

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

*Submissions
Copy*

FILED

Asheville Division

Civil Action No. 2560

AUG 23 1991

ASHEVILLE, N. C.
U. S. DISTRICT COURT
WESTERN DISTRICT OF N.C.

B. Lee Allen, et al.,
Plaintiffs,

v.

THE ASHEVILLE CITY BOARD
OF EDUCATION, a public body
corporate, et al.,

Defendants

CONSENT ORDER

THIS CAUSE coming on to be heard and being heard before The Honorable Woodrow W. Jones, Senior Judge of the United States District Court for the Western District of North Carolina, upon motion of the defendant and with consent of the plaintiffs for approval of its facility use and pupil assignment plan, the Court now makes the following:

FINDINGS OF FACT

1. This Court last entered an Order in this action on June 21, 1972, approving an integration plan and retaining jurisdiction over this case.
2. The defendant Asheville City Board of Education has adopted the following student assignment plan effective at the start of the 1991-92 school year:

COPY

**STUDENT ASSIGNMENT PLAN
ASHEVILLE CITY SCHOOLS,
ASHEVILLE, NORTE CAROLINA**

Parental choice of an appropriate educational program is a major commitment of the Asheville City Schools. The individual gifts and talents of each student will be recognized and developed through the magnet school component of the educational plan. Each student will have the option of applying for admission to one of the magnet educational programs which will be offered in all elementary schools.

This student assignment plan and all guidelines and procedures developed for its implementation shall be based upon the following:

1. Appropriate and reasonable racial balance in individual schools and efficient utilization of existing facilities are sound educational objectives which will help provide more positive educational experiences for children who come from various socio-economic, racial and ethnic backgrounds. These continue to be major commitments of the Asheville City Schools and are essential to the fair, legal, and responsible operation of the System. For individual schools, the goal of the Asheville City Schools is that minority enrollment be no more than 15 percent above or below the system minority enrollment and that, whenever possible, minority enrollment be no more than 10 percent above or below the system minority enrollment.
2. A written request for transfer of a student to one of the magnet schools may be submitted by the parent or guardian on a form provided by the school system. Building capacity, classroom capacity, and maintenance of appropriate racial balance shall be the factors in considering a request for transfer.
3. All students entering the Asheville City Schools for the first time after the 1990-91 school year must make an active choice for school assignment.

Present attendance areas will only be valid for students enrolled during the 1990-91 school year, and these students can elect to continue attending the school appropriate for their attendance area. Beginning with the

1991-92 school year, and continuing in successive years, new students attending the Asheville City Schools, both kindergarten and transfer students, will not be assigned to attendance areas. These students must select a magnet school of their choice on forms to be provided by the Asheville City Schools.

4. A written request for placement should indicate a priority of school choices. Parents should indicate their first, second, and third choices.
5. Each year, the Board will review the school assignment plan and make adjustments when needed.
6. All applications for magnet schools shall be received by the board within a specified period to be determined by the administration each year for the following school year.
7. The application of siblings of a student already assigned to a school will be given first consideration as long as the minority enrollment at the school is no more than ten percent above or below the system minority enrollment. If the school exceeds a minority enrollment of ten percent above or below the system enrollment, assignments will be made first to affect positively racial balance and then to consider the application of siblings. Siblings of tuition students will be considered using the same guidelines.
8. Once a child is accepted into a magnet program, he/she may stay in that program until completion of fifth grade. However, a child could at any time choose another magnet subject to the same criteria as before. In some situations, a child may be encouraged to change to another school. For example, a child who is perceived to have certain gifts in a particular theme might be encouraged to develop those gifts in the school with that theme.
9. In order to be fair to all children, applications will be taken only during the specified period of time. All applications will be sorted by grade, gender, race, and program requested. Assignments will then be made. If space is not available for all first

choice applicants, a lottery system will be used to determine who gets spaces available. Those not accepted will be offered their second choice or their third choice if possible.

10. An appeal panel will hear cases of special consideration. This panel will be made up of the following:
 - a. One principal
 - b. One parent
 - c. One teacher
 - d. The Director of Pupil Personnel
 - e. One person chosen by previous four

Special cases could include, but would not be limited to late applications, handicapping conditions, and special, thoroughly documented, health considerations. A final appeal may be made to the Board of Education.

11. Students living outside the Asheville City Schools attendance area will be accepted and assigned based on space available, and racial balance. Preference will be given to students living within the Asheville City School District. Tuition students admitted after the 1990-91 school year will not have a base school. Siblings of tuition students will be considered using the same guidelines as outlined previously.
12. Students not receiving their first choice may ask to be placed on a waiting list for the school of their choice for consideration later when and if space becomes available. Waiting lists will be kept only through the tenth day of school.

3. In order to improve racial balance, maximize educational choices and opportunities, and provide better uses of facilities throughout the Asheville City Public School System, the defendant Board of Education has reorganized its uses of facilities and reassigned pupils, effective with the start of the 1991-92 school year, as follows:

A. Asheville High School, which previously served all students in the school system in grades 10 through 12, has been expanded by the addition of a Fine Arts Facility (completed in 1991) and will expand to accept all of the system's ninth grade students, who previously attended Asheville Junior High School. Asheville High School will serve all students in grades

9 through 12 in the school system. The projected racial make-up of the student body for 1991-92 is 55% white, 45% minority; compared to the school system's overall projected composition of 58% white and 42% minority.

B. Asheville Junior High School, which previously served all students in the school system in grades 8 and 9, will become Asheville Middle School and will serve all of the system's students in grades 6, 7, and 8. The projected racial make-up of the student body for 1991-92 is 54% white, 46% minority, compared to the school system's overall projected composition of 58% white and 42% minority.

C. Hall-Fletcher Middle School and Hill Street Middle School, each of which previously served the school system's sixth and seventh grade students, will be converted to elementary schools, as described in paragraphs 3.D and 3.E, below.

D. Aycock Elementary School will continue to serve grades kindergarten through 5. The school will move from its old, outdated buildings and campus to the site of the former Hall-Fletcher Middle School, a larger and more modern facility. The projected racial make-up of the student body for 1991-92 is 57% white, 43% minority, compared to the schools system's overall projected composition of 58% white, 42% minority, and further compared to the projected composition of 61% white, 39% minority in grades kindergarten through 5. The former Aycock Elementary School facility will not be used as a school, but will be used for other school purposes.

E. The former Asheville Alternative School, which served students in grades kindergarten through five on a system-wide, open enrollment basis in 1990-91 and which was housed on part of the Asheville Junior High School campus, will move and occupy the former Hill Street Middle School campus. The school has been renamed Isaac Dickson Elementary School, in recognition of the dedication to public education and the civic achievements of Isaac Dickson, who was born into slavery in 1831 and became one of the leading business, civic, church and education leaders of Asheville, serving on the first school committee to govern the Asheville City School System after its creation in 1887. The projected racial make-up of the student body for 1991-92 is 65% white, 35% minority, compared to the school system's overall projected composition of 58% white, 42% minority and the projected composition in grades kindergarten through 5 of 61% white, 39% minority.

F. Randolph Elementary School and Jones Elementary School will combine attendance districts and operate as "paired" schools, with Randolph serving the students in grades 4 and 5, and Jones serving the students in grades kindergarten through 3 from the combined attendance districts. The projected racial make-ups of the student bodies for 1991-92 are: Randolph - 61% white, 39% minority; Jones - 62% white, 38% minority. These figures compare to the school system's overall projected composition of 58% white, 42% minority, and the projected composition in grades kindergarten through 5 of 61% white, 39% minority.

G. The sites and initial attendance districts for Claxton Elementary School and Vance Elementary School will remain unchanged from the 1990-91 school year. The projected racial make-ups of the student bodies for 1991-92 are: Claxton - 53% white, 47% minority (compared to 41% white, 59% minority in 1990-91); Vance - 65% white, 35% minority (compared to 69% white, 31% minority in 1990-91). These figures compare to the school system's overall projected composition of 58% white, 42% minority, and the projected composition in grades kindergarten through 5 of 61% white, 39% minority.

4. Based upon the student assignments and the plan outlined herein, more than ninety-five percent (95%) of all students for the 1991-92 school year will be assigned to their first school of choice (with more than 98% being assigned their first or second choice), there will be no mandatory busing required to achieve integration, and all schools will be within approximately seven percent (7%) or less of the school system's overall racial balance.

Based upon the foregoing, the Court makes the following:

CONCLUSIONS OF LAW

1. The plan proposed by the defendant Asheville City Board of Education and consented to by plaintiffs is in accordance with Title VI of the Civil Rights Act of 1964, as amended.
2. The plan complies fully with previous orders of this Court.

NOW, THEREFORE, IT IS HEREBY ORDERED, that the facility use and pupil assignment plan proposed by the defendant Asheville City Board of Education is approved by this Court for immediate implementation, and that the Court shall retain its continuing jurisdiction of this cause. Without prejudice to the right of any party to seek earlier review, this plan shall be subject to review by the Court after June 1, 1993, upon motion of any party.

This the 23rd day of August, 1991.

s/Woodrow W. Jones
Woodrow W. Jones
U.S. District Court Judge

CONSENTED TO BY THE PARTIES:

[Signature]
Richard A. Schwartz
Attorney for the Defendant
Asheville City Board of Education
Richard Schwartz & Associates
19 W. Hargett Street
Suite 1000
Post Office Box 2350
Raleigh, NC 27602
(919) 821-9011
DATE: 8/21/91

[Signature]
James E. Ferguson, II,
Attorney for the Plaintiffs
Ferguson, Stein, Watt,
Wallas, Adkins & Gresham
Suite 730
East Independence Plaza
700 E. Stonewall Street
Charlotte, NC 28202
(704) 375-8461
DATE: 8/21/91

ASHEVILLE CITY BOARD OF EDUCATION:

[Signature]
David R. Hillier, Chairman

[Signature]
Dr. Erby R. Oglesby, Vice-Chairman

[Signature]
Harriet N. Haith

[Signature]
Carol I. Matthews

[Signature]
J.R. Downs

[Signature]
Dr. Douglas Pearson, Secretary/Superintendent