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Constitutional Law--Public School Desegregation--Pupil Placement Plan

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CASE COMMENTS

Constitutional Law—Public School Desegregation—Pupil Placement Plan

Judicial cognizance of the fact that Atlanta public schools had been and were being operated on a racially segregated basis led to the court's entertaining a submitted plan whereby racial discrimination was to be discontinued. The plan effectuates desegregation, beginning at the twelfth grade and extending successively each year to a lower grade until all grades are included, requiring a total period of twelve years. *Held,* approved. The plan is reasonable and meets the requirement that desegregation take place with all deliberate speed. *Calhoun v. Board of Educ.,* 188 F. Supp. 401 (N.D. Ga. 1959). Subsequently, the court decreed that the plan should become effective in September, 1961. *Calhoun v. Latimer,* 188 F. Supp. 412 (N.D. Ga. 1960).

P contested the proposed plan in the principal case on three main grounds: first, that the plan generally failed to satisfy the tests laid down in the second *Brown* decision. *Brown v. Board of Educ.,* 349 U.S. 294 (1955); second, that the plan refused a consideration of the possibility of threat of disorder among pupils and the community; and third, that the administrative procedure for applicants under the plan was inadequate. The first of these is examined in some detail below. As to the second, the court cited the Supreme Court which held that, however important it may be to maintain the public peace, it "cannot be accomplished by laws or ordinances which deny rights created or protected by the federal constitution." *Cooper v. Aaron,* 358 U.S. 1, 16 (1958). In conforming with *P's* third contention, the court ordered a change of the plan's administrative procedure to insure prompt hearings and results once applications for transfers or placement had been made. For an able discussion of this phase see Meador, *The Constitution and the Assignment of Pupils to Public Schools,* 45 VA. L. REV. 517, 544 (1959).

The first *Brown* decision declared the fundamental principle that racial discrimination in public education is unconstitutional and that all laws requiring such discrimination must succumb to this principle. *Brown v. Board of Educ.,* 347 U.S. 483 (1954). The second *Brown* decision considered the manner in which relief was

to be granted. *Brown v. Board of Educ.,* 349 U.S. 294 (1955). In the latter case the court provided that the primary responsibility for assessing and solving these problems rests upon the school authorities. The courts are then to determine whether the governing constitutional principles have been adequately implemented by such actions. The requirement stressed in the decision was a reasonable and prompt start toward full compliance.

Several decisions are in general accord with the principal case in holding that desegregation plans starting at one school grade which would include all grades after twelve years comply with the requirements of the second *Brown* decision. *Boson v. Rippy,* 285 F.2d 43 (5th Cir. 1960); *Kelly v. Board of Educ.,* 270 F.2d 209 (6th Cir. 1959), *cert. denied,* 361 U.S. 924 (1959); *Aaron v. Cooper,* 243 F.2d 361 (8th Cir. 1957), *cert. denied,* 357 U.S. 566 (1958). However, there are two notable exceptions. The first of these is a Delaware case, *Evans v. Ennis,* 281 F.2d 385 (3d Cir. 1960). The court rejected a twelve year plan calling for desegregation commencing at the first grade. The unusual approach of the court was that integration in Delaware should not be gauged by the more restrictive standards applicable to those communities which have not advanced so far toward integration. The other rejection of the twelve year plan was upon entirely different grounds. *Borders v. Rippey,* 184 F. Supp. 402 (N.D. Tex. 1960). The Texas court, after an elaborate discussion, concluded that such a plan would necessarily result in an amalgamation which the court considered the "most objectionable of all integration features." The court rejected any integration plan pursued by force, rather pointing out the need of "integration by consent," resulting from a plan which would not provoke a general shifting and transferring of the school population. The ultimately approved plan was one in which those who desired to integrate might do so, and those who were opposed might not be forced to do so. In effect, the holding was that the court cannot require segregation but may permit it. As stated by Meador, 45 VA. L. REV. *supra,* such an attitude is not unconstitutional as the Constitution "merely forbids discrimination."

The West Virginia Constitution provides that "white and colored persons shall not be taught in the same school," and a state statute contains a similar provision. W. VA. CONST., art. XII, § 8; W. VA. CODE, ch. 18, art. 5, § 14 (Michie 1955). While no state statutes or reported cases are found concerning public school place-

ment plans, it appears quite obvious that West Virginia has not encountered the many integration problems present in other jurisdictions. In general, the state has moved promptly in compliance with the mandate of the Supreme Court and has the distinction of being the first in the southern and border region to comply with the Court's order, though, as could be expected, a few of the more southern counties have been lax in following the prescript. See Charleston Gazette, May 4, 1961, p. 1, col. 8. A practical attitude of cooperation on the part of state and local authorities largely accounts for the orderly accomplishments attained in the state. This position is indicated by an opinion of the Attorney General of West Virginia, dated June 1, 1954, concerning integration at West Virginia University in particular and in the state in general. The opinion observed that the above mentioned constitutional and statutory provisions are "rendered null and void, and are now of no force and effect" because of the Supreme Court decision. 45 W. VA. OPS. ATT'Y. GEN. 725 (1954). By a subsequent letter of June 9, 1954, not reported as an official opinion, the Attorney General held that his June 1 opinion applied "also to all state operated schools and colleges under the jurisdiction of the West Virginia Board of Education." See *Starling v. Board of Educ.*, 175 F. Supp. 703, 705 (S.D. W. Va. 1959).

These decisions serve only to demonstrate that the term "all deliberate speed" as employed by the Supreme Court in reference to integration of public schools is a relative one, dependent upon varying facts and circumstances in different localities. Certainly, the idea here is progress toward elimination of compulsory segregation; but just as certain is the necessity of maintaining a concept of sound educational standards and a salutary educational atmosphere. The duty of solving the many and varied local problems involved in establishing racially non-segregated schools is the duty of the school authorities, and of the public as well. Such problems concerned the court in its decree delaying the effective date of the public placement plan approved in the principal case. *Calhoun v. Latimer, supra,* pp. 414-15. For some, this duty connotes an inevitable deadline of compliance; for others, a choice between segregated schools or no public school system at all.

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