-67 school year. It provided, in pertinent part, that a student would be automatically enrolled in the same school he attended the previous year unless his parents chose otherwise.

To make this choice, the parent would have to apply in person for enrollment at the school chosen during the last week of August. For students who were not enrolled in a Houston public school at the end of the previous school year, the bulletin provided that their parents should apply for enrollment at a convenient school during the last week of August. Students seeking enrollment at a given school would be enrolled on a first-come, first-served basis, up to the limit of reasonable class size and space available, and in the case where demand exceeded capacity priority would be given to pupils living closer to the school and to pupils with a brother or sister enrolled in the school.

The second bulletin, Houston Independent School District Superintendent's Bulletin No. 4-S (attached hereto as Exhibit B), pertained to the secondary grades (grades 7-12) and was distributed to principals and teachers on August 9, 1966. It provided, in pertinent part, that students registering at a junior high school for the first time could attend the junior high school of their choice, and that students who had attended a junior or senior high school during the 1965-1966 school year would be automatically enrolled in the same school in 1966-1967, unless they chose otherwise. Those students choosing a junior high or senior high school other than the one to which they were assigned had to apply

for enrollment at another school during the last week of August, presenting report cards from the schools they last attended. The Superintendent's Bulletin also stated that these applications of secondary school pupils for enrollment were to be granted on a first-come, first-served basis, up to the limit of reasonable class size and space available, and that in the case where demand exceeded capacity priority would be given to pupils living in closer to the school and to pupils with a brother or a sister enrolled in the school.

Following the distribution of these administrative bulletins, the defendants also mailed in August 1966 approximately 25,000 letters to parents of Negro children entering grades 6, 7, 8, 10 and 11, advising parents that dual school boundaries or attendance zones had been abolished for all grades except grade nine and that students entering all grades other than the ninth who desired to attend schools other than the ones they had attended the past year or to which they were promoted in June 1966, should register at the school of their choice between 9:00 A.M., to 1:00 P.M., August 27-31, 1966. (A copy of the letter is attached to this motion and designated as Exhibit C). These letters also advised that students who planned to attend the same school as last year should report for classes on opening day and that students who planned to attend the school to which they were promoted in

June 1966, should also report for classes on opening day. A list of all schools in the Houston Independent School District was published in the Houston papers in August 1966, prefaced with a statement similar to that contained in the aforementioned letter that had been mailed to some Negro parents earlier in the month.

To our knowledge the enrollment procedures set forth in Superintendent's Bulletins 4-E and 4-S, in the letter mailed by the defendants to some Negro parents in August 1966, and in the notice in the newspapers constituted the method of student assignment implemented by defendants for the current school year and unless restrained by this Court, will be the method of student assignment used by them in future school years. Although defendants claim this to be a freedom-of-choice method of student assignment, the method is constitutionally inadequate under existing judicial standards for freedom-of-choice plans in that it fails to provide for:

- (1) an annual freedom of choice for all students to be exercised in an orderly manner subject to judicial evaluation;
- (2) a procedure to insure the nonracial assignment of students who fail to exercise that choice;
- (3) a procedure to insure the nonracial assignment of students whose choices are denied because enrollment exceeds capacity at the schools of their choice; and
- (4) appropriate notice to parents and students fully informing them of their right to choose, the choice procedures, the course to be followed where enrollment exceeds capacity at any particular school, and the availability of school bus transportation.

II

Teacher Assignments

Under the traditional dual system maintained in the Houston Independent School District, it was the consistent practice and policy of the defendants to assign all Negro teachers to schools attended solely by Negro students, and all white teachers to schools attended solely by white students.

Commencing with the 1965-66 school year, the defendants assigned a few teachers on a desegregated basis, but in general defendants continued to assign teachers to schools - both new and old - on a racially segregated basis.

The orders of this Court of August 1960 and October 1965 have no specific provision requiring faculty desegregation. Moreover, the defendants have not voluntarily taken any meaningful steps to cease their practice and policy of assigning teachers to schools on a racially segregated basis, nor have they formulated or committed themselves to any plan or program to correct the existing effects of past racial assignments of teachers.

III

School Transportation System

The school transportation system for the Houston Independent School District, including bus routes and criteria governing the availability of transportation,

was designed and established for the purpose of serving a dual school system based on race.

The orders of this Court of August 1960 and October 1965 have no specific provision requiring the reorganization of the school bus transportation system, nor have the defendants voluntarily taken any meaningful steps to that end. Defendants thus continue to operate and maintain a bus transportation system which was established to serve a dual school system based on race and which has the effect of perpetuating that system and impeding desegregation.

IV

We believe that unless restrained by order of this Court, the defendants will continue to deny to Negro children the equal protection of the laws in violation of the Fourteenth Amendment by not taking adequate steps to reorganize the dual system based on race into a single, unitary, nonracial school system.

WHEREFORE, the United States prays that this Court supplement its orders of August 12, 1960, and October 27, 1965, by ordering the defendants to take steps to reorganize the dual school system based on race into a unitary nonracial school system, including the following steps:

1. Establish and implement a plan for the non-racial assignment of students to schools.

2. Establish and implement a plan and program for the correction of the existing effects of their practice of assigning teachers to schools on a racially segregated basis.

3. Cease operating, maintaining, or supporting a school transportation system which promotes or encourages continued attendance of Negro students at schools traditionally maintained for Negro students and white students at schools traditionally maintained for white students, and establish and implement in its place a school transportation system that will complement the nonracial assignment of students to schools.

4. Take all other necessary steps to eliminate all vestiges of a dual school system based on race and to correct the existing effects of past racial discriminatory action in the operation of the Houston Independent School District.

The United States further prays that this Court grant such additional relief as the needs of justice may require, including the costs and disbursements of this action.

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