

432 F.2d 927

United States Court of Appeals, Fifth Circuit.

Derek Jerome SINGLETON et al., Plaintiffs-Appellants,

v.

JACKSON MUNICIPAL SEPARATE SCHOOL DISTRICT et al., Defendants-Appellees.

No. 29226.

|

Aug. 12, 1970, Supplemental Order Aug. 25, 1970.

School desegregation case. The United States District Court for the Southern District of Mississippi at Jackson, Dan M. Russell, Jr., J., approved a plan, and the plaintiffs appealed. The Court of Appeals, 426 F.2d 1364, reversed and remanded on May 5, 1970, and on July 20, 1970, 430 F.2d 368, made an intervening order for the secondary level. On remand, the District Court, Dan M. Russell, Jr., J., imposed a plan, and plaintiffs appealed. The Court of Appeals held that plan under which 70 per cent of Negro elementary students would be placed in all or substantially all Negro schools and under which integration of two schools, which had been substantially all Negro, was confined to only two grades was unacceptable.

Modified and remanded.

Attorneys and Law Firms

*927 Fred L. Banks, Jr., Melvyn R. Leventhal, Reuben V. Anderson, John A. Nichols, Jackson, Miss., Jack Greenberg, James M. Nabrit, III, Norman J. Chachkin, Jonathan Shapiro, New York City, for plaintiffs-appellants.

Robert C. Cannada, Thomas H. Watkins, Jackson, Miss., for defendants-appellees.

Jerris Leonard, Asst. Atty. Gen., David D. Gregory, Atty., Civil Rights Division, U.S. Dept. of Justice, Washington, D.C., amicus curiae.

Before JOHN R. BROWN, Chief Judge, and MORGAN and INGRAHAM, Circuit judges.

Opinion

PER CURIAM:

Here we review the District Court's order imposing a plan for a unitary school system for the elementary grades in the Jackson Municipal Separate School System. This plan was adopted pursuant to our mandate in Singleton IV, Singleton v. Jackson Municipal Separate School District, 5 Cir., 1970, 426 F.2d 1364.¹

That mandate required the District Court to reconsider the plan (adopted in January 1970) for the system at the elementary level. The District Court appointed a Bi-Racial Committee also pursuant to that mandate. And that Committee² and HEW proposed new plans. *928 The School Board offered no new plan, but did support the Bi-Racial Committee's proposal. Plaintiffs did not propose a new plan, but did suggest substantial modifications to the January 1970 plan put forward by HEW.³

Under the stringent time limitations imposed by Alexander v. Holmes County School System, 1969, 396 U.S. 19, 90 S.Ct. 29, 24 L.Ed.2d 19; Singleton III, Singleton v. Jackson Municipal Separate School District, 5 Cir., 1970, 419 F.2d 1211, and Singleton IV, the District Court held an evidentiary hearing⁴ on June 8, 1970, and on June 15, 1970 it ordered the plan proposed by the BiRacial Committee⁵ to be implemented.⁶

We find the results to be unacceptable. Under this plan approximately 70% Of the Negro elementary students will be in all (or substantially all) Negro elementary schools. In fact the 70% Figure is an understatement for Bradley and Dawson are not included in the schools that are substantially all Negro. The integration in those schools is confined to only two grades. See note 5, supra, items 3 and 8. We have to be particularly sensitive to this because the zones for some substantially segregated secondary schools cover the same areas as are covered by the all Negro elementary school zones. And some students will likely have an education in predominately Negro schools throughout their school life. This is especially true for those students attending Blackburn Junior High and Lanier High School. See charts in Singleton V, Singleton IV; Davis v. Board of School Commissioners of Mobile County, 5 Cir., 1970, 430 F.2d 883; Mannings v. Board of Public Instruction of Hillsborough County, 5 Cir., 1970, 427 F.2d 874; Bradley v. Board of Public Instruction of Pinellas County, 5 Cir., 1970, 431 F.2d 1377.

*929 The HEW plan⁷ was a substantial improvement over the plan approved by the District Court. It reduced the number of all Negro schools from 9 to 4 and the number of Negroes in which they constituted 95% Or more of the student body to 2,731. Plaintiffs' modifications⁸ of the HEW plan were an even greater improvement. There were to be no all Negro schools under that plan.

Both of these plans are based on a type of zoning that divides the District into large Areas, 10 in both plans, and then establishes a separate grade structure in the Area. For example, under the HEW plan, Area II, which is about 4 miles across, contains four schools in which grades 1-4 are presented and one large school in which grades 5-6 are presented. (See note 5, lines 14, 17, 18, 20, 23, supra). There was much discussion in the briefs that under this type of 'clustering' it will be necessary for the School District to provide intra-city transportation for the plans to be effective. But we do not reach this since the changes we mandate persuade us that there is a variety of ways to improve the result.

We repeat that the result below is not acceptable. When making this determination in many recent cases, we have often specified the full form that the desegregation plan is to take. However we do not believe this is the wise course here since the record is inadequate. Consequently, a remand will be required. *930 But meantime something must be done now. We cannot accept the proposition that over 70% Of the Negro elementary students are to remain in substantially all Negro schools during the time the case undergoes more complete exploration. Consequently, pending the remand hearing and order of the District Court, discussed next, the School District is to operate under the plan approved below by the order of June 15, 1970, but with the following modifications:

- (i) Brown is to be paired with Power.
- (ii) Boyd is to be paired with Walton.
- (iii) George is to be paired with Martin.
- (iv) Robertson is to be paired with Poindexter.
- (v) Lester is to be paired with Isable.
- (vi) Watkins, Morrison, and Smith are to be grouped.⁹
- (vii) The School District shall have the option of pairing:
(a) Jones with Lake or (b) Johnson with Lake.

By these pairings and clusterings the percentage of Negroes in substantially all Negro schools will be reduced from over 70% To about 20%.¹⁰ We must reemphasize that these mandated modifications are an interim requirement and are not 'frozen'. The District Court is to begin a hearing not later than September 25, 1970. The hearing and order will canvass the whole elementary system with whatever changes are needed such as appropriate or required pairing, grouping, clustering, grade restructuring, and all other factors called for by our decisions and those of the Supreme Court. It will, of course, prescribe the time the changes are to become effective which must be at a time not later than January

1971 representing a midyear date regardless of formal terms or semesters. Likewise, all of the provisions of Part III, Singleton will apply as to appeals, record, briefs, etc.

Of course, the changes that will come as a result of the modifications we now specify and from the November order now called for will cause midyear disruptions, pupil reassignment and the like. But on balance, this is less costly than a continued loss of rights of a large number of students.

Modified and remanded.

SUPPLEMENTAL ORDER

To the extent consent of this Court is necessary or desirable the Court on motion of the Trustees of the Jackson Municipal Separate School District (Defendant-Appellee) joined therein by Plaintiffs-Appellants, ORDERS:

First: The opinion-order of August 12, 1970 is modified as follows:

- (a) To delete the requirement that the School District is to operate under interim modifications of the plan approved by District Court order of June 15, 1970; such deletion to be conditioned upon an immediate hearing by the District Court prior to commencement of the September school term.
- (b) To provide that the September term for elementary schools may open under a new, comprehensive order of *931 the District Court as required by the August 12 opinion of this Court.
- (c) To provide that the opening of elementary schools may be delayed, if necessary, a reasonable length of time to permit a hearing and order by the District Court, so that midyear changes and accompanying disruption may be avoided.

Second: In addition to the action taken by this Court as an interim matter in our opinion of August 12, 1970, the attention of the District Court is called to our recent cases in which this Court has mandated pairings, clustering or such other equally effective devices to reduce the number of all black schools (90% Or more black) and the percentage and number of blacks in all black schools. See, e.g., Valley v. Rapides Parish Sch. Bd., 5 Cir., 1970, 434 F.2d 144; Pate v. Dade County Sch. Bd., 5 Cir., 1970, 434 F.2d 1151; Henry v. Clarksdale Mun. Sep. Sch. Dist., 5 Cir., 1970, (No. 29,165, August 12, 1970); Ross v. Eckels, 5 Cir., 1970, 434 F.2d 1140; Allen v. Bd. of Public Instruction of Broward County, Fla., 5 Cir., 1970, 432 F.2d 362.

Third: The Court commends the evident collaboration of counsel and the parties and expresses its confident hope that a constitutional unitary system will be established on this hearing and the order to emerge from it.

All Citations

432 F.2d 927

Footnotes

- 1 With the intervening order for the secondary level of July 20, 1970, Singleton v. Jackson Municipal Separate School District, 5 Cir., 1970, 430 F.2d 368 (As Singleton V, the current one becomes Singleton VI).
- 2 The Bi-Racial Committee is composed of 12 persons, 6 white, who were suggested by the School Board, and 6 Negro, who were suggested by Plaintiffs. Its proposal was a result of extensive effort by people with little expertise in this field, practically no assistance for staff, and no funds. Its work did, however, represent a very commendable effort and a contribution to this community problem.
This experience suggests that for the problems posed by our reversal and remand the District Court should enlist the cooperation of both HEW and the School Board in supplying one or more liaison representatives to the Committee. With this professional staff-like assistance this will enable it to be directly involved in the essential exploratory activities leading to recommendations to the District Court.
- 3 Hereafter all references to the 'HEW Plan' will be to the June HEW unless otherwise specifically stated.
- 4 On the hearing the District Court did not allow the Plaintiffs to make any testimonial inquiry into the considerations taken into account in the preparation of the Bi-Racial Committee's plan. It is not necessary for us to categorize this as 'error' especially since under our mandated time schedules the hearings themselves often must be compressed. But in the full factual development of justifications required on remand, we think the proposals and any modifications should be explored as fully as needed to determine strengths and weaknesses, etc.
- 5 The results under this plan are:

		Under District Court		
		Approved Plan		
	Schools	Negro	White	Percentage *
1.	Baker	4	323	99%
2.	Boyd	171	340	67%
3.	Bradley	341	92 ***	79%
4.	Brown	658	0	100%
5.	Casey	30	451	94%
6.	Clausell	57	166	75%
7.	Davis	303	52	85%
8.	Dawson	420	109 ***	79%
9.	Duling	122	118	51%
10.	French	142	318	69%
11.	Galloway	385	162	70%
12.	George	83	91	52%
13.	Green	123	484	80%
14.	Isable	1-4* 517	0	100%
15.	Johnson	862	50	94%
16.	Jones	1,234	10	99%
17.	Key	50 **	480	90%

Singleton v. Jackson Municipal Separate School Dist., 432 F.2d 927 (1970)

18.	Lake	50	615	92%
19.	Lee	51 **	371	88%
20.	Lester	138 **	228	62%
21.	McLeod	51	665	93%
22.	McWillie	38	495	93%
23.	Marshall	55 **	573	91%
23a.	Martin	206	17	92%
24.	Morrison	472	78	86%
25.	Poindexter	134	167	55%
26.	Power	39	366	90%
27.	Raines	81	494	86%
28.	Reynolds	982	0	100%
28a.	Robertson	320	0	100%
29.	Smith	1,022	0	100%
30.	Spann	47	497	91%
31.	Sykes	51 **	452	90%
32.	Walton	845	80	91%
33.	Watkins	129	270	68%
34.	Whitfield	159	230	59%
35.	Wilkins	116	373	76%
	TOTAL	10,488	9,217	

* FN* The percentage figures here and elsewhere reflect the proportion that the children of the majority race bear to the total student enrollment. Percentages are listed here strictly as informational aids. We expressly disclaim any intimation that racial balance is the standard by which we determine the acceptability of various desegregation plans.

** FN** This plan provides for the reassignment of blacks attending Isable 5 and 6, "more or less" equally among the formerly white Lester, Key, Marshall, Sykes and Lee Schools. Therefore the desegregation reflected in those formerly white schools is limited to grades 5 and 6 only.

*** FN*** Whites assigned to these schools were assigned to Watkins under previous court order; and since Watkins serves grades 5-6 only, these grades are integrated in grades 5-6 only.

6 The District did modify the Bi-Racial Committee's plan slightly by pairing Clausell and Wilkins Schools and closing Barr School and assigning those students to Poindexter.

7 The results under the HEW Plan are:

		Under HEW Plan			
Schools	Grades	Negro	White	Percentage **	
1. Baker	1-6	153	307	67%	
2. Boyd	5-6	360	269	57%	
3. Bradley	1-6	174	203	54%	
4. Brown	3-6	530	244	68%	
5. Casey	1-4	10	362	97%	

Singleton v. Jackson Municipal Separate School Dist., 432 F.2d 927 (1970)

6.	Clausell	5-6	57	166	75%
7.	Davis	1-6	303	52	85%
8.	Dawson	1-6	420	174	75%
9.	Duling	5-6	244	171	59%
10	French	1-2	404	154	72%
.					
11	Galloway	1-6	385	162	70%
.					
12	George	1-6	83	103	57%
.					
13	Green	1-4	95	518	84%
.					
14	Isable	5-6	607	467	57%
.					
15	Johnson	3-6	790	310	72%
.					
16	Jones	4-6	676	434	61%
.					
17	Key	1-4	0	368	100%
.					
18	Lake	1-3	329	307	52%
.					
19	Lee	1-6	128	296	70%
.					
20	Lester	1-4	68	156	70%
.					
21	McLeod	1-6	51	665	93%
.					
22	McWillie	1-4	42	517	92%
.					
23	Marshall	1-4	0	432	100%
.					
24	Morrison	1-4	549	0	100%
.					
25	Poindexter	1-6	118	82	59%
.					
26	Power	1-2	267	122	68%
.					
27	Raines	1-6	261	360	58%
.					
28	Reynolds	1-4	1,056	0	100%
.					
29	Smith	1-4	488	0	100%
.					
30	Spann	1-6	47	497	91%
.					
31	Sykes	1-6	179	400	69%
.					
32	Walton	1-4	638	0	100%
.					
33	Watkins	5-6	317	259	55%
.					
34	Whitfield	1-3	369	127	74%

Singleton v. Jackson Municipal Separate School Dist., 432 F.2d 927 (1970)

35	Wilkins	1-4	116	373	76%
			10,314	9,028	
	Special Ed.		218	153	
	TOTAL		10,532	9,181	

* FN* Under this plan Barr, Robertson, and Martin would be closed.

** FN** For use of percentages see note 5 supra.

8

**HEW Plan With Modifications
as Proposed by Plaintiffs**

NAME OF SCHOOL	NEGRO	WHITE	**
I			
- All-Negro			
as of			
May 8, 1970			
1. Brown	530	244	68%
2. Isable	607	467	57%
3. Morrison	349	200	64%
4. Reynolds	576	300	66%
5. Robertson		CLOSED	
6. Smith	388	100	80%
7. Walton	438	200	69%
II			
- All-white			
as of			
May 8, 1970			
1. Casey	110	262	70%
2. Key	200	218	52%
3. Lake	329	307	52%
4. Lee	128	296	70%
5. Marshall	200	282	59%
6. Sykes	179	400	69%
III			
- Overwhelmingly			
white or Negro			
as of May 8,			
1970			
1. Baker	153	307	67%
2. Bradley	174	203	54%
3. Clausell	57	166	75%
4. Dawson	420	174	75%

Singleton v. Jackson Municipal Separate School Dist., 432 F.2d 927 (1970)

5.	Johnson	790	310	72%
6.	Jones	676	434	61%
7.	Martin		CLOSED	
8.	McLeod	51	665	93%
9.	Power	267	122	68%
10.	Spann	47	497	91%
11.	Wilkins	116	373	76%
IV	- Integrated			
	as of			
	May 8, 1970			
1.	Barr		CLOSED	
2.	Boyd	360	269	57%
3.	Davis	303	52	85%
4.	Duling	244	171	59%
5.	French	404	154	72%
6.	Galloway	385	162	70%
7.	George	83	103	57%
8.	Green	295	318	52%
9.	Lester	148	156	51%
10.	Poindexter	118	82	59%
11.	Raines	261	360	58%
12.	Watkins	317	259	55%
13.	Whitfield	369	127	74%
14.	McWillie	242	317	58%

* FN* Only the italicized schools are affected by Plaintiffs' modifications. And all grade structures and zone boundaries are identical to those of the HEW plan.

** FN** For use of percentages see note 5 supra.

9	School	N	W
	(i) (Power	39	366
	(Brown	658	0
	(ii) (Boyd	191	340
	(Walton	845	80
	(iii) (George	83	91
	(Martin	206	17
	(iv) (Robertson	320	0

(Poindexter	134	167
(v) (Lester	138	228
(Isable	517	0
(vi) (Watkins	129	270
(Morrison	472	78
(Smith	1022	0
vii(a) (Jones	1234	10
(Lake	50	615
vii(b) (Johnson	862	50
(Lake	50	615

10 The final number in the paired schools will vary depending on the option under (vii)(a) or (b), supra:

	Jones-Lake		Johnson-Lake	
	N	W	N	W
(i) - (vi)	4754	1637	4754	1637
vii(a)	1284	625	vii(b) 912	665
	----	----	----	----
TOTAL	6038	2262	5666	2302