If the courts should accept the defendants' contention that all they have to do is re-draw attendance lines and allow a type of freedom of choice, two-thirds or more of the black children in Mecklenburg County would be relegated permanently to this kind of separate but unequal education.

AVERAGE ACHIEVEMENT TEST SCORES, GRADE 6, REPORTED IN GRADE EQUIVALENT, 1965-66/1968-69

	WM	PM	SP	LANG	ACM	ACN	AAPP	SS	SC
	1965-'66 / 1968-'69	1965-'66 / 1968-'69	1965-'66 / 1968-'69	1965-'66 / 1968-'69	1965-'66 / 1968-'69	1965-'66 / 1968-'69	1965-'66 / 1968-'69	1965-'66 / 1968-'69	1965-'66 / 1968-'69
GROUP A - 100% Black Elementary									
Billingsville	37/39	39/42	43/45	36/37	37/38	41/44	38/39	42/43	37/38
Marie Davis	42/43	42/44	49/48	39/41	43/45	45/48	43/41	43/45	39/40
Double Oaks	44/40	42/40	49/46	35/36	41/39	45/44	41/37	44/40	41/37
First Ward	43/40	42/41	50/48	39/36	40/39	44/46	43/41	48/44	42/40
Lincoln Heights	45/44	44/44	52/49	44/42	45/43	46/48	43/41	47/46	42/41
Oaklawn	44/44	42/45	50/53	42/47	41/45	50/49	43/44	41/49	40/47
University Park	44/44	44/47	51/48	43/43	40/44	46/48	41/44	46/46	41/43
GROUP B - 100% White Elementary									
Devonshire	52/59	54/62	57/60	57/64	49/53	53/63	55/59	57/64	57/65
Hidden Valley	/59	/62	/61	/62	/51	/60	/59	/64	/67
Merry Oaks	62/60	66/66	66/67	66/71	53/54	59/65	67/64	70/68	73/72
Montclaire	66/67	68/72	69/70	71/76	58/60	61/67	66/68	70/71	76/77
Pinewood	67/64	68/68	71/68	71/71	58/61	62/67	68/71	72/71	73/70
Rama Road	68/67	68/72	70/71	73/76	58/61	64/67	70/70	72/73	76/78
~~Shamrock Gardens~~	~~59/56~~	~~61/57~~	~~66/57~~	~~64/62~~	~~52/53~~	~~58/57~~	~~63/57~~	~~65/61~~	~~62/61~~
Thomasboro	58/55	59/55	63/58	59/58	52/51	55/57	60/56	63/59	64/61
Windsor Park	61/64	63/68	61/66	65/69	55/53	59/63	63/62	65/69	67/72
GROUP C - Barringer	61*/46#	63*/46#	64*/50#	66*/42#	53*/45#	59*/48#	64*/44#	65*/47#	68*/45#

*100% white in 1965
84% black in 1968-69

AVERAGE ACHIEVEMENT TEST SCORES, GRADE 8, REPORTED IN GRADE EQUIVALENT, 1965-66/1968-69

	PM	SP	LANG	ACM	ACN	AAPP	SS	SC
	1965-'66 / 1968-'69	1965-'66 / 1968-'69	1965-'66 / 1968-'69	1965-'66 / 1968-'69	1965-'66 / 1968-'69	1965-'66 / 1968-'69	1965-'66 / 1968-'69	1965-'66 / 1968-'69
GROUP D - Junior High								
Randolph Road (28% black)	/80	/82	/79	/62	/79	/76	/79	/81
Williams (100% black)	55/52	67/64	55/52	52/49	58/61	58/55	56/56	55/56
Northwest (100% black)	59/58	73/71	59/56	54/50	60/61	58/58	59/57	59/58
Eastway (96% white)	84/82	85/86	83/81	74/67	79/82	81/75	83/82	87/87

Opinion and Order dated December 1, 1969

THE LAW STILL REQUIRES DESEGREGATION

Segregation in public schools was outlawed by the decisions of the Supreme Court in *Brown* v. *Board of Education,* 347 U. S. 483 (1954) and 349 U. S. 294 (1955).

The first *Brown* opinion (*Brown I*) held that racial segregation, even though physical facilities and other tangible factors might be equal, deprives Negro children of equal educational opportunities. The Court recalled prior decisions that segregation of graduate students was unlawful because it restricted the student's "ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession." The Court said:

> "Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."

Quoting a lower court opinion, the Supreme Court continued:

> "'Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendence to [retard] the educational and mental development of Negro children

and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system.'

"We conclude that in the field of public education the doctrine of 'separate but equal' has no place. *Separate educational facilities are inherently unequal.* * * *." (Emphasis added.)

* * * * *

"* * * Such segregation has long been *a nationwide problem, not merely one of sectional concern.*" (Emphasis added.)

The selection of cases for the *Brown* decision demonstrates the nationwide reach of that concern; Brown lived in Kansas and the defendant board of education was that of Topeka, Kansas; defendants in companion cases included school authorities in Delaware and the District of Columbia. Later important cases have involved not just Southern schools, but also schools in New York, Chicago, Ohio, Denver, Oklahoma City, Kentucky, Connecticut and other widely scattered places.

Court decisions setting out the principles upon which the various orders of this court have been based include the following:

SUPREME COURT CASES

Alexander v. *Holmes County* (Mississippi), No. 632 (October 29, 1969).

Brown v. *Board of Education of Topeka* (Kansas), 347 U. S. 483 (1954), 349 U. S. 294 (1955).

Cooper, Members of the Board of Directors of the Little Rock (Arkansas) *Independent School District* v. *Aaron,* 358 U. S. 1 (1958).

Green v. *County School Board of New Kent County* (Virginia), 391 U. S. 430 (1968).

Griffin v. *County School Board of Prince Edward County* (Virginia), 377 U. S. 218 (1964).

Keyes v. *Denver* (Colorado) *School District Number 1,* Application for Vacation of Stay (Justice Brennan, Supreme Court, August 29, 1969).

Monroe v. *Board of Commissioners of the City of Jackson* (Tennessee), 391 U. S. 450 (1968).

Raney v. *Board of Education of the Gould School District* (Arkansas), 391 U. S. 443 (1968).

United States v. *Montgomery County* (Alabama) *Board of Education,* 395 U. S. 225 (1969).

CIRCUIT COURT CASES

Brewer v. *School Board of City of Norfolk* (Virginia), 397 F.2d 37 (4th Cir., 1968).

Felder v. *Harnett County* (North Carolina) *Board of Education,* 409 F.2d 1070 (4th Cir., 1969).

Wanner v. *County School Board of Arlington County* (Virginia), 357 F.2d 452 (4th Cir., 1966).

Henry v. *Clarksdale* (Mississippi) *Municipal Separate School District,* 409 F.2d 682 (5th Cir., 1969) (*petition for cert. filed,* 38 U.S.L.W. 3086) (U. S. 9/2/69) (No. 545).

United States v. *Greenwood* (Mississippi) *Municipal Separate School District,* 406 F.2d 1086 (5th Cir., 1969) (*cert. denied,* 395 U. S. 907 (1969)).

United States v. *Hinds County School Board,* Nos. 28030 and 28042 (5th Cir., July 3, 1969).

Clemons v. *Board of Education of Hillsboro, Ohio,* 228 F.2d 853 (6th Cir., 1956) (*cert. denied,* 350 U. S. 1006).

United States v. *School District 151 of Cook County, Illinois* (Chicago), 404 F.2d 1125 (7th Cir., 1968) (*rehearing denied,* January 27, 1969).

DISTRICT COURT CASES

Eaton v. *New Hanover County* (North Carolina) *Board of Education,* No. 1022 (E.D. N.C., July 14, 1969).

Keyes v. *School District Number One, Denver* (Colorado), 303 F. Supp. 289 (D. Colo., 1969).

Some of these principles which apply to the Charlotte-Mecklenburg situation are:

1. Racial segregation in public schools is unlawful, *Brown I; Green* v. *New Kent County, Virginia; Clemons* v. *Hillsboro, Ohio.* Such segregation is unlawful even though not required nor authorized by state statute, *Clemons* v. *Hillsboro.* Acts of school boards perpetuating or restoring separation of the races in schools are *de jure,* unlawful discrimination, *Cooper* v. *Aaron; Keyes* v. *Denver, Colorado School Board* (August 14, 1969), approved by the Supreme Court of the United States two weeks later, *Keyes* v. *Denver,* U. S. Supreme Court, August 29, 1969.

2. Drawing school zone lines, like "freedom of transfer," is not an end in itself; and a plan of geographic zoning which perpetuates discriminatory segregation is unlawful, *Keyes* v. *Denver; Brewer* v. *Norfolk; Clemons* v. *Hillsboro; Henry* v. *Clarksdale, Mississippi; United States* v. *Hinds County; United States* v. *Greenwood.*

3. No procedure, plan, method or gimmick will legalize state maintained segregation. The constitutional test of a plan is whether it gets rid of segregation in public schools, and does it "now," *Green* v. *New Kent County; Monroe* v. *Jackson; Alexander* v. *Holmes County.*

4. Good faith of the school authorities, if it exists, does not excuse failure to desegregate the schools. ". . . The availability to the Board of other more promising courses of action may indicate a lack of good faith; and at the least *it places a heavy burden upon the Board to explain its preference for an apparently less effective method.*" *Green* v. *New Kent County.* (Emphasis added.)

5. "Natural boundaries" for school zones are not constitutionally controlling. If a zone encloses a black school in a district like this one where white students are in a heavy (71% white, 29% black) majority, the "naturalness" of the boundary or the existence of reasons for the boundary unrelated to segregation does not excuse the failure to desegregate the school, *Keyes* v. *Denver, Colorado; Henry* v. *Clarksdale; Clemons* v. *Hillsboro.*

6. It is appropriate for courts to require that school faculties be desegregated by formula, if necessary, and by a definite time or on a definite schedule, *United States* v. *Montgomery.* Faculty assignments so that each school has approximately the same ratio of black teachers as the ratio of black teachers in the school system at large are appropriate and necessary to equalize the quality of instruction in this school system, *United States* v. *Montgomery; United States* v. *Cook County; Eaton* v. *New Hanover County* (North Carolina).

7. Bus transportation as a means to eliminate segregation results of discrimination may validly be employed, *Keyes* v. *Denver; United States* v. *Cook County,* Illinois, 404 F.2d 1125, 1130 (1969).

8. Race may be considered in eliminating segregation in a school system, *Wanner* v. *Arlington County, Virginia; United States* v. *Cook County; Green* v. *New Kent County.*

9. ". . . Whatever plan is adopted will require evaluation in practice and the court should retain jurisdiction until it is clear that state imposed segregation has been completely removed." *Green* v. *New Kent County; Raney* v. *Board of Education.*

10. The alleged high cost of desegregating schools (which the court does not find to be a fact) would not be a valid legal argument against desegregation, *Griffin* v. *School Board; United States* v. *Cook County, Illinois.*

11. The fact that public opinion may oppose desegregating the schools is no valid argument against doing it, *Cooper* v. *Aaron, Green* v. *New Kent County; Monroe* v. *Jackson.*

12. Fixed ratios of pupils in particular schools will not be set. If the board in one of its three tries had presented a plan for desegregation, the court would have sought ways to approve variations in pupil ratios. In default of any such plan from the school board, the court will start with the thought, originally advanced in the order of April 23, that efforts should be made to reach a 71-29 ratio in the various schools so that there will be no basis for contending that one school is racially different from the others, but to understand that variations from that norm may be unavoidable.

13. School location and construction and renovation and enlargement affect desegregation. Courts may properly restrain construction and other changes in location or capacity of school properties until a showing is made that such change will promote desegregation rather than frustrate it, *Felder* v. *Harnett County.*

14. Where pupils live must not control where they are assigned to school, if some other approach is necessary in order to eliminate racial segregation, *Green* v. *New Kent County; Keyes* v. *Denver; Eaton* v. *New Hanover County, North Carolina Board of Education.*

15. On the facts in this record and with this background of *de jure* segregation extending full fifteen years since *Brown I,* this court is of the opinion that all the black and predominantly black schools in the system are illegally segregated, *Green* v. *New Kent County; Henry* v. *Clarksdale; United States* v. *Hinds County.*

16. The school board is endowed by Chapter 115, Section 176 of the General Statutes of North Carolina with "full and complete" and "final" authority to assign students to whatever schools the board chooses to assign them. The board may not shift this statutory burden to others. In *Green* v. *New Kent County,* the Supreme Court said of "freedom of choice":

> "Rather than foster the dismantling of the dual system the plan has operated simply to burden children and their parents with a responsibility which *Brown II* placed squarely on the School Board. The Board must . . . fashion steps which promise realistically to convert

promptly to a system without a 'white' school and a 'Negro' school but just schools."

17. Pairing of grades has been expressly approved by the appellate courts, *Green* v. *New Kent County; Felder* v. *Harnett County.* Pairing, grouping, clustering, and perhaps other methods may and will be considered and used if necessary to desegregate the schools.

18. Some 25,000 out of 84,000 children in this county ride school busses each day, and the number *eligible* for transportation under present rules may be more than 30,000. A transportation system already this massive may be adaptable to effective use in desegregating schools.

19. The school board has a duty to promote acceptance of and compliance with the law. In a concurring opinion in *Cooper* v. *Aaron,* 358 U. S. at 26 (1958), Justice Frankfurter said:

> *"That the responsibility of those who exercise power in a democratic government is not to reflect inflamed public feeling but to help form its understanding, is especially true when they are confronted with a problem like a racially discriminating public school system.* This is the lesson to be drawn from the heartening experience in ending enforced racial segregation in the public schools in cities with Negro populations of large proportions. Compliance with decisions of this Court, as the constitutional organ of the supreme Law of the Land, has often, throughout our history, depended on active support by state and local authorities. It presupposes such support. To withhold it, and indeed to use political power to try to paralyze the supreme Law,

precludes the maintenance of our federal system as we have known and cherished it for one hundred and seventy years.

"Lincoln's appeal to 'the better angels of our nature' failed to avert a fratricidal war. But the compassionate wisdom of Lincoln's First and Second Inaugurals bequeathed to the Union, cemented with blood, a moral heritage which, when drawn upon in times of stress and strife, *is sure to find specific ways and means to surmount difficulties that may appear to be insurmountable.*" (Emphasis added.)

Order

IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. All facts found in this and previous orders, and all competent evidence including plans, reports and admissions in pleadings in the record are relied upon in support of this order.

2. The November 17 plan entitled "AMENDMENT TO PLAN FOR FURTHER DESEGREGATION OF SCHOOLS" is disapproved.

3. The defendants are directed to desegregate faculties in all the schools effective not later than September 1, 1970, so that the ratio of black teachers to white teachers in each school will be approximately the same as the ratio of black teachers to white teachers in the entire school system.

4. A consultant will be designated by the court to prepare immediately plans and recommendations to the court for desegregation of the schools. The legal and practical considerations outlined in detail in earlier parts of this opinion and order are for his guidance.

5. The defendants are directed to cooperate fully with the consultant. This cooperation will include but not be limited to providing space at the headquarters of the board of education in which he may work; paying all of his fees and expenses; providing stenographic assistance and the help of business machines, draftsmen and computers if requested, along with telephone and other communications services. He shall have full access to maps, drawings, reports, statistics, computer studies, and all information about all phases of the school system which may be necessary to prepare plans or reports. He shall be supplied with

any studies and plans and partial plans for desegregation of the schools which the defendants may have. The defendants will provide this consultant with full professional, technical and other assistance which he may need in familiarizing himself with the school system and the various problems to be solved in desegregating the schools. Any and all members of the board of education who wish to cooperate in the preparation of such a plan may do so. The cooperation of the school administrators and staff will be requested and will be appreciated.

6. Action on the motion of plaintiffs for an order directing immediate desegregation of the entire system is deferred.

7. Further orders with reference to restraining construction and enlargement of schools are deferred.

8. Motion has been filed for a citation of the school board members for contempt of court. Litigants are bound by court orders and may be punished for disobedience of such orders even though such orders may ultimately be reversed on appeal, *Walker* v. *Birmingham,* 388 U. S. 307 (1967). The evidence might very well support such citations. Nevertheless, this is a changing field of law. Despite the peremptory warnings of *New Kent County* and *Holmes County,* strident voices, including those of school board members, still express doubt that the law of those cases applies to Mecklenburg County. This district court claims no infallibility. Contempt proceedings against uncompensated public servants will be avoided if possible. Action on the contempt citation is deferred.

9. If the members of the school board wish to develop plans of their own for desegregation of the schools, with-

out delaying or interfering with the work of the consultant, they may proceed to do so, and if they wish any guidance from the court they will find their guidance in the previous opinions and orders of this court and in the court decisions and principles set out in this opinion and order.

10. Jurisdiction is retained for further orders as may be appropriate.

This is the 1st day of December, 1969.

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

Order dated December 2, 1969

The court appoints as a consultant under the terms outlined in the court's order of December 1, 1969, Dr. John A. Finger, Jr., of Providence, Rhode Island.

The school board and staff are directed to cooperate with Dr. Finger as set out in the December 1, 1969 order.

This the 2nd day of December, 1969.

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

Order dated February 5, 1970

On December 2, 1969, this court appointed Dr. John A. Finger, Jr., of Providence, Rhode Isand, to study the Charlotte-Mecklenburg school system and advise the court how the schools could be desegregated. The defendant school board, by order of December 1, 1969, had been extended a fourth opportunity to submit a plan if they wished. Dr. Finger went to work; the school staff worked with him; and they have produced some extremely useful information and reports, which will be referred to in this order as the Board plan and the Finger plan.

Hearings on the plans were conducted on February 2 and February 5, 1970.

The Board plan, prepared by the school staff, relies almost entirely on geographic attendance zones, and is tailored to the Board's limiting specifications. It leaves many schools segregated. The Finger plan incorporates most of those parts of the Board plan which achieve desegregation in particular districts by re-zoning; however, the Finger plan goes further and produces desegregation of all the schools in the system.

Taken together, the plans provide adequate supplements to a final desegregation order.

The court would like again to express appreciation to Dr. Finger for the intelligence, resourcefulness and tact with which he has pursued his difficult assignment, and to Dr. William Self, Superintendent of the schools, and to his able staff, for the excellent work done by them in their difficult role of helping prepare one plan to comply with what the court believes the law requires, and simultaneously preparing another plan to suit the majority of the School Board who, at last reckoning, still did not appear to accept the court's order as representing the law of the land.

The court is also grateful to the Board's outside consultant, Mr. Weil, of Systems Associates, Inc., whose two hundred days of work and whose computer studies formed the building blocks, or points of departure, for much of the work of the others.

Recent appellate court decisions have hammered home the message that sixteen years of "deliberate speed" are long enough to desegregate tax supported schools. On October 29, 1969, in *Alexander* v. *Holmes County,* 369 U.S. 19, the Supreme Court ordered numerous Deep South school districts to be completely desegregated by January 1, 1970; schools in Atlanta, Miami and parts of Chicago have been ordered totally desegregated; the Supreme Court in January ordered February 1, 1970, desegregation of 300,000 pupils in six Gulf Coast states; the Fourth Circuit Court of Appeals in *Nesbit* v. *Statesville,* —— F.2d. —— (December 2, 1969), ordered elimination by January 1, 1970, of the racial characteristics of the last black schools in Durham, Reidsville and Statesville, North Carolina; and in *Whittenberg* v. *Greenville, South Carolina,* the Fourth Circuit Court of Appeals, in an opinion by Chief Judge Clement F. Haynsworth, Jr., has just last month ordered the desegregation by February 16, 1970, of the 58,000 students in Judge Haynsworth's own home town. Judge Robert Martin of Greenville, pursuant to that mandate, on February 2, 1970, ordered all the Greenville schools to be populated by February 16, 1970, on a basis of 80% white and 20% black.

In the *Greenville* opinion the court said:

> "These decisions leave us with no discretion to consider delays in pupil integration until September 1970. Whatever the state of progress in a particular school

> district and whatever the disruption which will be occasioned by the immediate reassignment of teachers and pupils in mid-year, there remains no judicial discretion to postpone immediate implementation of the constitutional principles as announced in *Green* v. *County School Board of New Kent County,* 391 U.S. 430; *Alexander* v. *Holmes County Bd. of Educ.,* 396 U.S. 19 (Oct. 29, 1969); *Carter* v. *West Feliciana Parish School Bd.,* —— U.S. —— (Jan. 14, 1970)."

These decisions are binding on the United States District Court for the Western District of North Carolina. Unless that were true, the Constitution would mean whatever might be the temporary notion of whichever one of 340-odd federal judges happened to hear the case. This is a matter of law, not anarchy; of constitutional right, not popular sentiment.

The order which follows is not based upon any requirement of "racial balance." The School Board, after four opportunities and nearly ten months of time, have failed to submit a lawful plan (one which desegregates all the schools). This default on their part leaves the court in the position of being forced to prepare or choose a lawful plan. The fairest way the court knows to deal with this situation was stated clearly in the December 1, 1969 order, as follows:

> "In default of any such plan from the school board, the court will start with the thought, originally advanced in the order of April 23, that efforts should be made to reach a 71-29 ratio in the various schools so that there will be no basis for contending that one school is racially different from the others, but to

understand that variations from that norm may be unavoidable."

THEREFORE, and in accordance with the specific, detailed, numbered guidelines of this court's order of December 1, 1969, IT IS ORDERED:

1. That the defendants discontinue the operation of segregated schools.

2. That the defendants take such action as is necessary to desegregate all the schools—students and faculty.

3. That desegregation of faculty be accomplished, as previously ordered, by assigning faculty (specialized faculty positions excepted) so that the ratio of black and white faculty members of each school shall be approximately the same as the ratio of black and white faculty members throughout the system.

4. That teachers be assigned so that the competence and experience of teachers in formerly or recently black schools will not be inferior to those in the formerly or recently white schools in the system.

5. That no school be operated with an all-black or predominantly black student body.

6. That pupils of all grades be assigned in such a way that as nearly as practicable the various schools at various grade levels have about the same proportion of black and white students.

7. That transportation be offered on a uniform nonracial basis to all children whose attendance in 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 the cost is not a valid legal reason for continued denial of constitutional rights.

8. That if geographic zones are used in making school assignments, the parts of a zone need not be contiguous.

9. That the defendants maintain a continuing control over the race of children in each school, just as was done for many decades before *Brown* v. *Board of Education,* and maintain the racial make-up of each school (including any new and any re-opened schools) to prevent any school from becoming racially identifiable.

10. That "freedom of choice" or "freedom of transfer" may not be allowed by the Board if the effect of any given transfer or group of transfers is to increase the degree of segregation in the school from which the transfer is requested or in the school to which the transfer is desired.

11. That the Board retain its statutory power and duty to make assignments of pupils for administrative reasons, with or without requests from parents. Administrative transfers shall not be made if the result of such transfers is to restore or increase the degree of segregation in either the transferor or the transferee school.

12. That if transfers are sought on grounds of "hardship," race will not be a valid basis upon which to demonstrate "hardship."

13. That the Board adopt and implement a continuing program, computerized or otherwise, of assigning pupils and teachers during the school year as well as at the start of each year for the conscious purpose of maintaining each school and each faculty in a condition of desegregation.

14. That the defendants report to the court weekly between now and May 15, 1970, reporting progress made in compliance with this order; and that they report thereafter on July 15, August 15, September 15 and November 1, 1970, and on February 1 and May 1, 1971.

5. That the internal operation of each school, and the assignment and management of school employees, of course be conducted on a non-racial, non-discriminatory basis.

16. The duty imposed by the law and by this order is the desegregation of schools and the maintenance of that condition. The *plans* discussed in this order, whether prepared by Board and staff or by outside consultants, such as computer expert, Mr. John W. Weil, or Dr. John A. Finger,

Jr., are *illustrations of means or partial means to that end.*[1] The defendants are encouraged to use their full "know-how" and resources to attain the *results* above described, and thus to achieve the constitutional end by any means at their disposal. The test is not the method or plan, but the *results.*

17. The choice or approval or partial approval of any proposed desegregation plan is subject to all the requirements and restrictions of the preceding sixteen paragraphs, as well as to any later requirements or restrictions set out in this order.

18. Subject to the above, the Board's pupil assignment plan for senior high school pupils is approved, with one

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1. The following are exhibits to this order:
   - A. The Board's map of proposed senior high school attendance zones.
   - B. The Board's list of proposed senior high school populations.
   - C. The Board's map of proposed junior high school attendance zones.
   - D. The Board's list of proposed junior high school populations.
   - E. Dr. Finger's map of proposed junior high school attendance zones.
   - F. Dr. Finger's list of proposed junior high school populations.
   - G. The Board's map of proposed elementary school attendance zones.
   - H. The Board's list of proposed elementary school populations.
   - I. Dr. Finger's map of proposed elementary school attendance zones.
   - J. Dr. Finger's list of proposed elementary school populations.
   - K. Dr. Finger's list of pairing and grouping of elementary schools and grades.

exception. This exception is that black students, some 300 in number, should be assigned from map grids 294D, 295C, 295D, and 318A, to attend Independence High School.

19. Although the Board junior high school plan is inferior in design and results to Dr. Finger's plan, it is a purely "home grown" product and the court would like to approve it, if it can be brought into compliance with law by desegregating Piedmont Junior High School, and by adding transportation as above indicated, and by increasing the black attendance at several outlying schools. The Board may if it wishes consider (1) re-zoning; (2) two-way transporting of pupils between outlying schools and Piedmont; (3) closing Piedmont and assigning the pupils to Albemarle Road, Carmel, McClintock and Quail Hollow. Unless the court has been notified in writing by noon of February 6, 1970, of an affirmative decision adopting one of these choices by formal Board action, the junior high schools are directed to be desegregated according to Dr. Finger's plan, as illustrated by exhibits E and F.

20. The Board's plan for elementary schools, illustrated by exhibits G and H, cannot be approved because (1) it retains nine schools 83% to 100% black, serving over half the black elementary pupils, and (2) it leaves approximately half the 31,500 white elementary students attending schools that are 86% to 100% white; and (3) it promises to provide little or no transportation in aid of desegregation, even though the plan's zones in some cases are apparently five or six miles long. The Board plan for elementaries openly rejects the duty to eliminate all the black schools.

The Finger plan uses many of the same basic attendance lines as the Board plan; however, it does not stop short of

the constitutional requirements, and by pairing and clustering groups of schools it achieves full desegregation of the elementary schools. The school staff worked out the details of this plan and are familiar with it. Its attendance zones are illustrated on the map, exhibit I; its elementary school populations are listed in exhibit J; and the pairing and grouping of the outlying and inner-city schools, grade by grade, are shown in detail on exhibit K. Subject to the qualifications previously stated, the Board is directed to follow the Finger plan with reference to elementary schools.

21. THE TIME TABLE: Deadlines to complete various phases of the program required in this order are as follows:

SENIOR HIGH SCHOOLS.—Seniors may remain in their present schools until the end of the school year; the Board may make any decision they deem wise about allowing seniors to transfer before graduation to schools where their race will be in the minority. *Eleventh and tenth graders* will be transferred to their new schools not later than the 4th day of May, 1970.

JUNIOR HIGH SCHOOLS (Grades 7, 8, 9).—Complete desegregation shall be accomplished not later than the 1st day of April, 1970.

FACULTY.—Complete desegregation of the various faculties shall be accomplished by the various times set out above for desegregation of the student bodies.

22. MODIFICATIONS.—The intention of this order is to put on the Board the full duty to bring the schools into compliance with the Constitution as above outlined, but to leave maximum discretion in the Board to choose methods that will accomplish the required result. However, it is directed

that leave of court be obtained before making any material departure from any specific requirement set out herein. The court will undertake to rule promptly on any such requests for deviation from prescribed methods.

23. APPEAL.—The court claims no infallibility and does not seek to prevent appeal from all or any part of this order, and will allow the making of any record needed to present on appeal any contention the parties desire to make, and will do what this court can to expedite such appeal. However, in accordance with *Whittenberg* v. *Greenville, supra,* this order will not be stayed pending appeal, and immediate steps to begin compliance are directed.

24. All evidence in the cause and all findings and conclusions in previous orders which support or tend to support this order are relied upon in support of this order.

25. Jurisdiction of this cause is retained for further orders.

This the 5th day of February, 1970.

James B. McMillan
United States District Judge

Research Report
January 31, 1970

The Charlotte-Mecklenburg Schools

DESEGREGATION PLAN for 1970-71

Exhibit B

Senior High Schools

School	1970-71 Capacity		1969-70				Board Plan			
	Base	+20%	B	W	T	%B	B	W	T	%B
East Mecklenburg	1700	2040	215	1925	2140	10%	360	1716	2076	17%
Garinger	1874	2249	492	2148	2640	18%	721	1914	2635	27%
Harding	1202	1442	612	720	1332	45%	395	692	1087	36%
Independence	1047	1256	101	1111	1212	9%	23	1241	1264	2%
Myers Park	1679	2015	224	1767	1991	12%	426	1883	2309	18%
North Mecklenburg	1158	1390	446	1185	1631	28%	440	998	1438	31%
Olympic	807	968	351	512	863	41%	201	687	888	23%
South Mecklenburg	1523	1828	90	2024	2114	5%	482	1846	2328	21%
West Charlotte	1593	1912	1641	0	1641	100%	597	1045	1642	36%
West Mecklenburg	1374	1649	141	1444	1585	9%	494	998	1492	33%
Total	13,957	16,749	4,313	12,836	17,149		4,139	13,020	17,159	

Research Report
January 31, 1970

Exhibit D

The Charlotte-Mecklenburg Schools

DESEGREGATION PLAN for 1970-71

Junior High Schools

School	1970-71 Capacity		1969-70				Board Plan			
	Base	+20%	B	W	T	%B	B	W	T	%B
Albemarle Road	948	1138	63	995	1058	5%	19	753	772	2%
Alexander	874	1049	328	761	1089	30%	303	698	1001	30%
Cochrane	1190	1428	72	1544	1616	5%	571	1150	1721	33%
Coulwood	704	845	101	770	871	12%	313	551	864	36%
Eastway	1093	1312	61	1356	1417	4%	375	971	1346	28%
Alexander Graham	996	1194	101	1028	1129	8%	261	888	1149	23%
Hawthorne	850	910	550	472	1022	54%	276	704	980	28%
Kennedy	801	961	802	9	811	99%	325	510	835	39%
McClintock	923	1100	84	1288	1372	6%	25	1048	1073	2%
Northwest	1068	1282	1032	1	1033		296	675	971	30%
Piedmont	631	757	408	55	463	89%	758	84	842	90%
Quail Hollow	1238	1486	129	1421	1550	9%	138	1144	1282	11%
Randolph	972	1170	279	710	989	28%	307	683	990	31%
Ranson	851	1021	246	548	794	31%	295	558	853	35%
Sedgefield	777	930	167	809	976	17%	234	612	846	28%
Smith	1093	1312	51	1436	1487	4%	330	957	1287	26%
Spaugh	826	1091	262	839	1101	24%	346	752	1098	32%
Williams	801	967	1081	0	1081	100%	336	722	1058	32%
Wilson	1044	1253	60	1145	1205	5%	346	795	1141	30%
Carmel	558	670					2	555	557	0%
J. H. Gunn (Wilgrove)	558	670					49	470	519	9%
Total	18,796	22,546	5,877	15,187	21,064		5,905	15,280	21,185	

Exhibit F

DESEGREGATION PLAN for Charlotte-Mecklenburg Schools

Junior High Schools

School	1970-71 Capacity		1969-70				Court Consultant Plan			
	Base	+20%	B	W	T	%B	B	W	T	%B
Albemarle Road	948	1138	63	995	1058	5%	292	696	988	30%
Alexander	874	1049	328	761	1089	30%	335	690	1025	33%
Cochrane	1190	1428	72	1544	1616	5%	370	984	1354	27%
Coulwood	704	845	101	770	871	12%	245	568	813	30%
Eastway	1093	1312	61	1356	1417	4%	351	839	1190	30%
Alexander Graham	996	1194	101	1028	1129	8%	359	938	1297	28%
Hawthorne	850	910	550	472	1022	54%	290	677	967	30%
Kennedy	801	961	802	9	811	99%	184	606	790	23%
McClintock	923	1100	84	1288	1372	6%	386	925	1311	30%
Northwest	1068	1282	1032	1	1033		336	736	1072	31%
Piedmont	631	757	408	55	463	89%	243	538	781	32%
Quail Hollow	1238	1486	129	1421	1550	9%	339	1050	1389	25%
Randolph	972	1170	279	710	989	28%	402	832	1234	33%
Ranson	851	1021	246	548	794	31%	264	583	847	31%
Sedgefield	777	930	167	809	976	17%	171	641	812	21%
Smith	1093	1312	51	1436	1487	4%	350	929	1279	27%
Spaugh	826	1091	262	839	1101	24%	324	807	1131	29%
Williams	801	967	1081	0	1081	100%	308	727	1035	30%
Wilson	1044	1253	60	1145	1205	5%	230	570	800	29%
Carmel	558	670					142	444	586	24%
J. H. Gunn	558	670					49	475	524	9%
Total	18,796	22,546	5,877	15,187	21,064		5,970	15,255	21,225	

Research Report
January 31, 1970

The Charlotte-Mecklenburg Schools

Exhibit H, page 1.

DESEGREGATION PLAN for 1970-71

Elementary Schools

School	1970-71 Capacity		1969-70 *				Board Plan			
	Base	+12%	B	W	T	%B	B	W	T	%B
Albemarle Rd.	432	484	4	510	514	1%	4	469	473	1%
Allenbrook	540	605	61	452	513	12%	59	496	555	11%
Ashley Park	621	696	27	574	601	4%	155	421	576	27%
Bain	702	786	33	735	768	4%	25	706	731	3%
Barringer	486	544	843	16	859	98%	203	320	523	39%
Berryhill	836	936	98	639	737	13%	247	574	821	30%
Beverly Woods	540	605	68	684	752	9%	8	648	656	1%
Billinsgville	594	665	596	0	596	100%	113	325	438	26%
Briarwood	540	605	6	680	686	1%	2	663	665	0%
Bruns Ave.	675	756	759	10	769	99%	624	73	697	90%
Chantilly	432	484	0	472	472	0%	142	303	445	32%
Clear Creek	324	363	48	229	277	17%	43	266	309	14%
Collinswood	621	696	111	443	554	20%	224	448	672	33%
Cornelius	459	514	181	235	416	44%	182	265	447	41%
Cotswold	540	605	23	537	560	4%	128	449	577	24%
Davidson	324	363	104	186	290	36%	102	174	276	32%
Marie Davis	756	847	662	0	662	100%	666	82	748	88%
Derita	783	877	150	678	828	18%	152	595	747	20%
Devonshire	648	726	0	903	903	0%	0	925	925	0%
Dilworth	648	726	90	317	407	22%	241	376	617	39%
Double Oaks	675	756	836	0	836	100%	825	3	828	100%
Druid Hills	486	544	472	3	475	99%	465	20	485	96%
Eastover	648	726	42	559	601	7%	157	478	635	25%
Elizabeth	405	454	314	125	439	72%	112	294	406	28%
Enderly Park	513	575	3	371	374	1%	119	238	357	33%

* Not including Special Education in self-contained classes

DESEGREGATION PLAN for 1970-71

Elementary Schools

School	1970-71 Capacity		1969-70				Board Plan			
	Base	+12%	B	W	T	%B	B	W	T	%B
First Ward	702	786	805	0	805	100%	770	7	777	99%
Hickory Grove	459	514	70	533	603	12%	74	556	630	12%
Hidden Valley	648	726	0	1100	1100	0%	1	1077	1078	0%
Highland	297	333	69	305	374	18%	76	237	313	24%
Hoskins	297	333	13	212	225	6%	124	219	343	36%
Huntersville	675	756	145	531	676	21%	130	554	684	19%
Huntingtowne Farms	594	665	7	603	610	1%	3	614	617	0%
Idlewild	567	635	47	581	628	7%	59	549	608	10%
Irwin Ave.			292	0	292	100%	*			
Amay James	378	423	462	3	465	99%	90	169	259	35%
Lakeview	378	423	346	89	435	80%	119	285	404	29%
Lansdowne	756	847	75	802	877	9%	79	719	798	10%
Lincoln Heights	648	726	711	0	711	100%	903	6	909	99%
Long Creek	702	786	267	468	735	36%	259	523	782	33%
Matthews	945	1058	86	802	888	10%	81	837	918	9%
Merry Oaks	486	544	0	442	442	0%	0	557	557	0%
Midwood	459	514	9	437	446	2%	116	401	517	23%
Montclaire	675	756	0	718	718	0%	1	781	782	0%
Myers Park	432	484	22	444	466	5%	150	314	464	32%
Nations Ford	621	696	43	669	712	6%	177	548	725	24%
Newell	594	665	74	438	512	14%	64	436	500	13%
Oakdale	540	605	69	517	586	12%	202	460	662	31%
Oakhurst	594	665	5	616	621	1%	92	504	596	15%
Oaklawn	594	665	584	0	584	100%	597	3	600	99%
Olde Providence	540	605	80	512	592	14%	83	461	544	15%

*distributed to surrounding schools

The Charlotte-Mecklenburg Schools

DESEGREGATION PLAN for 1970-71

Elementary Schools

School	1970-71 Capacity		1969-70				Board Plan			
	Base	+12%	B	W	T	%B	B	W	T	%B
Park Road	540	605	44	548	592	7%	41	571	612	7%
Paw Creek	594	665	27	609	636	4%	83	602	685	12%
Paw Creek Annex	270	302	30	271	301	10%				
Pineville	486	544	136	356	492	28%	123	379	502	25%
Pinewood	648	726	0	674	674	0%	0	900	900	0%
Plaza Road	459	514	80	340	420	19%	181	350	531	34%
Rama Road	648	726	1	815	816	0%	3	744	747	0%
Sedgefield	540	605	3	548	551	1%	223	364	587	38%
Selwyn	486	544	31	617	648	5%	32	459	491	7%
Shamrock Gardens	486	544	0	515	515	0%	84	496	580	15%
Sharon	459	514	72	361	433	17%	91	421	512	18%
Starmount	648	726	25	712	737	3%	67	833	900	7%
Statesville Road	648	726	333	522	855	39%	160	553	713	23%
Steele Creek	378	423	5	509	514	1%	195	475	670	29%
Thomasboro	729	816	0	690	690	0%	135	777	912	15%
Tryon Hills	486	544	309	164	473	65%	200	342	542	37%
Tuckaseegee	540	605	58	578	636	9%	57	510	567	10%
University Park	648	726	825	1	826	100%	735	132	867	85%
Villa Heights	810	907	902	83	985	92%	877	170	1047	83%
Westerly Hills	405	454	46	539	585	8%	144	332	476	30%
Wilmore	378	423	222	210	432	51%	153	250	403	38%
Windsor Park	648	726	1	748	749	0%	1	782	783	0%
Winterfield	648	726	48	688	736	7%	52	653	705	7%
Total	40,391	45,239	13,010	31,278	44,288		12,885	31,523	44,408	

DESEGREGATION PLAN for Charlotte-Mecklenburg Schools

Elementary Schools

School	1970-71 Capacity		1969-70				Court Consultant Plan			
	Base	+20%	B	W	T	%B	B	W	T	%B
Albemarle Rd.	432	434	4	510	514	1%	162	338	500	32%
Allenbrook	540	605	61	452	513	12%	135	341	476	28%
Ashley Park	621	696	27	574	601	4%	175	426	601	29%
Bain	702	786	33	735	768	4%	25	706	731	3%
Barringer	486	544	843	16	859	98%	203	320	523	39%
Berryhill	836	936	93	639	737	13%	247	574	821	30%
Beverly Woods	540	605	68	684	752	9%	186	446	632	29%
Billingsville	594	665	596	0	596	100%	113	325	438	26%
Briarwood	540	605	6	680	686	1%	256	479	735	35%
Bruns Avenue	675	756	759	10	769	99%	252	540	792	32%
Chantilly	432	484	0	472	472	0%	142	333	475	30%
Clear Creek	324	363	48	229	277	17%	43	266	309	14%
Collinswood	621	696	111	443	554	20%	224	406	630	36%
Cornelius	459	514	181	235	416	44%	182	265	447	41%
Cotswold	540	605	23	537	560	4%	128	404	532	24%
Davidson	324	363	104	186	290	36%	102	174	276	37%
Marie Davis	756	847	662	0	662	100%	193	532	725	27%
Derita	783	877	150	678	828	18%	167	625	792	21%
Devonshire	643	726	0	903	903	0%	333	624	957	35%
Dilworth	648	726	90	317	407	22%	241	376	617	39%
Double Oaks	675	756	836	0	836	100%	234	496	730	32%
Druid Hills	486	544	472	3	475	99%	158	303	461	34%
Eastover	648	726	42	559	601	7%	157	445	602	26%
Elizabeth	405	454	314	125	439	72%	132	304	436	30%
Enderly Park	513	575	3	371	374	1%	150	270	420	36%

DESEGREGATION PLAN for Charlotte-Mecklenburg Schools

Elementary Schools

School	1970-71 Capacity		1969-70				Court Consultant Plan			
	Base	+20%	B	W	T	%B	B	W	T	%B
First Ward	702	786	805	0	805	100%	265	686	951	28%
Hickory Grove	459	514	70	533	603	12%	272	439	711	38%
Hidden Valley	643	726	0	1100	1100	0%	310	679	989	31%
Highland	297	333	69	305	374	18%	76	237	313	24%
Hoskins	297	333	13	212	225	6%	139	244	383	36%
Huntersville	675	756	145	531	676	21%	130	554	684	19%
Huntingtowne Farms	594	665	7	603	610	1%	205	414	619	33%
Idlewild	567	635	47	581	628	7%	190	410	600	32%
Irwin Avenue			292	0	292	100%	*			
Amay James	373	423	462	3	465	99%	105	194	299	35%
Lakeview	378	423	346	89	435	80%	139	280	419	33%
Lansdowne	756	847	75	802	877	9%	207	496	703	29%
Lincoln Heights	648	726	711	0	711	100%	241	456	697	35%
Long Creek	702	786	267	468	735	36%	259	523	782	33%
Matthews	945	1058	36	302	880	10%	31	837	913	3%
Merry Oaks	486	544	0	442	442	0%	106	236	342	31%
Midwood	459	514	9	437	446	2%	116	446	562	21%
Montclaire	675	756	0	718	718	0%	280	504	784	36%
Myers Park	432	484	22	444	466	5%	150	445	595	25%
Nations Ford	621	696	43	669	712	6%	177	582	759	23%
Newell	594	665	74	438	512	14%	74	546	620	12%
Oakdale	540	605	69	517	586	12%	250	460	710	35%
Oakhurst	594	665	5	616	621	1%	197	534	731	27%
Oaklawn	594	665	584	0	584	100%	226	594	820	28%
Olde Providence	540	605	80	512	592	14%	145	351	496	29%

* Assigned from area to increase desegregation
Oakhurst 105B
Shamrock Gardens 90B
Thomasboro 95B

DESEGREGATION PLAN (Cont'd)

Elementary Schools

School	197071 Capacity		1969-70							
	Base	+20%	B	W	T	%B	B	W	T	%B
Park Road	540	605	44	548	592	7%	148	359	507	29%
Paw Creek	594	665	27	609	636	4%	160	395	555	29%
Paw Creek Annex	270	302	30	271	301	10%	83	209	292	28%
Pineville	486	544	136	356	492	28%	123	379	502	25%
Pinewood	648	726	0	674	674	0%	283	697	980	29%
Plaza Road	459	514	80	340	420	19%	181	350	531	34%
Rama Road	648	726	1	815	816	0%	273	493	766	36%
Sedgefield	540	605	3	548	551	1%	223	364	587	38%
Selwyn	486	544	31	617	648	5%	150	309	459	33%
Shamrock Gardens	486	544	0	515	515	0%	174	511	685	25%
Sharon	459	514	72	361	433	17%	123	245	368	33%
Starmount	648	726	25	712	737	3%	217	441	658	33%
Statesville Road	648	726	333	522	855	39%	160	553	713	23%
Steele Creek	378	423	5	509	514	1%	195	475	670	29%
Thomasboro	729	816	0	690	690	0%	230	770	1000	23%
Tryon Hills	486	544	309	164	473	65%	107	262	369	29%
Tuckaseegee	540	605	58	578	636	9%	119	300	419	28%
University Park	648	726	825	1	826	100%	260	461	721	36%
Villa Heights	810	907	902	83	985	92%	265	668	933	28%
Westerly Hills	405	454	46	539	585	8%	144	332	476	30%
Wilmore	378	423	222	210	432	51%	153	250	403	38%
Windsor Park	648	726	1	748	749	0%	272	561	833	33%
Winterfield	648	726	48	688	736	7%	261	537	798	33%
Total	40,391	45,239	13,010	31,278	44,288		12,984	31,386	44,370	

Exhibit K, page 1.

ELEMENTARY SCHOOLS TO BE PAIRED

Present School .o Count	1 - 4 B	 W	5 - 6 B	 W	Total Pupils
Albemarle Road	2	338	2	174	516
Allenbrook	0	341	0	156	497
Beverly Woods	1	446	1	249	697
Briarwood	4	477	2	220	703
Bruns Avenue	526	0	246	0	772
Marie Davis	431	59	193	26	709
Devonshire	0	624	0	276	900
Double Oaks	585	2	232	0	819
Druid Hills	310	2	158	1	471
First Ward	533	0	262	0	795
Hickory Grove	54	329	16	208	607
Hidden Valley	0	677	0	302	979
Huntingtowne Farms	0	414	0	195	609
Idlewild	0	410	0	163	573
Lansdowne	2	496	1	291	790
Lincoln Heights	456	0	239	0	695
Merry Oaks	0	236	0	119	355
Montclaire	0	504	0	217	721
Oaklawn	405	0	193	0	598
Olde Providence	2	351	1	146	500
Park Road	0	300	0	160	460
Paw Creek	16	395	11	214	636
Paw Creek Annex	27	209	3	53	292
Pinewood	0	697	0	346	1043
Rama Road	3	493	0	244	740
Selwyn	0	284	0	188	472
Sharon	0	245	0	117	362
Starmount	19	441	6	228	694
Tryon Hills	218	110	91	54	473
Tuckaseegee	49	300	19	171	539
University Park	550	0	260	0	810
Villa Heights	683	114	264	48	1109
Windsor Park	0	515	1	233	749
Winterfield	0	494	0	199	693
Total	4,876	10,303	2,201	4,998	22,378

Exhibit K.

The Charlotte-Mecklenburg Schools
ELEMENTARY SCHOOLS PAIRED

Grade 1-4 Schools	B	W	T	%	Grade 5-6 Schools	B	W	T	%
Huntingtowne Farms Sharon Starmount	545	1100	1645	33	Bruns Avenue	252	540	792	32
Park Road Pinewood	431	1056	1487	29	Marie Davis	193	532	725	27
Briarwood Devonshire	589	1103	1692	35	Double Oaks	234	496	730	32
Hidden Valley	310	679	989	31	Druid Hills	158	303	461	34
Beverly Woods Lansdowne Olde Providence	538	1293	1831	29	First Ward	265	686	951	28
Albemarle Road Idlewild Merry Oaks	458	984	1442	32	Lincoln Heights	241	456	697	35
Allenbrook Paw Creek Paw Creek Annex Tuckaseegee	497	1245	1742	29	Oaklawn	226	594	820	28
Hickory Grove	272	439	711	38	Tryon Hills	107	262	369	29
Montclaire Rama Road	553	997	1550	36	University Park	260	461	721	36
Selwyn Windsor Park Winterfield	683	1407	2090	33	Villa Heights	265	668	933	28
Total	4,876	10,303	15,179			2,201	4,998	7,199	

Amendment, Correction or Clarification of Order of February 5, 1970 dated March 3, 1970

Paragraph 7 of the February 5, 1970, order read in part as follows:

> "7. That transportation be offered on a uniform non-racial basis to all children whose attendance in 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 February 5, estimates have been made by defendants that paragraph 7 would require transporting more than 23,000 pupils rather than 10,000 to 14,000, as estimated at the hearing. Upon reviewing the evidence introduced since that hearing, it appears that these higher estimates may be based on construing the above language of paragraph 7 so as to require an offer of transportation to all children who live more than 1½ miles from their school, including city children who are not now entitled to transportation. These, according to the testimony, may number as many as 13,000.

The court regrets any lack of clarity in the order which may have given rise to this interpretation. Paragraph 7 was never intended to require transportation beyond that now provided by law for city children who are not reassigned, nor for those whose reassignments are not required by the desegregation program.

Accordingly, paragraph 7 of the February 5, 1970 order is amended by deleting the words "attendance in any school" and inserting the words "reassignment to any school," in the first sentence.

This the 3rd day of March, 1970.

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

Court of Appeals Order Granting Stay Order of March 5, 1970

ORDER

An application for a stay pending appeal of the order of the District Court dated February 5, 1970 made to Judge Craven was by him referred to the entire Court pursuant to Rule 8 of the Federal Rules of Appellate Procedure.

Upon consideration by the full Court, it appears that disposition of this appeal will depend in part upon a resolution of factual questions as yet undetermined in the District Court. Specifically, the parties are in wide disagreement as to the impact of the order upon the School Board's transportation system, the number of pupils for whom transportation will be required under the order, the number of school buses needed to provided such transportation, their availability, and the cost of their acquisition and operation. The resolution of such factual issues is necessary to an orderly consideration of the issues on appeal insofar as they are directed to the order's requirement that transportation be provided for pupils reassigned under the order.

To facilitate the hearing and the disposition of this appeal, the District Court is requested, after such evidentiary hearings as may be necessary, to make supplemental findings of fact respecting the general issue of busing and the effect of its order with respect to the number of pupils transported, the number of buses required, their availability, and the additional capital and operating costs of transportation.

The District Court is requested, if possible, to file a supplemental order or memorandum, including such findings of fact, by March 20, 1970.

Court of Appeals Order Granting Stay Order of March 5, 1970

This appeal is accelerated. The hearing of the appeal will be scheduled in the Court of Appeals in Richmond, Virginia, on April 9, 1970 and the attorneys for all parties are directed to file their briefs in the office of the Clerk of the Court of Appeals for the Fourth Circuit not later than Tuesday, April 7, 1970.

Since it appears that the appeal cannot be heard and determined prior to April 1, 1970, the date for implementation of the first phase of the order of the District Court, and since the Court of Appeals is presently unable to appraise, in the absence of the requested additional findings of fact, the impact of the busing requirements,

IT IS NOW ORDERED that the order of the District Court dated February 5, 1970 be, and it hereby is, stayed insofar as it requires the reassignment of pupils for whom transportation would be required under the order but who are now not transported or who are now being transported at substantially less distance and at substantially less expense, such reassignments being those arising out of the pairing and clustering of schools with resulting cross-busing.

To the extent that the stay granted by this order requires other modifications in the District Court's order, such modifications as may appear appropriate to the District Court to achieve a cohesive and efficient system of public education are authorized.

Except with respect to the busing requirements of the order which are hereby stayed and the resulting necessary modifications hereby authorized, the application for a stay is denied, and implementation of the order of the District Court is directed at the times and in the manner specified

Court of Appeals Order Granting Stay Order of March 5, 1970

therein, subject to the further orders of this Court and the ultimate disposition of the appeal. This is in conformity with the general direction of the Supreme Court that orders of the District Court shall be implemented pending the hearing and determination of appeals from such orders. Alexander v. Holmes County Board of Education, 396 U.S. 19; Carter v. West Feliciana Parish School Board, — U.S. — (January 14, 1970).

By direction of the Court.

/s/ CLEMENT L. HAYNSWORTH, JR.
Chief Judge, Fourth Circuit

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-

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.

Supplemental Findings of Fact dated March 21, 1970

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

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-

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.

Supplemental Findings of Fact dated March 21, 1970

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

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

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-

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, 1963.

GRADE 6 AVERAGE ACHIEVEMENT TEST SCORES, SHOWN IN GRADE EQUIVALENT (such as 6.2 = 6th grade, 2nd month), 1963-64.

SCHOOL	YEAR BUILT	YEARS OF ADDITIONS	NO. OF MOBILE UNITS	WORD MEANING	PARAGRAPH MEANING	SPELLING	LANGUAGE	ACM (MATH)	ACN (MATH)	AADD (MATH)
BURNS AVENUE	1963	--	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 1963	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 1963	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

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,

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-

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 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

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

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

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

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.

(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 1½ miles from their assigned schools. If the board wants to transport children who live less than 1½ 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 1½ to perhaps 1¾ 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

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:

	Net Additional Transportees	*Number of Busses Needed*
Senior Highs	1,500	20
Junior Highs	2,500	28
Elementaries:		
Re-zoned	1,300	10
Paired and Grouped	8,000	80
Totals	13,300	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*

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

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.

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

Supplemental Memorandum dated March 21, 1970

Pursuant to the order of the Fourth Circuit Court of Appeals, filed March 5, 1970, this memorandum is issued.

Previous orders cover more than one hundred pages. The motions and exhibits and pleadings and evidence number thousands of pages, and the evidence is several feet thick. It may be useful to reviewing authorities to have a brief summary of the case in addition to the supplemental facts on the questions of transportation.

Before 1954, the schools in Charlotte and Mecklenburg County were segregated by state law. The General Assembly, in response to Brown v. Board of Education, adopted the Pupil Assignment Act of 1955-56, North Carolina General Statutes, §115-176, which was quoted in the April 23, 1969 order and which is still the law of North Carolina. It provides that school boards have full and final authority to assign children to schools and that no child can be enrolled in nor attend a school to which he has not been so assigned.

"Freedom of choice" to pick a school has never been a right of North Carolina public school students. It has been a courtesy offered in recent years by some school boards, and its chief effect has been to preserve segregation.

Slight token desegregation of the schools occurred in the years following *Brown.* The Mecklenburg County and the Charlotte City units were merged in 1961.

This suit was filed in 1965, and an order was entered in 1965 approving the school board's then plan for desegregation, which was substantially a freedom of choice plan coupled with the closing of some all-black schools.

There was no further court action until 1968, when a motion was filed requesting further desegregation. Most

white students still attended "white" schools and most black students still attended "black" schools. The figures on this subject were analyzed in this court's opinion of April 23, 1969 (300 F.Supp. 1358 (1969)), in which the background and history of local segregation and its continuing discriminatory nature were analyzed at length. In that order the court ruled that substantial progress had been made and that many of the alleged acts of discrimination were not proved.

However, certain significant findings and conclusions were made which have been of record without appeal for eleven months. These include the following:

1. The schools were found to be unconstitutionally segregated.

2. Freedom of choice had failed; no white child had chosen to attend any black school, and freedom of choice promoted rather than reduced segregation.

3. The concentration of black population in northwest Charlotte and the school segregation which accompanied it were primarily the result of discriminatory laws and governmental practices rather than of natural "neighborhood" forces. (This finding was reaffirmed in the order of November 7, 1969.)

4. The board had located and controlled the size and population of schools so as to maintain segregation.

5. The plan approved and put into effect in 1965 had not eliminated unlawful segregation.

6. The defendants operate a sizeable fleet of busses, serving over 23,000 children at an average annual cost (to state and local governments combined) of not more than $40 per year per pupil.

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7. Transportation by bus is a legitimate tool for school boards to use to desegregate schools.

8. Faculties were segregated, and should be desegregated.

9. Under *Green* v. *New Kent County School Board,* 391 U.S. 430 (1968), there was now an active duty to eliminate segregation.

The board was directed to submit a plan to desegregate the schools.

The order produced a great outcry from school board members and others. It also produced a plan which called for the closing of Second Ward, the only black high school located near a white neighborhood; and it produced no rezoning, no elimination of gerrymandering, and only minor changes in the pupil assignment plan. It did produce an undertaking to desegregate the faculties. The plan was reviewed in the court order of June 20, 1969, in which the court approved the provision for offering transportation to children transferring from majority to minority situations and directed the preparation of a plan for pupil desegregation.

The court also specifically found that gerrymandering had been taking place; and several schools were cited as illustrations of gerrymandering to promote or preserve segregation.

In June of 1969, pursuant to the hue and cry which had been raised about "bussing," Mecklenburg representatives in the General Assembly of North Carolina sought and procured passage of the so-called "anti-bussing" statute, N.C. G.S. 115-176.1. That statute reads as follows:

"§115-176.1. Assignment of pupils based on race, creed, color or national origin prohibited. —No person shall be refused admission into or be excluded from any public school in this State on account of

race, creed, color or national origin. No school attendance district or zone shall be drawn for the purpose of segregating persons of various races, creed, colors or national origins from the community.

"Where administrative units have divided the geographic area into attendance districts or zones, pupils shall be assigned to schools within such attendance districts; provided, however, that the board of education of an administrative unit may assign any pupil to a school outside of such attendance district or zone in order that such pupil may attend a school of a specialized kind including but not limited to a vocational school or school operated for, or operating programs for, pupils mentally or physically handicapped, or for any other reason which the board of education in its sole discretion deems sufficient. No student shall be assigned or compelled to attend any school on account of race, creed, color or national origin, or for the purpose of creating a balance or ratio of race, religion or national origins. Involuntary bussing of students in contravention of this article is prohibited, and public funds shall not be used for any such bussing.

"*The provisions of this article shall not apply* to a temporary assignment due to the unsuitability of a school for its intended purpose nor *to any assignment or transfer necessitated by overcrowded conditions or other circumstances which, in the sole discretion of the school board, require assignment or reassignment* .

"The provisions of this article shall not apply to an application for the assignment or reassignment by the parent, guardian or person standing in loco parentis of any pupil or to any assignment made pursuant to a choice made by any pupil who is eligible

to make such choice pursuant to the provisions of a freedom of choice plan voluntarily adopted by the board of education of an administrative unit. (1969, c. 1274.)"

The board's next plan was filed July 29, 1969, and was approved for 1969-70 by the order of August 15, 1969. The August 15 order contained the following paragraph:

"The most obvious and constructive element in the plan is that the School Board has reversed its field and has accepted its affirmative constitutional duty to desegregate pupils, teachers, principals and staff members 'at the earliest possible date.' It has recognized that where people live should not control where they go to school nor the quality of their education, and that transportation may be necessary to comply with the law. It has recognized that easy methods will not do the job; that rezoning of school lines, perhaps wholesale; pairing, grouping or clustering of schools; use of computer technology and all available modern business methods can and must be considered in the discharge of the Board's constitutional duty. This court does not take lightly the Board's promises and the Board's undertaking of its affirmative duty under the Constitution and accepts these assurances at face value. They are, in fact, the conclusions which necessarily follow when any group of women and men of good faith seriously study this problem *with knowledge of the facts of this school system and in light of the law of the land.*"

The essential action of the board's July 29, 1969 plan was to close seven inner-city black schools and to re-assign their pupils to designated white suburban schools, and to

transport these children by bus to these suburban schools. In addition, it was proposed to re-assign 1,245 students from named black schools to named suburban white schools and provide them transportation.

The total of this one-way transportation of black students only to white schools under this plan was stated to be 4,245 children.

No problem of transportation or other resources was raised or suggested.

The evidence of the defendants is that the property value of the schools thus closed exceeds $3,000,000. For the most part, that property stands idle today.

The "anti-bussing" law was not found by the board to interfere with this proposed wholesale re-assignment and "massive bussing," of black children only, for purposes of desegregation.

The plan, by order of August 15, 1969, was approved on a one-year basis only, and the board was directed to prepare and file by November 17, 1969, a plan for complete desegregation of all schools, to the maximum extent possible, by September 1, 1970.

The defendants filed a motion asking that the deadline to prepare a plan be extended from November 17, 1969, to February 1, 1970. The court called for a report on the results of the July 29, 1969 plan. Those results were outlined in this court's order of November 7, 1969. In substance, the plan which was supposed to bring 4,245 children into a desegregated situation had been handled or allowed to dissipate itself in such a way that only about one-fourth of the promised transfers were made; and as of now only 767 black children are actually being transported to suburban white schools instead of the 4,245 advertised when the plan was proposed by the board. (See defendants'

March 13, 1970 response to plaintiffs' requests for admissions.)

The meager results of eight months of planning were further set out in this court's November 7, 1969 order, as follows:

"THE SITUATION TODAY

"The following table illustrates the racial distribution of the present school population:

SCHOOLS READILY IDENTIFIABLE AS WHITE

% WHITE	NUMBER OF SCHOOLS	NUMBERS OF STUDENTS WHITE	BLACK	TOTALS
100%	9	6,605	2	6,607
98–99%	9	4,801	49	4,850
95–97%	12	10,836	505	11,341
90–94%	17	14,070	1,243	15,313
86–89%	10	8,700	1,169	9,869
	57	45,012	2,968	47,980

SCHOOLS READILY IDENTIFIABLE AS BLACK

% BLACK	NUMBER OF SCHOOLS	NUMBERS OF STUDENTS WHITE	BLACK	TOTALS
100%	11	2	9,216	9,218
98–99%	5	41	3,432	3,473
90–97%	3	121	1,297	1,418
56–89%	6	989	2,252	3,241
	25	1,153	16,197	17,350

SCHOOLS NOT READILY IDENTIFIABLE BY RACE

% BLACK	NUMBER OF SCHOOLS	NUMBERS OF STUDENTS WHITE	BLACK	TOTALS
32–49%	10	4,320	2,868	7,188
17–20%	8	5,363	1,230	6,593
22–29%	6	3,980	1,451	5,431
	24	13,663	5,549	19,212
TOTALS:	106	59,828	24,714	84,542

Some of the data from the table, re-stated, is as follows:

Number of schools	106
Number of white pupils	59,828
Number of black pupils	24,714
Total pupils	84,542
Per cent of white pupils	71%
Per cent of black pupils	29%
Number of "white" schools	57
Number of white pupils in those schools	45,012
Number of "black" schools	25
Number of black pupils in those schools	16,197
Number of schools not readily identifiable by race	24
Number of pupils in those schools	19,212
Number of schools 98-100% black	16
Negro pupils in those schools	12,648
Number of schools 98-100% white	18
White pupils in those schools	11,406

"Of the 24,714 Negroes in the schools, something above 8,500 are attending 'white' schools or schools not readily identifiable by race. *More than 16,000, however, are obviously still in all-black or predominantly black schools.* The 9,216 in 100% black situations are considerably more than the number of black students in Charlotte in 1954 at the time of the first *Brown* decision. The black school problem has not been solved.

"The schools are still in major part segregated or 'dual' rather than desegregated or 'unitary.'

"The black schools are for the most part in black residential areas. However, that does not make their segregation constitutionally benign. In previous opinions the facts

respecting their locations, their controlled size and their population have already been found. Briefly summarized, these facts are that the present location of white schools in white areas and of black schools in black areas is the result of a varied group of elements of public and private action, all deriving their basic strength originally from public law or state or local governmental action. These elements include among others the legal separation of the races in schools, school busses, public accommodations and housing; racial restrictions in deeds to land; zoning ordinances; city planning; urban renewal; location of public low rent housing; and the actions of the present School Board and others, before and since 1954, in locating and controlling the capacity of schools so that there would usually be black schools handy to black neighborhoods and white schools for white neighborhoods. There is so much state action embedded in and shaping these events that the resulting segregation is not innocent or *'de facto,'* and the resulting schools are not 'unitary' or desegregated.

"Freedom of Choice

"Freedom of choice has tended to perpetuate segregation by allowing children to get out of schools where their race would be in a minority. The essential failure of the Board's 1969 pupil plan was in good measure due to freedom of choice.

"As the court recalls the evidence, it shows that *no white students have ever chosen to attend any of the 'black' schools.*

"Freedom of choice does not make a segregated school system lawful. As the Supreme Court said in *Green* v. *New Kent County,* 391 U. S. 430 (1968):

> "'* * * If there are reasonably available other ways, such for illustration as zoning, promising speedier and

more effective conversion to a unitary, nonracial school ysstem, "freedom of choice" must be held unacceptable.'

"Redrawing attendance lines is not likely to accomplish anything stable toward obeying the constitutional mandate as long as freedom of choice or freedom of transfer is retained. The operation of these schools for the foreseeable future should not include freedom of choice or transfer except to the extent that it reduces segregation, although of course the Board under its statutory power of assignment can assign any pupil to any school for any lawful reason."

(The information on the two previous pages essentially describes the condition in the Charlotte-Mecklenberg schools today.)

Meanwhile, on October 29, 1969, the Supreme Court in *Alexander* v. *Holmes County,* 396 U. S. 19 (1969), ordered thirty Mississippi school districts desegregated immediately and said that the Court of Appeals

"... *should have denied all motions for additional time* because continued operation of *segregated schools* under a standard of allowing all deliberate speed for desegregation is no longer constitutionally permissible. *Under explicit holdings of this Court, the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools. Griffin* v. *School Board,* 377 U.S. 218, 234 (1964); *Green* v. *School Board of New Kent County,* 391 U. S. 430, 439, 442 (1968)." (Emphasis added.)

Because of this action and decision of the Supreme Court, this court did not feel that it had discretion to grant the requested time extension, and it did not do so.

Supplemental Memorandum dated March 21, 1970

The board then filed a further desegregation plan on November 17, 1969. The plan was reviewed in the order of December 1, 1969. It was not approved because it rejected the goal of desegregating all the schools or even all the black schools. It proposed to concentrate on methods such as rezoning and freedom of choice and to discard any consideration of pairing, grouping, clustering and transporting or other methods. It proposed to retain numerous all-black schools.

The performance results, set out in previous orders, show that the all-black schools lag far behind white schools or desegregated schools.

The court, in an order dated December 1, 1969, reviewed the recent decisions of courts and laid out specific guidelines for the preparation of a plan which would desegregate the schools. A consultant, Dr. John A. Finger, Jr., was appointed to draft a plan for the desegregation of the schools for use of the court in preparing a final order. The school board was authorized and encouraged to prepare another plan of its own if it wished.

Dr. Finger worked with the school board staff members over a period of two months. He drafted several different plans. When it became apparent that he could produce and would produce a plan which would meet the requirements outlined in the court's order of December 1, 1969, the school staff members prepared a school board plan which would be subject to the limitations the board had described in its November 17, 1969 report. The result was the production of two plans—the board plan and the plan of the consultant, Dr. Finger.

The detailed work on both final plans was done by the school board staff.

The high school plan prepared by the board was recommended by Dr. Finger to the court with one minor change.

This change involved transporting three hundred inner city black children to Independence High School. As to high school students, then, the plan which was ordered by the court to take effect on May 4, 1970 *is* the school board's plan, with transportation added for three hundred students. The proportion of black children in the high schools varies from 17% to 36% under this plan.

For junior high schools, separate plans were prepared by Dr. Finger and by the board. The board plan would have used zoning to desegregate all the black junior high schools except Piedmont, which it would have left 90% black. The Finger plan employed re-zoning as far as appeared feasible, and then provided for transportation between inner city black zones and outlying white schools to desegregate all the schools, including Piedmont.

The court offered the school board the options of (1) rezoning, or (2) closing Piedmont, or (3) two-way transport of students between Piedmont and other schools, or (4) accepting the Finger plan which desegregates all junior high schools.

The board met and elected to adopt the Finger plan rather than close Piedmont or rearrange their own plan. The Finger plan may require the transportation of more students than the board plan would have required, but it handles the transportation more economically and efficiently, and does the job of desegregating the junior high schools. The percentage of black students in the junior high schools thus constituted will vary from 9% to 33%.

The transportation of junior high students called for in the plan thus adopted by the board pursuant to the court order of February 5, 1970, is essentially the same sort that was adopted without hesitation for 4,245 black children when the seven black inner city schools were closed in 1969.

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For elementary schools the problem is more complicated. Dr. Finger prepared several plans to desegregate the elementary schools and reviewed them with the school staff. It was apparent that even the gerrymandering considered by the board could not desegregate all the elementary schools, and that without transportation there is no way by which in the immediate future the continuing effects of state imposed segregation can be removed. Dr. Finger prepared a plan which proposed re-zoning of as many schools as could be desegregated by re-zoning and which then proposed pairing or grouping of schools. By pairing or grouping, a black school and one or more white schools could be desegregated by having grades one through four, black and white, attend the white schools, and by having grades five and six, black and white, attend the black school, and by providing transportation where needed to accomplish this.

The original Finger plan proposed to group black inner city schools with white schools mostly in the south and southeast perimeter of the district.

The school staff drafted a plan which went as far as they could go with re-zoning and stopped there, leaving half the black elementary children in black schools and half the white elementary children in white schools.

In other words, both the plan eventually proposed by the school board and the plan proposed by Dr. Finger went as far as was thought practical to go with re-zoning. The distinction is that the Finger plan goes ahead and does the job of desegregating the black elementary schools, whereas the board plan stops half way through the job.

In its original form the Finger plan for elementary schools would have required somewhat less transportation than its final form, but would have been more difficult to

put into effect rapidly. The pressure of time imposed by decisions of the Supreme Court and other appellate courts had become such that there was concern lest there be an order from one of the appellate courts for immediate February or March desegregation of the entire system. The school staff therefore, based on Finger's guidelines, prepared a final draft of his plan incorporating pairing, grouping and transporting on a basis which would better allow for early implementation with a minimum of administrative complications, in lieu of his original plan.

The result is that the plan for elementary schools which is known as the "Finger plan" was prepared in detail by the school staff and incorporates the thought and work of the staff on the most efficient method to desegregate the elementary schools.

The time table originally adopted by this court in April of 1969 was one calling for substantial progress in 1969 and complete desegregation by September 1970. However, on October 29, 1969, in *Alexander* v. *Holmes County,* the Supreme Court ordered immediate desegregation of several Deep South school systems and said that the Court of Appeals *"should have denied all motions for additional time."* The Supreme Court adhered to that attitude in all decisions prior to this court's order of February 5, 1970. In *Carter* v. *West Feliciana Parish,* —— U. S. —— (January 14, 1970), they reversed actions of the Fifth Circuit Court of Appeals which had extended time for desegregating hundreds of thousands of Deep South children beyond February 1, 1970. In *Nesbit* v. *Statesville, et al.,* 418 F.2d 1040, the Fourth Circuit Court of Appeals on December 2, 1969, ordered the desegregation by January 1, 1970, of schools in Statesville, Reidsville and Durham, North Carolina. Referring to the *Alexander* v. *Holmes County* decision, the Fourth Circuit said:

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> "The clear mandate of the Court is immediacy. *Further delays will not be tolerated in this circuit.*" (Emphasis added.)

In that opinion the Court directed this district court to adopt a plan on December 19, 1969, for the City of Statesville, effective January 1, 1970, which *"must provide for the elimination of the racial characteristics of Morningside School by pairing, zoning or consolidation. . . ."* As to Durham and Halifax, Virginia, courts were ordered to accomplish the necessary purpose by methods including pairing, zoning, reassignment or *"any other method that may be expected to work."*

In *Whittenburg* v. *Greenville County, South Carolina,* —— F.2d —— (January 1970), the Fourth Circuit Court of Appeals, citing *Holmes County* and *Carter* v. *West Feliciana Parish,* said:

> "More importantly the Supreme Court said emphatically it meant precisely what it said in *Alexander* that general reorganization of school systems is requisite now, that *the requirement is not restricted to the school districts before the Supreme Court in Alexander, and that Courts of Appeals are not to authorize the postponement of general reorganization until September 1970.*" (Emphasis added.)

As to *Greenville,* in a case involving 58,000 children, the Court said that

> "The plan for *Greenville* may be based upon the revised plan submitted by the school board *or upon any other plan that will create a unitary school system.*" (Emphasis added.)

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The Court further said:

> *"The District Court's order shall not be stayed pending any appeal which may be taken to this court,* but, in the event of an appeal, modification of the order may be sought in this court by a motion accompanied by a request for immediate consideration."

Upon rehearing the Fourth Circuit Court of Appeals said on January 26, 1970:

> *"The proper functioning of our judicial system requires that subordinate courts and public officials faithfully execute the orders and directions of the Supreme Court.* Any other course would be fraught with consequences, both disastrous and of great magnitude. *If there are appropritae exceptions,* if the District Courts and the Courts of Appeals are to have some discretion to permit school systems to finish the current 1969-1970 school year under current methods of operation, *the Supreme Court may declare them, but no member of this court can read the opinions in* CARTER *as leaving any room for the exercise by this court in this case of any discretion* in considering a request for postponement of the reassignment of children and teachers until the opening of the next school year.
>
> "For these reasons the petition for rehearing and for a stay of our order must be denied." (Emphasis added.)

The above orders of the Supreme Court and the Fourth Circuit Court of Appeals are the mandates under which this court had to make a decision concerning the plan to be adopted and the time when the plan should be implemented.

Supplemental Memorandum dated March 21, 1970

This court conducted hearings on February 2 and February 5, 1970, upon the content and the effective date of the plans for desegregation of the Charlotte-Mecklenburg schools. On February 2nd, Mr. Waggoner, the attorney for the school board, requested the court to adopt a time table under which the elementary schools would be desegregated immediately after Easter (about April 1st) and the junior highs and senior highs would be desegregated in May, about the third week before the end of school. Dr. Self, the school superintendent, requested essentially the same time table.

Dr. Self testified that the job could be done as to all students in the times requested if transportation could be arranged; and he and Mr. Waggoner indicated that by staggering hours of school and by effective use of busses the transportation problem might be solved.

The Supreme Court in *Griffin* v. *Prince Edward County,* 377 U. S. 218 (1964), had held that a school board could and should validly be required by a district court to reopen a whole county school system rather than keep it closed to avoid desegregation, even though levying taxes and borrowing money might be necessary.

In view of the decisions above mentioned and the facts before the court, it appeared to this court that the undoubted difficulties and inconveniences and expense caused by transferring children in mid-year to schools they did not choose would have to be outweighed by the mandates of the Supreme Court and the Fourth Circuit Court of Appeals and that this court had and has a duty to require action now.

On February 5, 1970, therefore, a few days after the second *Greenville* opinion, this court entered its order for desegregation of the schools.

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The time table set in the February 5, 1970 order is precisely the time table suggested by Mr. Waggoner, the attorney for the defendants, in the record of the February 2, 1970 hearing.

Paragraph 16 of the February 5, 1970 order reads:

> "The duty imposed by the law and by this order is the desegregation of schools and the maintenance of that condition. The *plans* discussed in this order, whether prepared by Board and staff or by outside consultants, such as computer expert, Mr. John W. Weil, or Dr. John A. Finger, Jr., are *illustrations of means or partial means to that end.* The defendants are encouraged to use their full 'know-how' and resources to attain the *results* above described, and thus to achieve the constitutional end by any means at their disposal. The test is not the method or plan, but the *results.*"

The above summary is an outline only of the most significant steps which have brought this case to its present position. Details of all the developments mentioned in this summary appear in previous orders and in the lengthy evidence.

Pursuant to the direction of the Circuit Court, this court has made and is filing contemporaneously herewith supplemental detailed findings of fact bearing on the transportation question.

This the 21st day of March, 1970.

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

Order dated March 25, 1970

In the original order of April 23, 1969, and in the order of August 15, 1969, the projected time for completion of desegregation of the schools was set for September 1970. The court did not then consider and never has at any time considered that wholesale mid-year or mid-term transfers of pupils or teachers were desirable. Furthermore, it was contemplated by all parties that this time table would allow time for orderly development of plans as well as for appeal by all who might wish to appeal.

On October 29, 1960, in *Alexander* v. *Holmes County,* the Supreme Court ordered the immediate desegregation of schools involving many thousands of Mississippi school children. In *Carter* v. *West Feliciana Parish,* —— U. S. —— (January 14, 1970), the Supreme Court reversed the Fifth Circuit Court of Appeals and set a February 1, 1970 deadline to desegregate schools in Gulf Coast states involving many thousands of children. In *Nesbit* v. *Statesville,* 418 F.2d 1040, on December 2, 1969, the Fourth Circuit read *Alexander* as follows:

> "The clear mandate of the Court is immediacy. Further delays will not be tolerated in this circuit."

In *Whittenburg* v. *Greenville County, South Carolina,* —— F.2d — —(January 1970), the Fourth Circuit Court of Appeals read *Alexander* to say that

> ". . . general reorganization of school systems is requisite now, that the requirement is not restricted to the school districts before the Supreme Court in *Alexander,* and that Courts of Appeals are not to authorize the postponement of general reorganization until September 1970.

* * *

Order dated March 25, 1970

> *"The District Court's order shall not be stayed pending any appeal which may be taken to this court, . . .* (Emphasis added.)

On January 26, 1970, on re-hearing, the Fourth Circuit Court of Appeals said:

> "The proper functioning of our judicial system requires that subordinate courts and public officials faithfully execute the orders and directions of the Supreme Court. . . . no member of this court can read the opinions in *Carter* as leaving any room for the exercise by this court in this case of any discretion in considering a request for postponement of the reassignment of children and teachers until the opening of the next school year."

The petition of Greenville for a stay of the order was again denied, and the Greenville schools were desegregated as of February 16, 1970.

The last *Greenville* decision was ten days old at the time of this court's order of February 5, 1970. These were the mandates under which it was ordered that the Charlotte-Mecklenburg schools should be desegregated before the end of the spring term, and that the mandate should not be stayed pending appeal.

Since that time, several suits have been filed in state court seeking to prevent implementation of the February 5, 1970 order, and decision by the three-judge court now considering the constitutionality of the "anti-bussing" law, North Carolina General Statutes, §115-176.1, does not appear likely before April 1, 1970. The appeal of the defendants in the *Swann* case to the Fourth Circuit Court of Appeals is not scheduled to be heard until April 9,

1970, and there is no way to predict when a decision on that appeal will be rendered. There is also no way to predict when a final decision by the Supreme Court will be made on any of these issues, nor what the final decision may be.

Furthermore, notwithstanding the *Holmes County, Greenville, Carter* and *Statesville* decisions, the Fourth Circuit Court of Appeals has now rendered a stay as to certain portions of the February 5, 1970 order, and a petition to vacate that stay has been denied by the Supreme Court. The Fourth Circuit Court of Appeals and the Supreme Court have now demonstrated an interest in the cost and inconvenience and disruption that the order might produce—factors which, though bussing was not specifically mentioned, appear not to have been of particular interest to either the Fourth Circuit Court or the Supreme Court when *Holmes County, Carter, Greenville* and *Statesville* were decided.

The only reason this court entered an order requiring mid-semester transfer of children was its belief that the language of the Supreme Court and the Fourth Circuit above quoted in this order, given its reasonable interpretation, required district courts to direct desegregation before the end of this school year.

The urgency of "desegregation now" has now been in part dispelled by the same courts which ordered it, and the court still holds its original view that major desegregation moves should not take place during school terms nor piecemeal if they can be avoided.

Thereforefore, IT IS ORDERED, that the time table for implementation of this court's order of February 5, 1970 be, and it is hereby modified so that the implementation of the various parts of the desegregation order will not be

required until September 1, 1970, subject, however, to any different decisions that may be rendered by appellate courts and with the proviso that the school board may if they wish proceed upon any earlier dates they may elect with any part or parts of the plan.

This is the 25th day of March, 1970.

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

Further Findings of Fact on Matters Raised by the March 26, 1970, Motions of Defendants dated April 3, 1970

On March 26, 1970, the defendant school board filed "OBJECTIONS AND EXCEPTIONS TO SUPPLEMENTARY FINDINGS OF FACT OF MARCH 21, 1970, AND MOTION FOR MODIFICATION AND CLARIFICATION THEREOF." The court has reviewed the questions raised in that document and makes further findings of fact with reference to certain of its numbered paragraphs as follows:

¶¶ 1, 4, 16, 40. The annual school bus cost per pupil transported, including everything except the original cost of the bus, parking arrangements and certain local administrative costs, for the 1968-69 year, was $19.92. The state reimburses the Charlotte-Mecklenburg school system approximately this $19.92 per pupil. The April 23, 1969, and February 5, 1970, findings of fact estimated the original cost and periodic replacement of the busses themselves at $18 to $20 per pupil per year, which, added to the $19.92, resulted in the estimate of $40 as the total annual per pupil transportation cost. That estimate assumed that the local schools would have to pay for periodic *replacement* of busses as well as for their original purchase. Since it is now clear from the deposition of D. J. Dark that the replacement of worn out or obsolescent busses is *included* in the $19.92 figure, the overall estimate of $40 per pupil per year is far too high. Instead of a *continuing* annual local per pupil cost of $18 or $20 to supply and replace busses, as the court originally understood, the local board will have to bear only administrative and parking expenses, plus the original, one-time purchase of the busses. This cuts the annual cost of bus transportation from nearly $40 per pupil per year as originally estimated, to a figure closer

Further Findings of Fact on Matters Raised by the March 26, 1970, Motions of Defendants dated April 3, 1970

to $20 per pupil per year, and reduces the capital outlay required of the local board to the one-time purchase of about 138 busses at a cost of about $745,200.00, plus whatever may prove to be actually required in the way of additional parking facilities. Paragraphs 1, 4, 16 and 40 of the supplemental findings of fact are amended accordingly.

¶¶ 2, 4, 11, 34. Although the evidence concerning the 5,000 children currently transported by City Coach Lines lacks clarity, the court agrees with the defendant that it should not be inferred that they are the source of payment for this transportation, and the court specifically corrects the previous finding so as to delete any reference to the source of payment for this transportation.

¶ 21. The school board's July 29, 1969 plan (see pages 457-459 of the record on appeal) proposed the transfer and transportation of over 4,200 black children. The court on November 7, 1969, on the basis of the then evidence, found that the number actually transferred was 1,315. The affidavit of J. D. Morgan dated February 13, 1970 (paragraph 4, page 770 of the record on appeal), indicated that the number of these students being transported was 738, requiring 13 busses. The findings of fact proposed by the defendants gave the number as "over 700." The J. D. Morgan affidavit of March 21, 1970, indicated that the number of busses was 30 instead of 13. From this conflicting evidence the court concluded that "several hundred" was as accurate as could be found under the circumstances.

¶ 33. Paragraph 33 is amended as requested by adding after the word "schools" in the eleventh line of the paragraph:

Further Findings of Fact on Matters Raised by the March 26, 1970, Motions of Defendants dated April 3, 1970

"—and about 5,000 black children, grades one through four, to outlying white schools."

¶ 34(f). The average *straight line* mileage between the elementary schools paired or grouped under the "cross-bussing" plan is approximately 5½ miles. The average bus *trip* mileage of about seven miles which was found in paragraph 34(f) was arrived at by the method which J. D. Morgan, the county school bus superintendent, testified he uses for such estimates—taking straight line mileage and adding 25%.

As to the other items in the document, the court has analyzed them carefully and finds that they do not justify any further changes in the facts previously found.

This the 3rd day of April, 1970.

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

Opinions of Court of Appeals dated May 26, 1970

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 14,517

No. 14,518

JAMES E. SWANN, *et al.*,

Appellees and Cross-Appellants,

—versus—

CHARLOTTE-MECKLENBURG BOARD OF EDUCATION, *et al.*,

Appellants and Cross-Appellees.

Appeals from the United States District Court for the Western District of North Carolina, at Charlotte. James B. McMillan, District Judge.

(Argued April 9, 1970. Decided May 26, 1970.)

Before HAYNSWORTH, Chief Judge, SOBELOFF, BOREMAN, BRYAN, WINTER, and BUTZNER, Circuit Judges, sitting en banc.*

BUTZNER, Circuit Judge:

The Charlotte-Mecklenburg School District appealed from an order of the district court requiring the faculty and student body of every school in the system to be racially mixed. We approve the provisions of the order deal-

* Judge Craven disqualified himself for reasons stated in his separate opinion.

ing with the faculties of all schools[1] and the assignment of pupils to high schools and junior high schools, but we vacate the order and remand the case for further consideration of the assignment of pupils attending elementary schools. We recognize, of course, that a change in the elementary schools may require some modification of the junior and senior high school plans, and our remand is not intended to preclude this.

I.

The Charlotte-Mecklenburg school system serves a population of over 600,000 people in a combined city and county area of 550 square miles. With 84,500 pupils attending 106 schools, it ranks as the nation's 43rd largest school district. In *Swann* v. *Charlotte-Mecklenburg Bd. of Ed.*, 369 F.2d 29 (4th Cir. 1966), we approved a desegregation plan based on geographic zoning with a free transfer provision. However, this plan did not eliminate the dual system of schools. The district court found that during the 1969-70 school year, some 16,000 black pupils, out of a total of 24,700, were attending 25 predominantly black schools, that faculties had not been integrated, and that other administrative practices, including a free transfer plan, tended to perpetuate segregation.

Notwithstanding our 1965 approval of the school board's plan, the district court properly held that the board was impermissibly operating a dual system of schools in the

[1] The board's plan provides: "The faculties of all schools will be assigned so that the ratio of black teachers to white teachers in each school will be approximately the same as the ratio of black teachers to white teachers in the entire school system." We have directed other school boards to desegregate their faculties in this manner. See Nesbit v. Statesville City Bd. of Ed., 418 F.2d 1040, 1042 (4th Cir. 1969); cf., United States v. Montgomery County Bd. of Ed., 395 U.S. 225, 232 (1969).

light of subsequent decisions of the Supreme Court, *Green* v. *School Bd. of New Kent County*, 391 U.S. 430, 435 (1968), *Monroe* v. *Bd. of Comm'rs*, 391 U.S. 450 (1968), and *Alexander* v. *Holmes County Bd. of Ed.*, 396 U.S. 19 (1969).

The district judge also found that residential patterns leading to segregation in the schools resulted in part from federal, state, and local governmental action. These findings are supported by the evidence and we accept them under familiar principles of appellate review. The district judge pointed out that black residences are concentrated in the northwest quadrant of Charlotte as a result of both public and private action. North Carolina courts, in common with many courts elsewhere, enforced racial restrictive covenants on real property[2] until *Shelley* v. *Kraemer*, 334 U.S. 1 (1948) prohibited this discriminatory practice. Presently the city zoning ordinances differentiate between black and white residential areas. Zones for black areas permit dense occupancy, while most white areas are zoned for restricted land usage. The district judge also found that urban renewal projects, supported by heavy federal financing and the active participation of local government, contributed to the city's racially segregated housing patterns. The school board, for its part, located schools in black residential areas and fixed the size of the schools to accommodate the needs of immediate neighborhoods. Predominantly black schools were the inevitable result. The interplay of these policies on both residential and educational segregation previously has been recognized by this and other courts.[3] The fact that similar forces operate in cities

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[2] E.g., Phillips v. Wearn, 226 N.C. 290, 37 S.E.2d 895 (1946).

[3] E.g., Henry v. Clarksdale Munic. Separate School Dist., 409 F.2d 682, 689 (5th Cir.), *cert. denied*, 396 U.S. 940 (1969); United States v. School Dist. 151 of Cook County, 404 F.2d 1125, 1130

throughout the nation under the mask of *de facto* segregation provides no justification for allowing us to ignore the part that government plays in creating segregated neighborhood schools.

The disparity in the number of black and white pupils the Charlotte-Mecklenburg School Board busses to predominantly black and white schools illustrates how coupling residential patterns with the location of schools creates segregated schools. All pupils are eligible to ride school buses if they live farther than 1½ miles from the schools to which they are assigned. Overall statistics show that about one-half of the pupils entitled to transportation ride school buses. Only 541 pupils were bussed in October 1969 to predominantly black schools, which had a total enrollment of over 17,000. In contrast, 8 schools located outside the black residential area have in the aggregate only 96 students living within 1½ miles. These schools have a total enrollment of about 12,184 pupils, of whom 5,349 ride school buses.

II.

The school board on its own initiative, or at the direction of the district court, undertook or proposed a number of reforms in an effort to create a unitary school system. It closed 7 schools and reassigned the pupils primarily to increase racial mixing. It drastically gerrymandered school

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(7th Cir. 1968), *aff'g* 286 F. Supp. 786, 798 (N.D. Ill. 1968); Brewer v. School Bd. of City of Norfolk, 397 F.2d 37, 41 (4th Cir. 1968); Keyes v. School Dist. No. One, Denver, 303 F.Supp. 279 and 289 (D. Colo.), *stay pending appeal granted,* —— F.2d —— (10th Cir.), *stay vacated,* 396 U.S. 1215 (1969); Dowell v. School Bd. of Oklahoma City, 244 F.Supp. 971, 975 (W.D. Okla. 1965), *aff'd,* 375 F.2d 158 (10th Cir.), *cert. denied,* 387 U.S. 931 (1967). See generally Fiss, *Racial Imbalance in the Public Schools: The Constitutional Concepts,* 78 Harv. L. Rev. 564 (1965). But see, Deal v. Cincinnati Bd. of Ed., 419 F.2d 1387 (6th Cir. 1969).

zones to promote desegregation. It created a single athletic league without distinction between white and black schools or athletes, and at its urging, black and white PTA councils were merged into a single organization. It eliminated a school bus system that operated on a racial basis, and established nondiscriminatory practices in other facets of the school system. It modified its free transfer plan to prevent resegregation, and it provided for integration of the faculty and administrative staff.

The district court, after a painstaking analysis of the board's proposals and the relevant authorities, disapproved the board's final plan, primarily because it left ten schools nearly all black. In reaching this decision, the district court held that the board must integrate the student body of every school to convert from a dual system of schools, which had been established by state action, to a unitary system.

The necessity of dealing with segregation that exists because governmental policies foster segregated neighborhood schools is not confined to the Charlotte-Mecklenburg School District. Similar segregation occurs in many other cities throughout the nation, and constitutional principles dealing with it should be applied nationally. The solution is not free from difficulty. It is now well settled that school boards operating dual systems have an affirmative duty "to convert to a unitary school system in which racial discrimination would be eliminated root and branch." Green v. School Bd. of New Kent County, 391 U. S. 430, 437 (1968). Recently the Supreme Court defined a unitary school system as one "within which no person is to be effectively excluded from any school because of race or color." Alexander v. Holmes County Bd. of Ed., 396 U. S. 19, 20 (1969). This definition, as the Chief Justice noted in Northcross v. Board of Ed. of Memphis, 90 S.Ct. 891, 893

(1970), leaves open practical problems, "including whether, as a constitutional matter, any particular racial balance must be achieved in the schools; to what extent school districts and zones may or must be altered as a constitutional matter; to what extent transportation may or must be provided to achieve the ends sought by prior holdings of the Court."

Several of these issues arise in this case. To resolve them, we hold: first, that not every school in a unitary school system need be integrated; second, nevertheless, school boards must use all reasonable means to integrate the schools in their jurisdiction; and third, if black residential areas are so large that not all schools can be integrated by using reasonable means, school boards must take further steps to assure that pupils are not excluded from integrated schools on the basis of race. Special classes, functions, and programs on an integrated basis should be made available to pupils in the black schools. The board should freely allow majority to minority transfers and provide transportation by bus or common carrier so individual students can leave the black schools. And pupils who are assigned to black schools for a portion of their school careers should be assigned to integrated schools as they progress from one school to another.

We adopted the test of reasonableness—instead of one that calls for absolutes—because it has proved to be a reliable guide in other areas of the law. Furthermore, the standard of reason provides a test for unitary school systems that can be used in both rural and metropolitan districts. All schools in towns, small cities, and rural areas generally can be integrated by pairing, zoning, clustering, or consolidating schools and transporting pupils. Some cities, in contrast, have black ghettos so large that integra-

tion of every school is an improbable, if not an unattainable, goal. Nevertheless, if a school board makes every reasonable effort to integrate the pupils under its control, an intractable remnant of segregation, we believe, should not void an otherwise exemplary plan for the creation of a unitary school system. Ellis v. Board of Public Instruc. of Orange County, No. 29124, Feb. 17, 1970 —— F.2d —— (5th Cir.)

III.

The school board's plan proposes that pupils will be assigned to the system's ten high schools according to geographic zones. A typical zone is generally fan shaped and extends from the center of the city to the suburban and rural areas of the county. In this manner the board was able to integrate nine of the high schools with a percentage of black students ranging from 17% to 36%. The projected black attendance at the tenth school, Independence, which has a maximum of 1400 pupils, is 2%.

The court approved the board's high school plan with one modification. It required that an additional 300 pupils should be transported from the black residential area of the city to Independence School.

The school board proposed to rezone the 21 junior high school areas so that black attendance would range from 0% to 90% with only one school in excess of 38%. This school, Piedmont, in the heart of the black residential area, has an enrollment of 840 pupils, 90% of whom are black. The district court disapproved the board's plan because it maintained Piedmont as a predominantly black school. The court gave the board four options to desegregate all the junior high schools: (1) rezoning; (2) two-way transportation of pupils between Piedmont and white schools; (3) closing Piedmont and reassigning its pupils and (4)

adopting a plan proposed by Dr. John A. Finger, Jr., a consultant appointed by the court, which combined zoning with satellite districts. The board, expressing a preference for its own plan, reluctantly adopted the plan proposed by the court's consultant.

Approximately 31,000 white and 13,000 black pupils are enrolled in 76 elementary schools. The board's plan for desegregating these schools is based entirely upon geographic zoning. Its proposal left more than half the black elementary pupils in nine schools that remained 86% to 100% black, and assigned about half of the white elementary pupils to schools that are 86% to 100% white. In place of the board's plan, the court approved a plan based on zoning, pairing, and grouping, devised by Dr. Finger, that resulted in student bodies that ranged from 9% to 38% black.

The court estimated that the overall plan which it approved would require this additional transportation:

	No. of pupils	No. of buses	Operating costs
Senior High	1,500	20	$ 30,000
Junior High	2,500	28	$ 50,000
Elementary	9,300	90	$186,000
TOTAL	13,300	138	$266,000

In addition, the court found that a new bus cost about $5,400, making a total outlay for equipment of $745,200. The total expenditure for the first year would be about $1,011,200.

The school board computed the additional transportation requirements under the court approved plan to be:

	No. of pupils	No. of buses	Operating costs
Senior High	2,497	69	$ 96,000
Junior High	4,359	84	$116,800
Elementary	12,429	269	$374,000
TOTAL	19,285	422	$586,000

In addition to the annual operating cost, the school board projected the following expenditures:

Cost of buses	$2,369,100
Cost of parking areas	284,800
Cost of additional personnel	166,200

Based on these figures, the school board computed the total expenditures for the first year would be $3,406,700 under the court approved plan.[4]

[4] The school board computed transportation requirements under the plan it submitted to be:

	No. of pupils	No. of buses	Operating cost
Senior High	1,202	30	$ 41,700
Junior High	1,388	33	$ 45,900
Elementary	2,345	41	$ 57,000
TOTAL	4,935	104	$144,600

The board estimated that the breakdown of costs for the first year of operation under its plan would be:

Cost of buses		$589,900
Cost of parking areas		56,200
Operating expenses of	$144,600	
Plus depreciation allowance of	31,000	
		175,600
Cost of additional personnel		43,000

The estimated total first-year costs are $864,700.

Both the findings of the district court and the evidence submitted by the board are based on estimates that rest on many variables. Past practice has shown that a large percentage of students eligible for bus transportation prefer to provide their own transportation. However, it is difficult to accurately predict how many eligible students will accept transportation on the new routes and schedules. The number of students that a bus can carry each day depends in part on the number of trips the bus can make. Scheduling two trips for a bus generally reduces costs. But student drivers may not be able to spend the time required for two trips, so that adult drivers will have to be hired at substantially higher salaries. It is difficult to accurately forecast how traffic delays will affect the time needed for each trip, for large numbers of school buses themselves generate traffic problems that only experience can measure.

The board based its projections on each 54-passenger bus carrying about 40 high school pupils or 54 junior high and elementary pupils for one roundtrip a day. Using this formula, it arrived at a need of 422 additional buses for transporting 19,285 additional pupils. This appears to be a less efficient operation than the present system which transports 23,600 pupils with 280 buses, but the board's witnesses suggest that prospects of heavier traffic justify the difference. The board also envisioned parking that seems to be more elaborate than that currently used at some schools.

In making its findings, the district court applied factors derived from present bus operation, such as the annual operating cost per student, the average number of trips each bus makes, the capacity of the buses—including permissible overloads, and the percentage of eligible pupils who use other forms of transportation. The district court also found no need for expensive parking facilities or for

additional personnel whose costs could not be absorbed by the amount allocated for operating expenses. While we recognize that no estimate—whether submitted by the board or made by the court—can be absolutely correct, we accept as not clearly erroneous the findings of the district court.

Opposition to the assignment of pupils under both the board's plan and the plan the court approved centered on bussing, which numbers among its critics both black and white parents. This criticism, however, cannot justify the maintenance of a dual system of schools. Cooper v. Aaron, 358 U.S. 1 (1958). Bussing is neither new nor unusual. It has been used for years to transport pupils to consolidated schools in both racially dual and unitary school systems. Figures compiled by the National Education Association show that nationally the number of pupils bussed increased from 12 million in the 1958-59 school year to 17 million a decade later. In North Carolina 54.9% of all pupils are bussed. There the average daily roundtrip is 24 miles, and the annual cost is over $14,000,000. The Charlotte-Mecklenburg School District presently busses about 23,600 pupils and another 5,000 ride common carriers.

Bussing is a permissible tool for achieving integration, but it is not a panacea. In determining who should be bussed and where they should be bussed, a school board should take into consideration the age of the pupils, the distance and time required for transportation, the effect on traffic, and the cost in relation to the board's resources. The board should view bussing for integration in the light that it views bussing for other legitimate improvements, such as school consolidation and the location of new schools. In short, the board should draw on its experience with bussing in general—the benefits and the defects—so that it may intelligently plan the part that bussing will play in a unitary school system.