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A legal analysis of student assignment in North Carolina

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A LEGAL ANALYSIS OF STUDENT ASSIGNMENT IN NORTH CAROLINA

by

Charles Morris

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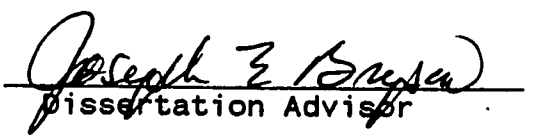

Dissertation Advisor

APPROVAL PAGE

This dissertation has been approved by the following committee of the Faculty of the Graduate School at The University of North Carolina at Greensboro.

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MORRIS, CHARLES F., ED.D., A Legal Analysis of Student Assignment in North Carolina. (1992) Directed by Dr. Joseph E. Bryson. 187 pp.

This study was designed to research and analyze case law relating to student assignment in North Carolina. The writer surveyed the governance of the public schools from the early 1800's to 1955 and traced the changing nature of school boards and the state board of education. With the passage of the Pupil Assignment Act in 1955, local boards of education were given the authority to assign students. The basis for this study were the court cases that challenged school boards and their right to assign students.

All court cases to be adjudicated in the Courts of Appeal of North Carolina and the federal courts relating to student assignment in North Carolina were reviewed. These cases were discussed in regard to the legal aspects of the decisions of the courts and their effect in establishing precedent for litigation that was to follow. Having discussed the legal aspects of the Pupil Assignment Act, the facts of each case were summarized, the legal decision rendered was cited and the decision discussed as to its legal significance.

Drawing specific conclusions from legal research is very difficult. Even though legal issues appear to be similar, a different set of circumstances can produce an entirely different opinion. Though the legal issues may change in

respect to time, many of the issues remain the same. The following conclusions are presented on the legal aspects of student assignment, based on an analysis of cases:

1. The assignment of students that in any way denies their right to an equal education will continue to come under scrutiny of the Courts.

2. The authority of school boards to assign students is recognized by the courts. The courts will not become involved in the operation of the schools unless there is evidence of the violation of a students' constitutional right.

3. Students have a right to request reassignment and if due process has been granted, all administrative remedies must be exhausted before a judicial remedy can be sought.

4. Boards of education must have sound reasons for denying a request for reassignment. The courts will look at what is "in the best interest of the student" in determining the actions of the board. The legal question of what is "in the best interest of the student" will continue to be a legal issue for the courts to explore and define.

5. The issue of "in the best interest of the student" and "in the best interest of the school system" will continue to be an area of conflict that the courts may involve themselves.

6. With "choice" being advocated by politicians at both the national and local level, the question of its constitutionality will again become an issue for the courts to decide. If "choice" is allowed, when does the equalization issue become more important for those less fortunate.

7. A continuing legal issue within the state is the large number of students requesting transfers to systems with better resources from systems with fewer resources. When does the interest of the school system take precedence?

8. The issue of racial balance may again become a major area of litigation in North Carolina as predominantly black city systems merge with predominantly white county systems. Student assignment plans will come under close scrutiny by the public and the courts may again be asked to become involved in the operation of the public schools.

CHAPTER I

INTRODUCTION

Federal and state courts have become a powerful influence on educational institutions. School administrators and school boards routinely review court decisions when formulating policy and making decisions on a daily basis.

The **BROWN** I decision in 1954 was the first of many decisions that forced school systems to consider the courts as the ultimate decision making body. The Supreme Court was to act as a national school board.

On May 17, 1954, in an unanimous opinion, written and read by Chief Justice Earl Warren, the Supreme Court declared that the doctrine of "separate but equal" was unconstitutional. This opinion, **BROWN v. TOPEKA BOARD OF EDUCATION**, stated, in part:

> ...Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.
> ...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 effect their hearts and minds in a way unlikely ever to be undone.
> ...We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiff and others similarly situated for whom the actions have been brought are by reason of the segregation complained of, deprived

of the equal protection of the laws guaranteed by the Fourteenth Amendment.[1]

Since the 1954 **BROWN I** decision, the federal courts have become more involved in education.

The federal court system consists of eighty-eight district courts, eleven circuit courts of appeal and the Supreme Court. Chart I displays the structure of the federal court system.

CHART I

FEDERAL COURT STRUCTURE

UNITED STATES SUPREME COURT Review of: Cases from Lower Federal Courts; Cases from State Courts Concerning Constitutional Provision or State Statute
COURTS OF APPEAL (88) Review of: Decisions of Federal District Courts
FEDERAL DISTRICT COURTS (88) Trial Courts General Federal Jurisdiction

The United States Supreme Court is principally an appellate court. The Supreme Court reviews cases that are filed by a petition for writ of certiorari from a state

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[1]Coates, Albert, ed - A Report to the Governor of North Carolina. Chapel Hill: Institute of Government, 1954, 37.

supreme court or federal appeals court. The Supreme Court has the authority to review all cases from lower federal courts and cases in state courts which involve the meaning or effect of a constitutional provision.

The eleven Circuit Courts of Appeal review district court decisions except when the law provides for direct review by the Supreme Court. The circuit courts of appeal relieve the Supreme Court from the obligation of hearing all appeals from district courts.

The District courts function in line of authority just below the appellate courts and serve as trial courts with general federal jurisdiction. District courts are the first federal court to hear a federal lawsuit. In cases affecting education, federal jurisdiction is recognized when a plaintiff questions the validity of a state or federal statute under the United States Constitution or alleges that an individual right, privilege, or immunity protected under the constitution has been violated. Such cases generally require an interpretation of the First and Fourteenth Amendments to the Constitution.

North Carolina's judicial system, like the federal system, is composed of a Supreme Court, a court of appeals, superior courts, and district courts. Chart II shows the organization of North Carolina's court system.

CHART II - ORGANIZATION OF NORTH CAROLINA COURTS SYSTEM

SUPREME COURT
APPELLATE DIVISION
COURT OF APPEALS
SUPERIOR COURT
DISTRICT COURT

The district court hears civil cases, criminal cases, juvenile cases, and magisterial matters. The district judges are elected by popular vote and the chief district judge is appointed by the chief justice of the State Supreme Court. Two to eight district judges try cases in each of the thirty judicial districts.

The Superior Court sits in each county of the state at least twice yearly and is the court with general jurisdiction in North Carolina. There are forty-seven regular superior court judges, each elected for an eight year term and eight special judges appointed by the governor for four year terms. Superior Courts try all felony cases. Appeals of misdemeanor convictions from district court and civil cases involving five thousand dollars or more in damages.

Cases from lower courts are appealed to the Courts of Appeal which are composed of nine judges who sit in panels of three. Only questions of law are heard by the Courts of Appeal.

The Supreme Court comprises, a chief justice and six associate justices who hear oral arguments on questions of law. The Supreme Court does not hear witnesses or have juries. Its decisions require interpretation of the state constitution.

The federal judiciary handed down the **BROWN** I decision. The **BROWN** I decision, however, did not specify how its mandates were to be enforced.[2] It did set in motion in North Carolina and other Southern states a series of laws and studies designed to determine how to respond to it. Southerners regarded this decision as the greatest threat to public education since the Civil War. In North Carolina the governor, William B. Umstead, called for a study of the decision and what impact it would have for public education in the state. A special committee was appointed in August, 1954. In 1955, the General Assembly met and Governor Luther Hodges and his aides promoted a bill that forestalled integration in public schools by allowing local units to decide for themselves if they would integrate. It was called the Pupil Assignment Act. This statute, when it became law, gave to local school boards the authority to assign students to schools.

If parents were not satisfied with their child's assignment, they had the right to appeal it to the

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[2]Id. at 38.

"appropriate school official." If the appeal was denied, the parents could request a hearing before the board of education. The board would consider five criteria:

a. child is entitled to be enrolled, or
b. enrollment is for the best interests of the child,
c. enrollment will not interfere with the proper administration of such school
d. enrollment will not interfere with proper instruction of enrolled pupils, and
e. enrollment will not endanger the health or safety of enrolled pupils.

If a board of education denied reassignment, parents could then seek Superior Court action within ten days. Superior Court decisions could be appealed to the State Supreme Court.

The Pupil Assignment Act was a break from the traditional governance of the public schools. Its enactment was followed by numerous legal actions brought against local school boards. All actions were brought by plaintiffs who desired to be assigned to a school other than the one specified by boards. The purpose of this study is to describe the changing nature of these cases over the thirty-three year history of the act.

STATEMENT OF THE PROBLEM

Parents request reassignment of a child for many reasons. Parents response to American society as it becomes more mobile, as more mothers work outside the home, and as schools begin to resegregate is, in this context, increased requests for intrasystem and intersystem transfers. There is a need to establish guidelines to be used by boards of education in

denying or approving transfers that in turn will be upheld by the courts. Judicial decisions must be reviewed to discover legal trends and precedents. This study will provide a comprehensive review of judicial cases in North Carolina. From this analysis, will come guidelines that will assist school boards and school administrators in formulating policy in regard to student transfers.

SIGNIFICANCE OF STUDY

As an annual event, students are assigned to schools for the forthcoming school year. Inevitably, there are students and their parents who are displeased with the assignments. School boards then have to deny or approve the requests for reassignment. In doing so, boards will become involved in hearings and, potentially, court action if parents dispute their actions. This study is designed to aid the school board in making a decision as it relates to the rights of the child and the school system. This study will also be beneficial in providing guidelines for the development of board policies that will meet the legal statutes and provide for the protection of the student's rights.

Administrators and school board members should find this study of interest in determining the future trend of transfer requests. The emphasis will be on current legal issues and court decisions as they effect students and school boards. The significance of this study lies with the analysis of court

cases and definition of the role of the school board in student assignment. It will provide guidelines in the adoption of practices likely to be upheld in court.

PURPOSE OF THIS STUDY

The purpose of this study is to research and analyze case law involving student assignment in North Carolina. In order to understand the case law, additional research on the underlying causes of the enactment of the Pupil Assignment Act must be pursued. These findings will be shared to provide guidelines for school boards to set policy on student assignment.

QUESTIONS TO BE ANSWERED

Questions to be answered in order to develop legal guidelines and recommendations are listed:

(1) When and why did the responsibilities of the State School Board change in relation to student assignment?

(2) What were the sociological and political conditions that led to the enactment of the Pupil Assignment Act?

(3) What areas of litigation were most frequently involved concerning denial or approval of student transfers?

(4) What legal principles established by landmark decisions have been made by the judicial system that have guided the decisions of school boards and the lower courts?

(5) What are the rights of the student when a school assignment is not to their liking?

(6) What future considerations might be forthcoming that might provide an increase in student transfer requests?

SCOPE OF THE STUDY

The purpose of this study is twofold. It will be a study of the history of the governance of the public schools in North Carolina and an analysis of court cases which have been litigated by parents and students regarding the assignment of pupils to schools. The governance study begins with the original act of the legislature to establish public schools in North Carolina and continues to the Pupil Assignment Act of 1955 at which time control of pupil assignment came to rest with the individual school boards of each school district.

The second major thrust of this study will be directed at reporting and analyzing the major cases involving student transfers in North Carolina. Legal precedents and trends in an historical context will be identified. From these, guidelines for school boards will be established.

METHODS, PROCEDURES, SOURCES OF INFORMATION

The basic research techniques of this study began with an examination and analysis of available references concerning the legal aspects of student assignment. A search of journal articles relating to the topic was conducted through the Reader's Guide to Periodical Literature, Education Index, and the Index to Legal Periodicals. Federal and state court cases

related to the topic were located through the use of the North Carolina Law Reporter, the North Carolina Law Review, Shepard's North Carolina Citations, Strong's North Carolina Index and West's South Eastern Digest. The Biennial Report of the Attorney General of North Carolina was consulted for interpretations of law as requested by school boards and/or their appointed school officer.

When the writer conducted an ERIC search, no periodicals or text were listed relating to student assignment in North Carolina. Based on this information, a search of primary sources began. Fortunately, a master thesis was located that provided some relevant information and references relating to the study committee formed to study the response of North Carolina to the **BROWN** I decision. Publications by the State Department for Public Instruction provided information on issues involving student assignment prior to 1955.

There is no historical study of education in North Carolina since M.C.S. Noble's work in 1930. This required the writer to research the state statutes to trace the changes in governance as they were legislated by the General Assembly. The Duke Law Library was the best source for this information and the easiest to access. The Duke Law Library proved to be the best source for the legal cases in regard to easy access and assistance.

A study of the history of governance was researched through selected texts and a review of the state statutes from

1839 to the present. A review of the Pearsall Plan was researched through selected government documents and other available materials.

LIMITATION OF THE STUDY

This study is limited to court cases adjudicated in the North Carolina Superior and Supreme Court and at all levels of the federal court system since 1955 and the enactment of the North Carolina Pupil Assignment Act. This study is limited to student assignment cases in North Carolina.

DEFINITION OF TERMS

Hearing: The opportunity to present one's side of a case to a school board or their appointed school officer.

Pupil Assignment: The assignment of a student to a school within the school system where the parents or guardians claim domicile.

Intrasystem Transfer: Student transfers from one school to another within the same school system.

Intersystem Transfer: Students transfers to a school outside the school system in which the student is domiciled.

Procedural Due Process: "The requirement that when persons are deprived of life, liberty, or property, they must be given notice of the proceedings against them. They must be given the opportunity to defend themselves, (a hearing); the problem

of the propriety of the deprivation under the circumstances presented must be resolved in a fair manner."

Substantive Due Process: "The constitutional guarantee that no person shall be deprived of life, liberty, or property for arbitrary reasons, with such deprivation to be constitutionally supportable only if conduct bringing about the deprivation is proscribed by reasonable legislation which has been reasonably applied and with laws operating equally."

School District: The legal boundaries of a school system as approved by the state legislature.

School Board: The elected or appointed members of a school district's governing board whose primary responsibility is the setting of district policy and the appointment of an administrative school officer to see to the daily operation of the schools within that school district.

State School Board: That board whose members are appointed by the governor and the legislature to set educational policy for all elementary and secondary public schools in North Carolina. They govern and enforce all policies and regulations through the State Department of Instruction.

Negro: Used in historical quotes in reference to Afro-American ancestry and as cited from reference materials.

Black: Used in reference to Afro-Americans.

Domicile: The place with which a person has a settled connection for important legal purposes. In the case of a minor, the place assigned to him by law.

Guardian: One who has or is entitled or legally appointed to the care and management of the person or property of another.

DESIGN OF THE STUDY

Chapter I presents the purpose of the study and poses specific questions that will be answered by the research and findings of this study.

Chapter II contains an historical review of the governance of the public schools of North Carolina and constitutional obligations of the state and local boards. Also included in the chapter will be a brief description of the sociological and political conditions that led to the enactment of the Pearsall Plan and the Pupil Assignment Act of 1955. An indepth discussion of the Pearsall Plan and the ultimate effect on the governance of the public schools of North Carolina will be included.

Chapter III includes a narrative discussion of major pupil assignment cases in North Carolina since 1955. An attempt will be made in this Chapter to show causal relationships between federal and state judicial decisions that have allowed case law to evolve.

Chapter IV contains a general listing and discussion of major pupil assignment litigation in North Carolina since 1955. The facts of each case will be presented, the decision rendered, followed by a discussion of the implications of the

decision. These cases will be categorized by areas of litigation.

Chapter V will conclude this study by summarizing the trend of the court decisions as they have affected pupil assignment in North Carolina. Questions posed in the first chapter of this study will be discussed along with specific recommendations regarding board policy on student transfers.

CHAPTER II

INTRODUCTION

Before reviewing the case law involving student assignment, an historical review of the governance of public education will be presented. Charts representing the governance of the schools will occur periodically to illustrate how school governance was in a constant state of flux until 1943. A review of early issues of student assignment will be followed by a brief sociological and political synopsis of the state and the schools prior to 1955. The last section of the chapter will be an indepth discussion of the impact of the **BROWN I** decision on North Carolina and the resulting Pupil Assignment Act of 1955. This background will provide a better understanding of the litigation brought before the courts following enactment of North Carolina's Pupil Assignment Act.

GOVERNANCE

Efforts to launch a public school system in North Carolina were numerous in the early nineteenth century. The "Act to Create a Fund for the Establishment of Common Schools was passed by the North Carolina Assembly and became law on

January 4, 1826.[3] It is commonly called "The Literary Fund Law of 1825." This act provided for funding common schools through;

> "...the dividends arising from the stock which is owned by the state in the Banks of Newbern and Cape Fear, and which have not heretofore been pledged and set apart for internal improvements; the dividends arising from stock which owned by the state in the Cape Fear Navigation Company and the Clubfoot and Harlow Creed Canal Company; the tax imposed by law on licenses to the retailers of spirituous liquors and auctioneers; the unexpended balance of the Agricultural Fund, which by the Act of the Legislature, is directed to be paid into the public treasury; all moneys paid to the state for the entries of vacant lands (except the Cherokee Lands); the sum of twenty-one thousand and ninety dollars, which was paid by the state to certain Cherokee Indians, for reservations to lands secured them by treaty, when said sums shall be received from the United States by this state, together with such sums of money as the legislature may hereafter find it convenient to appropriate from time to time."[4]

A corporate body, whose membership included the Governor of the State, the Chief Justice of the Supreme Court, the Speakers of the House and Senate, and the State treasurer was founded to control and manage the real and personal property and other capital of the literary funds.[5] The proceeds of the fund were to be applied to the instruction of such children as the legislature might deem appropriate in the common principles of reading, writing and arithmetic. When

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[3]M.C.S. Noble, A History of the Public Schools of North Carolina, 45 (Chapel Hill: University of North Carolina Press, 1930).

[4]Id. at 46.

[5]Id. at 46.

sufficient funds were accumulated, they could be divided among the several counties according to the free white population of each.[6]

From this beginning came the establishment of the public school system of North Carolina. Using the Literary Fund as a funding base, in January, 1839, the legislature passed "an Act to Divide the Counties of the State into School Districts and for other purposes."[7] This act provided for the organization of a uniform and state-wide system of elementary public education which would serve the children of all the white people of the state.[8] This act required:

1. The people in each district levy for a tax to support the common schools, a tax which would yield one dollar for every two dollars received from the Literary Fund.

2. The county in each district where the tax was levied would appoint not less than five nor more than ten persons to serve as the superintendents of the common schools of the county. The superintendents had to divide the county into districts of not more than six miles square, and appoint a committee of not less than three or more than six to assist in matters relating to the establishment of schools in their district.

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[6]Id. at 47.

[7]Id. at 59.

[8]Id. at 60.

3. After the first Monday in January, 1840, the county court had to levy a tax raising $20 for each district in the county. This was to be matched with forty dollars from the Literary Fund.[9]

The act did not address issues of organization, teaching or administration. The governance of the schools was to be decided by the county courts, which were given the discretion of appointing the board of county superintendents. The county superintendents divided the county into districts and appointed district committees. The committeemen were to provide some sort of school house and employ a teacher. When the school district raised twenty dollars in tax revenues, the Literary Fund would distribute another forty dollars to the district to support the schools.[10]

CHART III

SCHOOL GOVERNANCE 1839

COUNTY COURTS
BOARD OF COUNTY SUPERINTENDENT (APPOINTED)
DISTRICT COMMITTEE (APPOINTED)

The School Laws of 1840-41 placed the election of the school committees in the hands of the voters. The county

[9]Id. at 57.

[10]Id. at 61.

board of superintendents could appoint in any case where there was a failure to elect. The school committee was to contract with teachers as the money of the county was available. The act allowed all white children under the age of twenty-one to attend school in their district. The 1840-41 school act also changed the basis of the distribution of funds from the Literary Fund. It was to be based on the federal population and not the white population.[11]

During the next ten years, from 1841 to 1851, the public school system of North Carolina became more defined and stronger as the various administrative groups identified and clarified their specific responsibilities. The Literary Board was to administer the literary fund, distribute the proceeds of that fund to the counties, and prepare reporting forms to send to the counties. The county school authorities were to report the work and progress of the district schools to the Literary Board. The board of county superintendents was to define the boundaries of the school districts, distribute their share of the school funds to the districts and hear appeals from the districts. Also, they were to generally supervise and control the schools of the districts, receive reports from school committees, and send this information to the Literary Board.[12]

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[11]Id. at 71.

[12]Id. at 83.

The school committee was to visit the school, care for the school house, employ teachers and gather data for the board of county superintendents. The common schools were under the control of a tri-board system. The Literary Board directed and controlled the board of county superintendents who in turn controlled and directed the school committees, which were the local body of control.[13] Chart IV illustrates this organization.

CHART IV

SCHOOL GOVERNANCE 1841-1851

LITERARY BOARD (STATE)
DISTRICT BOARD OF COUNTY SUPERINTENDENTS (APPOINTED)
LOCAL SCHOOL COMMITTEE (ELECTED)
COMMON SCHOOL

In 1852, the legislature passed "an Act to provide for the appointment of a Superintendent of Common Schools, and for other purposes."[14] The duties of the superintendent were:

1. to consult as often as possible with experienced teachers.
2. to employ lawyers to recover on the behalf of the president and directors for the Literary Fund all escheats in the several counties in the state for the useful benefit of the Literary Fund.
3. to see that money distributed for the common schools was not misapplied by the Boards of County Superintendents.

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[13]Id. at 84.

[14]Id. at 133.

4. to report to the governor the length of school term, number of white persons five years old and under twenty-one enrolled in schools and to report on the number of school districts in each county of the state; and

5. to deliver as often as possible, public lectures on education and to encourage people's feelings in the cause of the common schools.[15] See Chart V.

CHART V

SCHOOL GOVERNANCE 1852

LITERARY BOARD (STATE)
STATE SUPERINTENDENT (APPOINTED)
DISTRICT BOARD OF COUNTY SUPERINTENDENT (APPOINTED)
LOCAL SCHOOL COMMITTEE (APPOINTED)
COMMON SCHOOL

Little change in the governance of the common schools occurred until 1861. The method of selection of school committeemen was changed at that time to enable the board of county superintendents to appoint any person as a school committeeman as might be requested in a petition signed in writing by a majority of those who constituted the whole number of parent, guardian and qualified voters of the district. If no petition was signed, the board of county superintendents would appoint. This was the first attempt to allow the voters of a district to select the committee which

[15]Id. at 134.

would oversee their schools. The procedures for the selection of both the county board of superintendents and district committeemen would change numerous times during the next hundred years.

The Civil War brought to an end the common schools of North Carolina. Superintendent Calvin Wiley worked throughout the Civil War to keep the schools open; but, as men went to war, the supply of teachers, mostly men, diminished; and the schools began to close. The Literary Funds were rapidly depleted and funding for local districts disappeared. With the occupation of North Carolina by Union forces in 1865, common schools ceased to exist. The Literary Fund was largely gone, and the Literary Board was dissolved. The Legislature of 1866 abolished the office of "Superintendent of Common Schools for the State", and placed what was left of the Literary Fund in the hands of the public treasury. It repealed all laws governing the appointment of five County Superintendents and required the election of only one. It made the levying and collection of taxes for schools discretionary with the county court, but gave the school committees the right to allow subscription schools to use the common school houses.[16]

The common schools, as they existed before the war, were gone. For those who wished to educate their children, the

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[16]Id. at 280.

subscription school became the most viable alternative. In accord with the Reconstruction Act, General E.R. Canaby called for the election of members to meet in Raleigh to draft a Constitution for North Carolina that would be acceptable to the United States Congress. The results of that election left the control of the convention in the hands of "northern men, carpetbaggers, colored men, and native Republicans, "scalawags," and thirteen native white North Carolinians, conservatives, who represented the more prominent citizens of the state."[17] The Educational Article in the Constitution of 1868 remains with us today, but with many vital changes, omissions, and amendments. The Article presented to the convention on March 6, 1868 created much discussion. The following sections and parts of sections formed the basis of much debate:

> "Section 1. Religion, morality, and knowledge being necessary to the good government and happiness of mankind, schools and the means of education, shall forever be fostered and encouraged.
>
> Section 2. The General Assembly at its first session under this Constitution, shall provide for a general and uniform system of public Schools, wherein tuition shall be free of charge to all the children of the State between the ages of six and twenty-one years.
>
> Section 3. Each County of the State shall be divided into a convenient number of districts, in which one or more Primary Public Schools shall be maintained at least four months in every year; and any county which shall fail to comply with the aforesaid requirement of this section shall be liable to indictment.

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[17]Id. at 286.

> Section 5. The General Assembly shall make such provisions, by taxation or otherwise, as will secure a thorough and efficient system of Public Schools throughout the State.
>
> Section 6. The University of North Carolina, with its lands, emoluments and franchises, is the property of the State, and shall be held to an inseparable connection with the Free Public School system of the State.
>
> Section 7. The General Assembly shall provide that the benefits of the University, as far as practicable, be extended to the youth of the State free of expense for tuition;...
>
> Section 8. The Governor, Lieutenant Governor, Secretary of State, State Treasurer, Auditor, Superintendent of Public Works, Superintendent of Public Instruction, and Attorney General shall constitute a State Board of Education.
>
> Section 9. The General Assembly is hereby empowered to enact that every child of sufficient mental and physical ability shall attend the Public Schools during the period between the ages of six (6) and eighteen (18) years, for a term of not less than sixteen months unless educated by other means."[18]

Through debate, Section 5 was stricken and incorporated into Section 2 by adding after the word "provide" the words "by taxation or otherwise." Section 3 was changed to read "and if the commissioners of any county shall fail to comply with the aforesaid requirement of this section they shall be liable to indictment."[19]

An amendment, introduced by Plato Durham of Cleveland County, proposed that "the general assembly shall provide

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[18]Id. at 288.

[19]Id. at 289.

separate and distinct schools, for the black children of the state, from those provided for white children."[20] Though much debate arose over this amendment and several others were offered in its place, the constitution was not changed and thus a free education was to be offered to all children of North Carolina.

The new Constitution called for a new board of county commissioners to be elected by the people.

> "By act of legislature, ratified April 16, 1869, the new political subdivisions called for in the constitution and designated by the name of "townships," were approved in eighty counties, whose commissioners had reported that they had divided their respective counties into convenient districts (townships) in fulfillment of the constitutional requirement."[21]

The township board of trustees consisting of a clerk and two justices of the peace were to be elected biannually in each township by the qualified voters. Their duties were in general: the management of highways, the maintenance of bridges, the assessment of taxable property in the township and the "power to lay and collect all taxes that may be required to defray the necessary expenses of the township. "On April 12, 1869, the legislature ratified "An Act to provide for a System of Public Instruction." Section 15 called for the election of a school committee by the qualified

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[20]Id. at 291.

[21]Id. at 314.

voters. The school committee were to establish and maintain for at least four months in each year, a sufficient number of schools at convenient localities, which would be for the education of all children between the ages of six and twenty-one years residing within the township. The new townships were larger than the old school districts and, hence, the township school committees had more duties to perform. They were responsible for the care of several schools and direction of the local educational interests of both white and black children assembled in separate schools in the township.[22]

The schools were to be supported by a poll tax that was to be placed on each taxable poll or male between the ages of twenty-one and fifty. Seventy-five percent of this tax was paid into the state treasury to be applied to the support of the public schools. Along with these funds, the legislature made a direct appropriation of one hundred thousand dollars from the state treasury to be combined with the poll tax to make possible the minimum four-months school term required by the constitution. These funds were apportioned to counties on the basis of the school population. The county commissioners were required to levy a county tax to be used in purchasing school sites and in building or renting schoolhouses. The township school committees were required to estimate the cost of fuel and other expenses for the school term. The township

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[22]Id. at 315.

trustees had to raise these funds through the levy of taxes. If they failed to do so, the commissioners could levy a township tax. This financing plan did not work.

The State Supreme Court ruled in 1870 that the 1869 school law was unconstitutional. It ruled that the townships did not have the power to tax and that the county commissioners could not levy township school taxes apart from county school taxes. The county commissioners could levy only a uniform county tax for constitutional school terms. The Supreme Court ruling led to the School Law of 1872.[23]

The School Law of 1872 made the county board of commissioners a county board of education with the chairman of the county board of commissioners as the chairman of the board of education, the register of deeds as the clerk of the board of education, and the treasurer of the county as the treasurer of the county free school fund. The county board of education was given the control and supervision of school affairs of the county, such as the appointment of the county examiner, the decision of all controversies relative to the boundaries of the districts and the enforcement of the provisions of the school law. This was the beginning of the centralization of educational authority in the counties.[24]

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[23]Id. at 327.

[24]Id. at 362.

Two constitutional changes were passed in 1876. As a way of helping to finance the schools, all fines and penalties collected in the county were to be used for free public schools. The second change required the two races be taught in separate public schools but with no discrimination in favor of or against either race.

With the coming of the Democrats into full control of public affairs with the legislature of 1877, the educational organization of the state embraced the following divisions: the State Board of Education, the county board of education, commissioners, the district school committee, the county examiners and the teaching force. See Chart VI.

CHART VI

SCHOOL GOVERNANCE 1877

STATE BOARD OF EDUCATION
STATE SUPERINTENDENT OF EDUCATION
COUNTY BOARD OF EDUCATION/COMMISSIONERS (ELECTED)
DISTRICT SCHOOL COMMITTEE (ELECTED)
COUNTY EXAMINERS (APPOINTED)

The law of 1881 abolished the office of school examiner and authorized the county board of education and the county board of magistrates, in joint session, to elect a resident of the county as superintendent of public schools for a two year

term. While the legislature of 1883 limited the authority of the county superintendent, the legislature of 1885 restored all the duties and authority to the office. In addition the law of 1885 also created a county board of education separate from the county board of commissioners. The board was created to take from the board of county commissioners the entire administration of the public schools of the county and thereby increase the efficiency of the county school system. The new board was to be elected by justices of the peace and county commissioners of each county. The board of education was to consist of three residents of its county who were qualified by education and experience to further the public school interests of their county.[25] County boards of education were abolished in 1887, only to be restored in 1889. See Chart VII.

CHART VII

SCHOOL GOVERNANCE 1881

STATE BOARD OF EDUCATION
STATE SUPERINTENDENT OF EDUCATION
COUNTY COMMISSIONERS (ELECTED)
COUNTY BOARD OF EDUCATION (APPOINTED)
COUNTY SUPERINTENDENT (APPOINTED)
DISTRICT SCHOOL COMMITTEE (ELECTED)

[25]Id. at 393.

In 1895 the county board of education offices were abolished along with the county superintendent's office. The board of county commissioners took over the powers and duties of the board of education. The clerk of the board of County commissioners took over the responsibility of the county superintendent. A county examiner was hired to issue certificates.[26]

CHART VIII

SCHOOL GOVERNANCE 1895

STATE BOARD OF EDUCATION
STATE SUPERINTENDENT OF EDUCATION
COUNTY COMMISSIONERS (ELECTED)
COUNTY EXAMINER (HIRED)
SCHOOL COMMITTEE (APPOINTED)

The legislation of 1897, under Chapter 108, abolished the county examiners office and reestablished the county school board. The county commissioners with the clerk of Superior Court and the register of deeds were to appoint three men as county supervisors of schools. The board of education was to divide the county into school districts and select five men to serve two years as school committeemen. The committeemen were to establish schools in each district for white and black

[26]North Carolina General Statutes 1895 Chapter 439.

children that was the most convenient for both races. The schools had to serve an average of fifteen students a day. The school boards were to fund the schools of the various districts on a per capita basis, with the school committees giving to the various schools in the district. The legislation also provided the State Superintendent the authority to report to the local board of education a county supervisor or board member who was not properly performing his duties. The local board had to hold a hearing on the charges.[27]

CHART IX

SCHOOL GOVERNANCE 1897

STATE BOARD OF EDUCATION
STATE SUPERINTENDENT OF EDUCATION
BOARD OF DIRECTORS FOR SCHOOLS (APPOINTED BY BOARD ANNUALLY)
COUNTY SUPERINTENDENT (APPOINTED)
TOWNSHIP TRUSTEES (APPOINTED)
SCHOOL COMMITTEE (APPOINTED)

A major revision of school law occurred in 1899. Chapter 732 clarified the role of the State Superintendent of Public Schools. His five major responsibilities were to:

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[27]North Carolina General Statutes 1897 Chapter 108.

1. print laws.
2. make the biennial report.
3. sign requisitions of auditor.
4. direct operations of the public schools
5. report misconduct.

This act also changed the county board of education to a board of directors that were to be appointed by the General Assembly. They were to obey the State Superintendent and elect a county superintendent. Three men were to be elected as township trustees and they were to divide the townships into school districts. There was to be a school committee for each school district. The marriage certificate was to be used for the purpose of determining the presence of Negro blood which affected the school to which (black or white) a student was to be assigned.[28]

CHART X

SCHOOL GOVERNANCE 1899

STATE SCHOOL BOARD
STATE SUPERINTENDENT GENERAL ASSEMBLY
BOARD OF DIRECTORS (APPOINTED)
COUNTY SUPERINTENDENT
TOWNSHIP TRUSTEES
SCHOOL COMMITTEE

[28]North Carolina General Statutes 1899 Chapter 732.

The 1901 legislature changed the board of directors into a county school board to be appointed by the General Assembly. They were to divide the townships into school districts and there was to be a school committee in each township. Students between the ages of six and twenty-one living within the district were to be educated for free.

In 1903 the State Board of Education was given the authority to appoint the county school boards. The school districts were given the authority to form school districts out of portions of contiguous counties by agreement of county boards of education. Section 22 of Chapter 435 stated:

> ...All white children shall be taught in the public schools provided for the white race, and all colored shall be taught in the public schools provided for the colored race, but no child with negro blood in his veins, however remote the strain, shall attend a school for the white race; and no such child shall be considered a white child.[29]

The authority to assign students was assumed by the State Superintendent and the General Assembly through legislation. As the state began to establish high schools, the authority to assign students was taken out of the hands of the local authorities.

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[29]North Carolina General Statutes 1903 Chapter 732.

CHART XI

SCHOOL GOVERNANCE 1903

STATE BOARD OF EDUCATION
STATE SUPERINTENDENT OF EDUCATION
COUNTY SCHOOL BOARDS (APPOINTED BY STATE BOARD OF EDUCATION)
COUNTY SUPERINTENDENT (APPOINTED)
SCHOOL COMMITTEE (APPOINTED)

In 1907, the county high schools were established with a special committee appointed to oversee the school. County children could attend and students outside of the district could contract with the county board of education to come to high school with a tuition not to exceed two dollars per month. Chapter 894 (1907) provided for a compulsory attendance law for students eight to fourteen years of age. They were to attend for sixteen weeks per year and must reside with parent or person having control. Students over twelve who were employed were exempt.[30]

The General Assembly made no changes in the governance of the schools until 1923 when they codified the public school laws of the state. This codification resulted in the following changes:

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[30]North Carolina General Statutes 1907 Chapter 894.

1. The county board of education was to consist of three to five members for two year terms.
2. The General Assembly was to appoint these members from lists submitted by political parties of each county. If no list was submitted, then the member would be appointed by the State Board of Education.
3. The Board of Education was to become a corporate body.
4. Any appeals to the board were to be reviewed by the Superior Court.
5. The county board was to elect three committeemen for each school district. The school committee employed teachers on the recommendation of the Superintendent and could suspend teachers with charges in writing being submitted to the Superintendent.

CHART XII

SCHOOL GOVERNANCE 1923

STATE SCHOOL BOARD
STATE SUPERINTENDENT OF EDUCATION
COUNTY BOARD OF EDUCATION (APPOINTED BY GENERAL ASSEMBLY)
COUNTY SUPERINTENDENT (APPOINTED)
SCHOOL COMMITTEE (APPOINTED BY COUNTY BOARD OF EDUCATION)

In 1931, the school boards' size was changed to allow a maximum of seven members. If a vacancy occurred on the board of education, it could be filled by the executive committee of the political party of the member who vacated the seat.

The Machinery Act of 1933 established the State School Commission charged with setting the policies for the public schools. The county became the administrative unit which

would provide a convenient number of school systems and in this consolidation some city units were eliminated.

Under this act, the State School Commission became the State Board of Education as of April, 1943. Chapter 468 provided that one representative from each educational district and two at large members be appointed. The other members would include the Lieutenant Governor, State treasurer and the Superintendent of Public Instruction.[31] Governance as of 1943 is illustrated in Chart XIII.

CHART XIII

SCHOOL GOVERNANCE 1943

STATE SCHOOL BOARD (10 APPOINTED BY GOVERNOR, 3 ELECTED)
STATE SUPERINTENDENT OF EDUCATION
COUNTY BOARD OF EDUCATION (APPOINTED BY GENERAL ASSEMBLY)
COUNTY SCHOOL SUPERINTENDENT (APPOINTED)
SCHOOL COMMITTEE (APPOINTED)

Changes in the governance of the public schools have not been as radical or as rapid since 1943. Changes since 1943 include the elimination of school committees and changes in the selection process for boards of education. The General Assembly is no longer responsible for the appointment of

[31]North Carolina General Statutes 1943 Chapter 468.

boards. All county school boards and most city school boards are elected by the residents. Some city boards are appointed and the body who appoints those members varies according to the city school's charter. The state school board's selection has not changed and the State Superintendent for schools is elected. Chart XIV shows the current school governance in North Carolina.

CHART XIV

SCHOOL GOVERNANCE 1992

STATE SCHOOL BOARD
STATE SUPERINTENDENT OF SCHOOLS (ELECTED)
SCHOOL BOARDS (ELECTED AND APPOINTED)
LEA SUPERINTENDENT (APPOINTED)

EARLY PUPIL ASSIGNMENT ISSUES

While there is no record of any ligation involving school assignment prior to 1954, there are instances of legislation addressing student assignment issues and some issues that did arise from the transfer of students. What follows is a chronological discussion of those issues and pertinent legislation.

In a letter written to then State Superintendent Calvin Wiley in the mid 1850's, is the first recorded complaint of student transfers. A teacher writes that he has excluded

students over the age of twenty-one because of overcrowded conditions. He also excluded children from neighboring districts because of overcrowding. His most serious complaint concerned the law that allowed any two superintendents of the county to transfer children from one district to another at will. He further contended that the school had been crowded against his will and against the best interests of the district. Superintendent Wiley noted that transferring was a common practice and one that seemed to interfere with the progress of the district school.[32]

Forty-five years later, the legislature of 1891 authorized the board of education in Jackson County to allow certain pupils to attend school at Whittier in Swain County.[33] This is the first legislation involving the specific assignment of students in the state. In 1893, the General Assembly set school attendance boundaries for Swan County to allow students to attend in Graham on Twenty-Mile Creek. They allowed the transfer of funds from Swan to Graham to pay for these students. This act also repealed Chapter 475 of 1891. The General Assembly in 1899, declared that for the purposes of assignment of black and white students to separate schools, the marriage certificate was to be used. The marriage certificates would indicate the race of the student.

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[32]Noble, Supra N 3, at 228.

[33]North Carolina General Statutes 1891 Chapter 475.

In 1903, the legislature gave the school districts the authority to form school districts out of portions of contiguous counties by agreement of county boards of education. Section 22 of Chapter 435 stated;

> "...all white children shall be taught in the public schools provided for the white race, and all colored shall be taught in the public schools provided for the colored race, but no child with negro blood in his veins, however remote the strain, shall attend a school for the white race; and no such child shall be considered a white child."[34]

The authority to assign students was assumed by the State Superintendent and the General Assembly through legislation. As the state began to establish high schools, the authority to assign students was taken out of the hands of the local authorities.

The legislation of 1913 allowed the county board of education to accept students to attend high school who lived outside the district, but they had to be approved by the State Board of Education. The laws of the 1915 General Assembly made first mention of non-resident students also being non-tuition students. This same legislation stated that you could not compel a board of education to admit a student who had been expelled. They presumed the board action was correct and the burden of proof was on the complaining party.

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[34]North Carolina General Statutes, Supra N 26, at 756.

With the consolidation movement sweeping America, the 1917 legislature passed legislation to allow school boards to redistrict and consolidate districts. Section 5 (Chapter 285) states;

> "...county boards of education of any two contiguous counties are hereby authorized to transfer children from a school district in the other county for the convenience of the children transferred and arrange by agreement for reasonable compensation out of the county school fund of the county from which such transfers are made to be placed to the credit of the school district in which the children transferred attend school."[35]

Issues of student transfers were also addressed by the General Assembly in 1923. The State Superintendent would decide on the pro-rata share of funds if the counties could not come to an agreement. The boards did have the right to transfer families who were contiguous to the boundaries but the families must pay any special school taxes of the district to which they were assigned. Residence was defined as a parent with whom a child lived or someone who provided board and other support free of cost to the student.

In 1931, the school boards were also given the authority to transfer students between districts where there was not space available in the schools within one of the districts.

The Machinery Act of 1933 made the State School Commission responsible for the assignment of students.

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[35]North Carolina General Statutes 1947 Chapter 285.

Students could be assigned to schools in order to lower instructional cost to the state.

In 1945, legislation forbid children to be transported except to the school where they were assigned by the county board of education unless permission was granted by the State Board of Education. This was followed by a General Statute, Section 15-352, in 1947 that stated:

> "...school children shall attend school within the district in which they reside unless assigned elsewhere by the State Board of Education."[36]

Boards could assign a child to another district when roads and conditions were bad. The district could pay up to twenty dollars a month so that the child could attend outside of the district of residence.

The judicial record indicates that there were no court cases involving student assignment that reached the Court of Appeals of North Carolina prior to 1954; but, that does not mean that there were no legal issues prior to that date. The North Carolina Public School Bulletin was published by the North Carolina Department of Instruction and a section of this Bulletin was devoted to questions addressed to the State Attorney General's office concerning legal interpretations of educational issues.

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[36]North Carolina General Statutes 1947 Chapter 352.

In researching the Bulletin, the first question involving student assignment occurred in 1937, when the parents of two students wished to send their children to a school closer than the one assigned to them. The Attorney General's answer supported the school system. He was of the opinion that the board of education of either a city or county unit, where there is more than one school, could designate the school students would attend regardless of convenience or overcrowded conditions.[37]

In July of that same year, a question arose as to whether the niece of a home owner paying city taxes including a supplement for the schools could send his niece who was living with him to the public schools. The Attorney General's opinion was that the public schools had to accept the niece even though her parents were living outside the state because the uncle was a resident of the state, caring for the child and was in loco parentis. It was his judgement that this also applied to the ninth month run upon supplements.[38] This opinion went far in establishing one of the residency requirements for attendance of students in a district.

In 1939, a question to the Attorney General asking what children may legally attend the schools in the city

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[37]North Carolina Public School Bulletin, p. 15, January 1937.

[38]North Carolina Public School Bulletin, p. 15, January 1937.

administrative unit were addressed by listing the four reasons that entitled a student to all of the privileges and advantages of public school of a local tax, special charter or special school taxing district. Unless removed from school for cause, the following standards were applicable:

> "(a) All residents of the district who have not completed the prescribed course for graduation in the high school.
> (b) All children whose parents have recently moved into the district for the purpose of making their legal residence in the same.
> (c) Any child or children living with either the father or the mother or guardian who has made his or her permanent home within the district.
> (d) Any child received into the home of any person residing in the district as a member of the family, who receives board and other support free of cost."[39]

This opinion further clarified legal attendance in a local tax district.

In an opinion in June, 1940, the Attorney General reinforced the right of local authorities in an administrative unit or district to refuse to accept students from other units when there is not sufficient space in the receiving unit to accommodate additional students. He went on to describe the authority of the State School Commission to assign students across district lines if it would provide a more efficient operation of the schools if sufficient space was available. It was his opinion that local authorities could not assign students across district lines and that only the state School

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[39]North Carolina Public School Bulletin, p. 15, December 1939.

Commission could do so after determination that space was available and that it would be more economical for the efficient operation of the schools.[40] This opinion clearly placed the authority to assign students across district lines in the hands of the State School Commission.

In the Public School Bulletin in October of 1942, an opinion was sought as to the right of a city school unit to charge tuition for students assigned by the county unit to the city administrative unit. It was the opinion of the Attorney General that if the State School Commission assigned the students to the city unit, then the county unit could not be charged tuition for these students. If it was done with the consent of administrative units, then the city had the right to charge tuition. It is again noted that the State School Commission had the final authority to assign students across administrative unit lines.[41]

The issue of tuition charges was again addressed in September, 1943. A city administrative unit was requesting clarification as to the right of the city schools to charge a nominal fee for pupils attending the school who resided out of the special tax district. The Attorney General reiterated his position that the State Board of Education had the authority to assign students across district lines without tuition being

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[40]North Carolina Public School Bulletin, p. 15, June 1940.

[41]North Carolina Public School Bulletin, p. 15, October 1942.

charged. He further stated that the city had the right to charge a fee if this arrangement of school assignment was made between the parents or the schools of the other district. For the first time, it was noted that school assignment could be made between a parent and the district without seemingly getting approval from the State Board of Education.[42]

In another opinion by the Attorney General in September 1944, he stated that if the State Board of Education had not transferred students to a city administrative unit which is a special tax unit, the students could be prohibited from attending school within that unit and/or they might be charged tuition. This opinion applied to students voluntarily attending school within this district.[43]

In an opinion in March of 1946, the Attorney General raised the question of a county and city administrative unit agreeing to allow a student who moved to the county to finish the school year in the city district without the payment of tuition. He again stated that only the State Board of Education could transfer students without tuition charge. He expressed some concern that if this was done extensively, some question could be raised as to the authority of the school districts using school facilities for purposes other than for

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[42]North Carolina Public School Bulletin, p. 15, September 1943.

[43]North Carolina Public School Bulletin, p. 15, September 1944.

the benefit of the residents of those districts.[44] A parent inquired in September 1946, if she had to pay tuition for her two children to a county where the high school was only six miles from her home, when the high school in the county where she resides was thirty miles away. The opinion was yes but that the parent should request the State Board of Education to make arrangements for the children to attend the closer school without the payment of tuition which they are authorized to do.[45]

In three successive opinions from 1946 to 1951, the Attorney General stated that school authorities have the right to require students to attend the school to which they have been assigned and that parents did not have the right to voluntarily transfer their children from one school district to another. Only the State Board of Education had the authority to transfer students between districts accept where two districts have agreed to the assignment of students between their districts with the approval of the State Board of Education. The Attorney General suggested that the compulsory attendance law could be used to enforce the attendance of children within the district in which they reside.[46]

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[44]North Carolina Public School Bulletin, p. 15, March 1946.

[45]North Carolina Public School Bulletin, p. 15, September 1946.

[46]North Carolina Public School Bulletin, p. 15, Oct. 1951, May 1952, Jan. 1953.

The question of legal residence came to the forefront from December 1952 to January 1954. Students seeking to attend schools outside of their assigned school districts were becoming more numerous. Inquiries were made from superintendents, boards of education and parents as what comprised the legal definition of "residence". The Attorney General cited the case of **STATE v. GRIZZARD, 89 N.C. 115** tried in Halifax County in 1883 to define residence. In that case the Court said:

> "Residence, as the word is used in this section in defining political rights, is, in our opinion, essentially synonymous with domicile, denoting a permanent as distinguished from a temporary dwelling place. There may be a residence for a specific purpose, as at summer or winter resorts, or to acquire an education, or some art or skill in which the **animus revertendi** accompanies the whole period of absence, and this is consistent with the retention of the original and permanent home with all its incidental privileges and rights. Domicile is a legal word and differs in one respect, and perhaps in others, in that, it is never lost until a new one is acquired, while a person may cease to reside in one place and have no fixed habitation elsewhere."[47]

Using domicile as the legal word, the Attorney General's opinion in 1954 defined the permanent residence as the domicile and students should attend school in the district where they were domiciled.

This differed from an opinion in 1952 and 1953, when the criteria used were those cited in the 1939 opinion discussed

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[47]North Carolina Public School Bulletin, p. 15, January 1954.

previously. The use of domicile places a much heavier burden on parents proving the residence of their child. The time was coming when this change in definition and criteria for school assignment would become critical as boards of education became the legal body to assign students within their school districts.

The issues and legislation described previously had only minor impact on students and their school assignments across the state. What was to happen in 1954 was to effect the lives of all of the citizens of North Carolina forever. It is important to look at the state of the schools and the feelings of the people in regard to segregation in order to understand the full significance of the **BROWN I** decision made by the United States Supreme Court. A synopsis of the political and sociological climate regarding the public schools is the topic of the third section of this chapter.

A Political and Social Synopsis of the State and Schools

The Negro first came to North Carolina with the Spanish and settlers from Virginia as slaves. Slavery was further encouraged in 1665 when the lord proprietors offered "...fifty acres of land to any settler bringing a Negro slave above the age of fourteen."[48] By 1860, there were 361,000 Negroes

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[48]Coates, Supra N 1 at 5

representing thirty-six percent of the population in North Carolina.

Though there were some free Negroes, they represented only ten percent of the Negro population in 1860. It was not until the thirteenth amendment in 1865 that all Negroes were free men.

Schooling for black and white children differed greatly during the early history of North Carolina. White children, beginning in 1839, with the funding of the public schools of North Carolina, were afforded the opportunity to learn to read and write where schools were being organized. Prior to that time they were tutored in many different ways. For black children the only source of education came from those masters who chose to teach some of their slaves to read and write. Their education was then furthered in the Sunday Schools. Even this attempt to provide education for black children was stifled in 1830 when the General Assembly made it a misdemeanor to teach slaves to read or write. There were no public schools open to blacks, slave or free.

At the close of the Civil War the public schools in North Carolina closed their doors for a number of reasons, one of which was to keep from admitting black children to formerly all white schools. In order for North Carolina to gain self governance and re-admittance to the union with full representation, the state had to satisfy the Fourteenth

Amendment to the Constitution guaranteeing equal protection of the law and non-discrimination.

Following the Civil War, and before the reopening of public schools in North Carolina, private schools for blacks sprang up across the state. By 1869, eleven thousand black children were being taught in 150 schools sponsored by the religious and benevolent societies. Another twenty thousand black children were being taught in schools sponsored by the Freedman's Bureau.[49]

The 1869 General Assembly, after much debate and bitter infighting concerning education for black children, enacted legislation that provided for a "general and uniform system of public education for both races" supported by the taxation of all of the wealth of all of the people for the children of all of the people.[50] The General Assembly would provide for the education of all of the children of North Carolina but in separate facilities. Separate schools were at the time not only supported by whites but by many influential blacks. The courts would reinforce this ideology over the years.

The federal courts had upheld the doctrine of segregated schools beginning with **ROBERTS v. CITY OF BOSTON** in 1849 to

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[49]D. J. Whitener, "Public Education in North Carolina During Reconstruction, 1865-1876", Essays in Southern History, ed by F. M. Green, James Sprunt Studies in History and Political Science, Vol. 31, pp 73-75 (Chapel Hill: University of North Carolina Press, 1949).

[50]North Carolina General Statutes 1869 Chapter's 68 and 69.

PLESSY v. FERGUSON in 1896. In **PLESSY v. FERGUSON** the United States Supreme Court in its decision against Plessy, who sought to overthrow a Louisiana statute requiring segregation of races traveling on trains, denied his claim by saying.

> "Laws permitting, and even requiring (separation of races) in places where they are liable to be brought in contact do not necessarily imply the inferiority of either race to the other and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their power. The most common instance of this is connected with the establishment of separate schools for white and colored children which has been held a valid exercise of the legislative power, even by the courts of states where the political rights of the colored race have been longest and most earnestly enforced."[51]

With this decision, separate but equal became the law of the land. The separate but equal doctrine did compel many states to attempt to upgrade facilities and provide equal opportunity. Separate but equal became the public response of North Carolina to the education of black children. Was it truly equal in 1954?

Figures furnished by L. H. Jobe, Division of Publications and Statistics, State Department of Instruction to the Institute of Government would refute the equality issue. They are as follows:

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[51]Plessy v. Ferguson, 163 U.S. 537 (1896).

CHART XV

1952-1954 FIGURES[52]

	White	Black	Year
School Population	792,000	339,000	1953
Enrollment	652,000	276,000	1953
Percentage	82%	81%	1953
Length of Term	180 Days	180 Days	1954
Number of Teachers	20,000	8,000	1952
Teacher Load	30/1	34/1	1952
Salary of Teachers	$2,807/A	$2,910/A	1952
Value of School Property	$316.5M	$77.4M	1953
Percentage Population	70.4%	29.6%	1953
Percent of Property Value	80.4%	19.6%	1953
Current Expense Expenditures	$101.8M	$40.0M	1952
Percent of Expenditure	72.3%	26.7%	1952

Based on this data, it is evident that funds for facilities, teachers, and current expenses were not equal for the black children of North Carolina.

At the time of the **BROWN I** decision, the black population varied by counties in North Carolina from 1/5 of one percent in Graham County to 63.9 percent in Northhampton County. There were nine counties with a black population between 50 and 63.9 percent, twenty with a black population of 40 to 50 percent, sixteen between 30 and 40 percent, thirteen between 20 and 30 percent, and forty-two counties with a black population of less than 20 percent. Of those forty-two

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[52]Coates, Supra N 1 at 18-20.

counties, all but three are in the Piedmont and western part of the state.[53]

Schools were segregated by law and racial prejudice was the dominant attitude in the South and North Carolina. It affected all aspects of life in the South. Opinion polls in the 1940's and 1950's were almost unanimously in favor of school segregation. In 1943 only two percent of Southerners, white and black, favored school segregation. That figure had risen to 14 percent by 1956.[54] In 1955, Public Opinion Quarterly found that 62 percent of southern whites believed white and black children between 6 and 12 years of age would not get along well together in the same school; 81 percent believed children over 12 would not get along well in an integrated school.[55]

Politically, blacks had in fact been disenfranchised when the Democrats used the race issue to obtain a majority in the general assembly and proceeded to repeal the election reform laws of the "fusionist", a coalition of Populists and Republicans which depended on black participation in

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[53]Coates, Supra N 1 at 5.

[54]Herbert Hyman and Paul B. Shealstey, "Attitudes Toward Desegregation" Scientific American (December, 1956) 35-39.

[55]Hasel Gaudet Erskine. "The Polls: Race Relations." Public Opinion Quarterly, (Spring, 1962), 137-148.

politics.[56] The Democrats used the issue of "Negro Rule" to arouse whites during the election of 1898. The campaign was led by Furnifold Simmons who subsequently dominated North Carolina politics for the next thirty years while serving in the U.S. Senate. Paramilitary units were established to harass Republicans, Populists, and especially blacks from voting. Simmons, using the support of business and manufacturers, successfully guided the Democrats to an overwhelming victory during this election.[57]

The 1899 General Assembly enacted a new election law and a restrictive suffrage amendment that instituted a poll tax along with a literacy test for all voters. The amendment did provide a grandfather clause which allowed illiterates to vote if their grandfathers had voted before 1867. This effectively eliminated all blacks because they were not allowed to vote prior to 1867. With the passage of the suffrage amendment, the Democrats institutionalized for decades, the denial of political rights of black North Carolinians.[58] Against this background, the white elite institutionalized and legitimated a segregated society in which blacks could not expect either political or economic equality.[59] Prior to the 1960's a

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[56]Paul Luebke, Tarheel Politics: Myths and Realities, p. 4 (Chapel Hill: University of North Carolina Press, 1990).

[57]Id. at 5-6.

[58]Id. at 6.

[59]Id. at 102.

black had not served in the General Assembly since the late eighteen hundreds.

As further evidence of the attitudes prior to the **BROWN** I decision, it is important to look at the 1950 election for the U.S. Senate seat. In 1949, University of North Carolina President, Frank Porter Graham, was appointed by then Governor Kerr Scott, to fill a vacancy in the U.S. Senate. Graham, "best known and best-loved man in North Carolina" was favored to win the seat in 1950. Graham was a genuine economic and racial liberal in a state that generally tolerated neither. Graham opposed mandatory federal civil rights legislation, but did not hide his distaste for racial segregation.[60]

Graham won the first primary with 48 percent of the vote and it did not look as if Willis Smith, who received 42 percent, would call for a runoff. Smith changed his mind when supporters urged him to run.

The campaign was racist and asserted that Graham's election would mean desegregation. During the campaign a decision by the U.S. Supreme Court in **SWEATT v. PAINTER** found that the State of Texas had to admit a black to the previously all white University of Texas Law School, added fuel for Smith's campaign.[61] Graham was defeated soundly. This defeat sent a message to progressives that for a majority of

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[60]Id. at 16.

[61]Id. at 17.

voting Tarheels, social liberalism was too threatening and that if progressives were to be elected, they could not advocate integration or social equality.[62]

PUPIL ASSIGNMENT ACT OF 1955

With this prevailing attitude among the people and the political realities of the time, the Supreme Court of the United States effectively outlawed segregation in the public schools of the South. The Southern states argued that it would be almost impossible to end segregation, but if it was to happen, the states needed time. The Court granted time with its phrase "with all deliberate speed." This gave the South a period of time, given such strong segregationist sentiment to integrate the schools. It was going to take not only time but patience to bring about the integration of the schools. The majority of the people still supported segregation but also believed in obeying the law and keeping the peace, maintaining orderly change, and support for schools.

Governor William B. Umstead, a former teacher, acknowledged the Supreme Court's decision without defiance. He sought the advice of the Institute of Government of the University of North Carolina. Assistant Director James C. N. Paul cautioned that to close the schools as was being

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[62]Id. at 18.

discussed around the South and in North Carolina was risky in a legal sense.[63] He believed that the state should accept the Court's invitation to enter into the forth coming arguments. The Attorney General should seek latitude in six areas: time, state discretion, geographical variation, preventing racial antipathy from jeopardizing the proper functioning of the schools, preserving the academic standards in the schools, and preserving the health and personal security of the children who attended the schools.[64]

Paul thought that the Court would grant a "long fixed period for slow, orderly adjustment..."[65] He felt that the Court would recognize that the black population density varied and that geographic variations in compliance would be permitted. Health, academic background, personalities, and the "needs and desires of individual children" might also be recognized as factors affecting the degree and speed of desegregation.[66]

Three basic methods were discussed by Paul that might enable the State to preserve the status quo of total segregation of the races in the schools. These methods were: a pupil assignment plan, creating new attendance districts,

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[63]Coates, Supra N 1 at 126.

[64]Id. at 139.

[65]Id. at 145.

[66]Id. at 157.

and allowing children to elect a district and school.[67] It should be noted that the discussion was not on how to integrate the schools but on how to maintain a segregated school system.

A pupil assignment plan, if adopted, could not be used to enforce permanent segregation. Pupil assignment plans might otherwise be legal but they could not be used to achieve an illegal result. Under these circumstances, school boards and individual members could be held liable by the court. Finally, a state-wide pupil assignment plan could be rendered invalid by a single lawsuit.[68]

Paul believed that similar restrictions would apply to creating new school districts, but since regulating school districts was such a common, traditional exercise of state power the courts would not involve themselves except in extreme cases. Freedom of choice, school election, might well be sanctioned during a "transitional period of adjustment" if the purpose of a plan was not to preserve the "status quo of segregation." Otherwise, Paul believed that it would quickly be judged to be invalid. Paul suggested that a state system of administrative appeals to review whatever pupil assignments local school boards made might be appropriate.[69]

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[67]Id. at 167.

[68]Id. at 167.

[69]Id. at 180.

Paul urged the Governor to follow two main principles: use legal means to delay segregation in order to provide time for adjustment, and do not defy the Supreme Court's decision. Defiance, Paul warned, could result in "...subjecting the operation of schools in North Carolina to litigious harassment, damage suits and possibly considerable court supervision." Paul counseled in favor of "...a system of orderly, slow adjustment which might entail a minimum of court interference, and a minimum of sudden change....," as well as localizing the problems created by the **BROWN** decision.[70]

On August 4, 1954, Governor Umstead announced the appointment of a special committee to study the problems that were created by the **BROWN** decision. The chairman of this committee was Thomas J. Pearsall of Rocky Mount, former Speaker of the House of Representatives, and prominent farmer and businessman. The Pearsall Plan that was to come out of this committee was to shape the school legislation for the 1955 session. Governor Hodges and his aides had a Pupil Assignment Bill introduced immediately after his biennial address on January 6.

The Pupil Assignment Act gave to the local school boards the authority to administer enrollment and assign students to schools within the district. If the parents were not satisfied with the assignment, they could appeal to the

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[70]Id. at 204.

"appropriate school authority." If the appeal was denied, they had a right to appeal to the local board of education. If the parent's appeal was denied by the board of education then Superior Court action would have to be sought within ten days. The Superior Court decision could be appealed to the State Supreme Court.

The Pupil Assignment Act delegated the assignment of pupils to local boards and provided a system of appeals for parents who wanted their children to attend a school other than the one to which they had been assigned. Parents having to act one-by-one would have to bear the burden of desegregation as individuals. This eliminated the possibility of a suit being brought against the state and forcing the integration of the schools on a state wide basis. The provision ensured a period of time for gradual adjustment. The 1955 General Assembly approved the Pupil Assignment Act and authorized the appointment of a new legislative committee to study any further responses that might be possible to deal with the **BROWN** decision. A joint resolution vowed that the mixing of the races in the public schools within the state cannot be accomplished and if attempted would alienate public support for the schools to such an extent that they could not be operated successfully.[71]

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[71]David Leroy Corbett, ed. Public Addresses, Letters, and Papers of William Bradley Umstead, Raleigh: Council of State, 1957.

Governor Hodges, with the cooperation of others, fought the efforts of some legislators to close the schools in order to avoid integration. Legislation that would have paved the way to shut down the public school system of the state were withdrawn to await the final implementation orders of the Supreme Court. Hodges assured the legislators that he would reconvene the Assembly once the Court's final orders were known.

On May 31, 1955, the Supreme Court issued its final decree in the **BROWN** cases. Hodges announced within three weeks the appointment of the new committee authorized by the 1955 General Assembly to study further responses to the Court's decrees. Thomas Pearsall chaired the seven-man committee. The following spring the North Carolina Advisory Committee on Education, the second Pearsall committee, issued its recommendations. Local school boards should be empowered to close the public schools. The state would provide tuition grants to support the education of children who did not wish to attend integrated schools. Governor Hodges called for the General Assembly to meet in the summer of 1956. He maintained that voluntary integration and the Pupil Assignment Act was sufficient to meet the state's needs but did agree that "safety valves' might be needed.

The General Assembly called for a referendum on the proposed amendment for September 8, 1956. The Amendment authorized local school systems to call for local elections if

fifteen percent of the voters petitioned to close the schools. If a majority so voted, the schools would be closed and the state would provide tuition grants to support education in private schools. The schools could be reopened if fifteen percent of the voters petitioned for an election and a majority voted to reopen the schools. All one hundred counties voted overwhelmingly in favor of the amendment but history has shown that no public schools were closed in North Carolina.

The Pupil Assignment Act has been tested in numerous court cases. Thirty-four years after its passage, this act continues to come under scrutiny from both parents and the court. The third chapter will analyze the effects of this litigation and the legal aspects of the Pupil Assignment Act.

CHAPTER III

INTRODUCTION

There was nothing subtle about the Pupil Assignment Act of 1955. Its purpose was to stall the desegregation of the public schools of North Carolina and to maintain the status quo of racially separate schools for as long as was possible. The act was intended to isolate the effects of any court decision to the individual person and system and not to the state as a whole.

In this chapter, the evolution of the Pupil Assignment Act from 1955 to the present will be discussed in relation to the legal aspects of student assignment and the court decisions that provided the case law on student assignment in North Carolina. In looking at the Pupil Assignment Act, it is important to keep in mind the real purpose of the passage of this law and how on a case by case challenge of school boards and the Pupil Assignment Act, the plaintiffs eventually involved federal courts in the issue of segregation within the schools.

It should be remembered that when discussing legal issues, each judicial decision relates only to the specific issues of a particular case. In making decisions, judges do look at decisions of other judges and some decisions do establish legal precedent or "case law." The higher the court

decision, the more likely that a case will establish legal precedent, with the Supreme Court establishing the greatest possible precedent regarding a particular issue.[72] It must be noted that a different set of facts may produce different legal results though the legal issues may be very similar to those already decided by the courts.[73]

As previously discussed in Chapter II, the Pupil Assignment Act of 1955 was in response to the **BROWN I** decision rendered by the United States Supreme Court in 1954. After a second study commission was convened in 1955 and further refinement by the U.S. Supreme Court of the ruling in the **BROWN** case, a special session of the legislature was called in 1956. At this session, the General Assembly called for a referendum for a Constitutional Amendment allowing local districts to close schools and to provide for the payment of educational expense vouchers that parents could use to pay for private education. As part of this legislation the Pupil Assignment Act was amended. For discussion purposes the text of the Pupil Assignment Acts of 1955 and 1956 follow with comments. It is important for the reader to be familiar with the text of these acts in order to understand the judicial

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[72]Joseph E. Bryson and Charles P. Bentley, Ability Grouping of Public School Students (Charlottesville, VA: The Richie Company, 1980).

[73]Id. 50.

cases that will be discussed. (bold print will note differences in Acts)

PUPIL ASSIGNMENT ACT OF 1955

AN ACT TO PROVIDE FOR THE ENROLLMENT OF PUPILS IN PUBLIC SCHOOLS.

Section 1. The county and city boards of education are hereby authorized and directed to provide for the enrollment in a public school within their respective administrative units of each child residing within such administrative unit qualified under the laws of this state for admission to a public school in such administrative unit. Except as otherwise provided in this Act, the authority of each such board of education in the matter of the enrollment of pupils in the public schools within such administrative unit shall be full and complete, and its decision as to the enrollment of any pupil in any such school shall be final. No pupil shall be enrolled in, admitted to, or entitled or permitted to attend any public school in such administrative unit other than the public school in which such child may be enrolled pursuant to the rules, regulations and decisions of such board of education.

Section 2. In the exercise of the authority conferred by Section 1 of this Act upon the county or city boards of education, each such board shall provide for the enrollment of pupils in the respective public schools located within such county or city administrative unit so as to provide for the orderly and efficient administration of such public schools, the effective instruction of the pupils <u>therein enrolled</u>, and the health, safety, and general welfare of such pupils. In the exercise of such authority such board may adopt such reasonable rules and regulations as in the opinion of the board shall best accomplish such purposes.

Section 3. The parent or guardian of any child, or the person standing in loco parentis to any child, who shall apply to the appropriate public school official for the enrollment of any such child in or the admission of such child to any public school within the county or city administrative unit in which such child resides, and whose application for such enrollment or admission shall be denied, may, pursuant to rules and regulations established by the county or city board of education apply to such board for enrollment in or admission to such school, and shall be entitled to a prompt

and fair hearing by such board in accordance with the rules and regulations established by such board. The majority of such board shall be a quorum for the purpose of holding such hearing and passing upon such application, and the decision of the majority of the members present at such hearing shall be the decision of the board. If, at such hearing, the board shall find that such child is entitled to be enrolled in such school, or if the board shall find that the enrollment of such child in such school will be for the best interests of such child, and will not interfere with the proper administration of such school, or with the proper instruction of the pupils there enrolled, and will not endanger the health or safety of the children there enrolled, the board shall direct that such child be enrolled in and admitted to such school.

Section 4. Any person aggrieved by the final order of the county or city board of education may at any time within ten (10) days from the date of such order appeal therefrom to the superior court of the county in which such administrative school unit or some part thereof is located. Upon such appeal, the matter shall be heard de novo in the superior court of therein. The record on appeal to the superior court shall consist of a true copy of the application and decision of the board, duly certified by the secretary of such board. If the decision of the court be that the order of the county or city board of education shall be set aside, then the court shall enter its order so providing and adjudging that such child is entitled to attend the school as claimed by the appellant, or such other school as the court may find such child is entitled to attend, and in such case such child shall be admitted to such school by the county or city board of education concerned. From the judgement of the superior court an appeal may be taken by any interested party or by the board to the Supreme Court in the same manner as other appeals are taken from judgments of such court in civil actions.[74]

As reported in the North Carolina Law Review in 1955, the statute followed the recommendations of the Governor's Committee, that the "enrollment and assignment of children in the schools is by its very nature a local matter...."[75] The local county and city boards were given authority over the

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[74]North Carolina General Statutes 1955, Chapter 366.

[75]North Carolina Law Review, Vol. 33, 1955, page 552.

enrollment of students residing within their respective administrative units and could formulate rules and regulations as they saw fit to implement this power. The boards were to adopt enrollment policies which would "provide for":

(1) "orderly and efficient administration" of the schools;

(2) "effective instruction" in the schools;

(3) preservation of "health";

(4) "safety"; and

(5) "general welfare" of all the students enrolled in the schools in the administrative unit.[76]

The law did not specify how a school board would discharge its duties but left it to the board to carry out this responsibility in any way they saw fit. The legislation made no mention of race as a criterion for enrollment and a school board could desegregate its schools if it wished.[77]

The 1955 Act provided for both administrative and judicial review of a request for enrollment in a school other than the one to which the board had assigned the student. The act was very specific. The board must find in the hearing that "the enrollment of such child in such school be for the best interest of such child, and not interfere with the proper instruction of the pupils there enrolled, and not endanger the health or safety of the children there enrolled, the board

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[76]Id. 552.

[77]Id. 553.

shall direct that such child be enrolled in and admitted to such school."[78] If the criteria was not met, they could deny the request. The act provided for judicial review on appeal to the Superior Court of the county within ten days of the decision by the board. The appeal was to be heard by a jury and if the decision was not satisfactory to the plaintiff, the plaintiff could appeal to the North Carolina Supreme Court for review. If the Supreme Court did rule for the plaintiff the Court could order the enrollment of the student to the school they were entitled to attend and the respective city or county board of education would have to admit them.

The 1956 Act reads as follows:

PUPIL ASSIGNMENT ACT OF 1956

AN ACT TO AMEND ARTICLE 21, CHAPTER 115 OF THE GENERAL STATUTES, RELATING TO ASSIGNMENT AND ENROLLMENT OF PUPILS IN PUBLIC SCHOOLS.

Section 1. G.S. 115-176 is hereby amended to read as follows: "Each county and city board of education is hereby authorized and directed to provide for the assignment to a public school of each child residing within the administrative unit who is qualified under the laws of this State for admission to a public school. Except as otherwise provided in this Article, the authority of each board of education in the matter of assignment of children to the public schools shall be full and complete, and its decision as to the assignment of any child to any school shall be final. **A child residing in one administrative unit may be assigned either with or without the payment of tuition to a public school located in another administrative unit upon such terms and conditions as may be agreed in writing between the boards of education of the administrative units involved and entered upon the official records of such boards.** No child shall be enrolled in or permitted to attend any public school other than the public

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[78]Id. 553.

school to which the child has been assigned by the appropriate board of education. In exercising the authority conferred by this Section, each county and city board of education shall make assignments of pupils to public schools so as to provide for the orderly and efficient administration of the public schools, and provide for the effective instruction, health, safety, and general welfare of the pupils. Each board of education may adopt such reasonable rules and regulations as in the opinion of the board are necessary in the administration of this Article."

Sec. 2. G. S. 115-177 is hereby amended to read as follows: "In exercising the authority conferred by G. S. 115-176, each county or city board of education may, in making assignments of pupils, give individual written notice of assignment, on each pupil's report card or by written notice by any other feasible means, to the parent or guardian of each child or the person standing in loco parentis to the child, or may give notice of assignment of groups or categories of pupils by publication at least two times in some newspaper having general circulation in the administrative unit."

Sec. 3. G. S. 115-178 is hereby amended to read as follows: "The parent or guardian of any child, or the person standing in loco parentis to any child, who is dissatisfied with the assignment made by a board of education may, within ten (10) days after notification of the assignment, or the last publication thereof, apply in writing to the board of education for the reassignment of the child to a different public school. Application for reassignment shall be made on forms prescribed by the board of education pursuant to rules and regulations adopted by the board of education. If the application for reassignment is disapproved, the board of education shall give notice to the applicant by registered mail, and the applicant may within five (5) days after receipt of such notice apply to the board for a hearing, and shall be entitled to a prompt and fair hearing on the question of reassignment of such child to a different school. A majority of the board shall be a quorum for the purpose of holding such hearing and passing upon application for reassignment, and the decision of a majority of the members present at the hearing shall be the decision of the board. If, at the hearing, the board shall find that the child is entitled to be reassigned to such school, or if the board shall find that the reassignment of the child to such school will be for the best interests of the child, and will not interfere with the proper administration of the school, or with the proper instruction of the pupils there enrolled, and will not endanger the health or safety of the children there enrolled, the board shall direct that the child be reassigned to and admitted to such school. The board shall render prompt decision upon the

hearing, and notice of the decision shall be given to the applicant by registered mail."[79]

The Special Session of the General Assembly in 1956 revised the Pupil Assignment Act of 1955 in numerous ways. The words "assignment" and "assign" are substituted for "enrollment" and "enroll". The Act of 1956 gives the boards of education the authority to assign students to any school including schools outside of their administrative unit. This reflects the possibility that educational grants might be awarded to private schools and the board would have the right to assign these students and pay the educational grants. Again, the boards would formulate rules and regulations in assigning students.

As noted, section 3 under the 1956 Act required each board to give some written notice to the parent or guardian of each child as to their school assignment.[80] Assignment of groups or categories of pupils could be given by publication in a newspaper having general circulation in the administrative unit.

A major change in the law was the elimination of the judicial review process that was part of the Act of 1955.[81] The 1956 Act provided for administrative review of a request

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[79]North Carolina General Statutes 1956, Chapter 7.

[80]Robert H. Wettach, "North Carolina School Legislation", 12, North Carolina Law Review, Volume 35 (1956/1957).

[81]Id. 12.

for reassignment in similar language as the Act of 1955 and boards were required to notify the parents by registered mail of their decision. The challenges to the Pupil Assignment Act and boards of education had begun even before their adoption in 1955 and 1956. The legal basis for court cases involving student assignment in North Carolina will be reviewed.

LEGAL BASIS FOR COURT CASES INVOLVING STUDENT ASSIGNMENT

As previously discussed, the segregation of the schools of North Carolina was legislated by law and had been supported by U.S. Supreme Court decisions, such as **PLESSY v. FERGUSON**, that upheld "separate but equal" as constitutional.[82] The **BROWN** I decision changed that. This landmark decision was to provide the basis for judicial review of educational issues for years. Bryson and Bentley list three major constitutional questions in regard to this case. They are:

1. "Can state and local school systems maintain separate school organizational plans for white and black students if facilities, programs and personnel are equal?"

2. "Do laws permitting segregation in the public school according to race violate the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution?"

3. "Is public education a right or a privilege, and must it be provided to all citizens on an equal basis?"[83]

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[82]Plessy v. Ferguson Supra N 48, 163 U.S. 537 (1896).

[83]Bryson and Bentley Supra N 72 at 96.

The Supreme Court ruled that "separate but equal" was not constitutional on the basis that forced segregation of students was a denial of the equal protection of the law as guaranteed by the Fourteenth Amendment of the Constitution. The Court went further by stating that where states attempt to provide an opportunity for education, it must be made available to all on equal terms. They instructed the district courts to require school boards to begin admitting students to schools on a nondiscriminatory basis with all deliberate speed.[84]

The Fourteenth Amendment was the basis for the Supreme Court decision in **BROWN I** and was to be the basis for much of the educational litigation that was forthcoming. Section I of the Fourteenth Amendment states:

> ...nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.[85]

The Fourteenth Amendment was to be the basis on which minorities would seek the desegregation of the schools in North Carolina. It would take a case by case challenge of the boards of education and the authority granted them by the Pupil Assignment Act before the federal courts could intervene

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[84]Brown v. Board of Education of Topeka, 347 U.S. 483 (1954).

[85]U.S. Constitution, Amendment XIV, Section 1.

on behalf of plaintiffs. Legal questions to be considered were:

1. Was the Pupil Assignment law constitutional at the state and federal level?
2. Were there provisions in the law that allowed plaintiffs to receive due process in their request for reassignment?
3. Did boards of education have the authority to assign students in any way that they deemed appropriate?

These questions and others would be answered in the years following the passage of the Pupil Assignment Act. As cases were scrutinized, clarified, and adjudicated over the years, the federal courts were eventually able to force the desegregation of the schools in North Carolina. A clarification of "in the best interest of the student" and the authority of the school board to assign students "in the best interest of the school system" would evolve from the judicial process.

LEGAL ASPECTS OF THE PUPIL ASSIGNMENT ACT

In discussing the case law, an attempt will be made to show how each case that was decided set the precedent for cases following and how litigants seeking to integrate the schools were able to build on previous decisions. The cases adjudicated at the state level contrast sharply with the majority of cases heard at the federal level.

Authority to Assign

The foundation of the Pupil Assignment Act was authorizing boards of education, be it city or county, to assign students to schools by any method that they wished to use. As previously stated, in the past this authority had been limited to the State Board of Education. In a case filed before the adoption of the Pupil Assignment law, the parents in the **ASSIGNMENT OF THE SCHOOL CHILDREN IN THE STELLA COMMUNITY OF CARTERET COUNTY**[86] challenged an order of the State Board of Education requiring them to send their children to schools in Jones County effective with the 1954-55 school year. A restraining order was brought against the State Board of Education. The State Board was upheld and the parents appealed the case. When the case finally reached the North Carolina Supreme Court, it was the fall of 1955. By this time, in reaction to the **BROWN I** decision, the General Assembly had enacted the Pupil Assignment Act. The Supreme Court ruled that since the State Board of Education no longer had the authority to assign students, the proceeding challenging the order was moot and the parents would have to proceed with the administrative remedies as required by law. The Supreme Court of North Carolina recognized the right of local boards of education to assign students and more

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[86]In RE Assignment of School Children, 242 S.E. 2d 500 (1955).

importantly removed the State Board of Education as the agent for assigning students to schools.

The authority of school boards to assign students was strengthened in 1956 in a U.S. Middle Court decision in **JEFFERS v. WHITLEY**[87]. The plaintiffs petitioned the State Board of Education and the State Superintendent for Instruction to order the Caswell County Board of Education to desegregate the schools. The plaintiffs alleged that the Caswell County Schools were being operated on a segregated basis and that as the State Superintendent for Instruction and the State Board of Education were charged with the general supervision and administration of the public schools of North Carolina, they could order the cessation of this practice. The U.S. Middle Court in Greensboro in 1958, agreed with plaintiffs on some of their grievances but removed the State Superintendent for Instruction and the State Board of Education as parties in the case, upholding the law that neither had any authority to assign students and that only the boards of education have the authority to assign students.[88] This case set a precedent for the federal courts by recognizing the authority of school boards to assign students to schools and the lack of authority of the State

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[87]Jeffers v. Whitley, 309 F. 2d 621 (1962).

[88]Id.

Superintendent for Instruction and the State Board of Education to intervene or supersede this decision.

The North Carolina Supreme Court strengthened the authority of the school boards to assign students when they reversed a decision handed down by the Superior Court in Wayne County in **FREMONT CITY BOARD OF EDUCATION v. WAYNE COUNTY BOARD OF EDUCATION.**[89] The Fremont Board of Education had sought an injunction against the Wayne County Board of Education because they had been enrolling students assigned to the city high school. The N.C. Supreme Court ruled that unless the board with the authority to assign students consented, then another board could not accept students from that unit. It reaffirmed the authority of the boards of education to assign students within their district and upheld G.S. 115-176;

> ...no child shall be enrolled in or permitted to attend any public school other than the public school to which the child has been assigned by the appropriate board of education."

The courts recognized the effect of the loss of students on operations of the schools if districts were allowed to enroll students at will in other schools.[90] These decisions at both the state and federal level affirmed the right of school

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[89]Fremont City Board of Education v. Wayne County Board of Education, 130 S.E. 2d 408 (1963).

[90]Id. 135.

boards to assign students whose residence was within their administrative district. The State Superintendent and the State Board of Education are clearly removed from having any authority over the assignment of students or having any legal authority over the boards of education of administrative units in regard to student assignment.

Authority to Assign Outside of District

Boards of education were given the authority to assign students outside of their district with the enactment of the 1956 Pupil Assignment law if there was a written agreement between the boards of education outlining terms and conditions for the assignment. The intent of this section was to allow school boards to continue to bus black students to schools in other districts or where, because of distance, it was more practical to assign students to another district. This was a common practice in school districts where the minority population was so small as to make it impractical to provide a school for them or distances were so great between school and home. In the N.C. Public Schools Bulletin, September, 1955, the Attorney General states that he is of the opinion that it is legal for administrative units to enter into an agreement and that an administrative unit could pay a tuition

charge for those students if it can be justified that it might save the taxpayers money.[91]

The first test of this practice came in 1959, when all of the black children of school age in Yancey County initiated action to compel the Yancey Board of Education and the County Superintendent to assign them to previously all white schools. They had previously been assigned to schools in Asheville, which was a forty mile one-way trip. The U.S. District Court in Asheville heard the complaint and found that the school districts were without legal authority to assign black students to schools outside the county while operating schools for white children within the county. The court ordered all of the black children to be reassigned to previously all white schools.[92]

This decision limited the authority of boards of education to assign students to schools outside of the district for discriminatory reasons. It did not limit their authority to enter into agreements for the assignment of students to other districts if they were not discriminatory. This case, **GRIFFITH v. BOARD OF EDUCATION OF YANCEY COUNTY** will be discussed at a later time. Again, both the state and federal courts recognized the authority of the boards of education to assign students but the federal courts were

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[91]N. C. Public School Bulletin, p. 15, September, 1955.

[92]Griffith v. Board of Education of Yancey County, 186 F. Supra 511 (1960).

beginning to question the right of boards to assign on the basis of race.

Administrative Remedies

The Pupil Assignment law of 1955 is very specific as to the administrative and judicial remedies available to parents requesting a change in assignment. The Act of 1956 removes the judicial remedies but maintains the guidelines for the boards of education to follow in approving requests for transfer. The Act does not give specific details as to procedures for hearings, participation by parents and other administrative details. These have been left to the school boards to devise. The courts eventually clarified these procedures for both parents and boards through their rulings.

This issue is vital. The Fourteenth Amendment requires due process to be followed. What that relationship is in regard to the Pupil Assignment Act of North Carolina was clarified through the courts.

One of the first tests of the Pupil Assignment Act resulted from a case that was filed prior to the Supreme Court decision in **BROWN I** and the enactment of the Pupil Assignment Act of 1955. In **CARSON v. BOARD OF EDUCATION OF McDOWELL COUNTY**[93] the plaintiffs alleged that they were being required to attend schools in Marion, fifteen miles from their home,

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[93]Carson v. Board of Education of McDowell County, 227 F. 2d 784 (1955).

and because of discrimination based solely on race and color, were not allowed to attend schools in Old Fort in McDowell County.

The Fourth Circuit Court of Appeals vacated a decision of dismissal by the District Court on the grounds that plaintiffs could be heard in regard to discrimination on account of race and color as alleged but only after the plaintiffs had exhausted the administrative remedies as provided for under North Carolina law. The Circuit Court's decision upheld the administrative remedies as provided for in the Pupil Assignment Act. The precedent was set that all of the administrative remedies at the state level must be exhausted before complaints involving student assignment would be heard by the federal courts.

Another case was to follow on the heels of **CARSON** that further clarifies the appeals process. In **JOYNER v. McDOWELL COUNTY BOARD OF EDUCATION**[94] petitioners on behalf of their children and the other black children in the county petitioned the county superintendent and the county board of education to admit black children to school and school facilities in the town of Old Fort. The case was eventually appealed to the State Supreme Court which denied the action. The Court ruled that the Pupil Assignment Act requires that any request for reassignment be done on an individual basis and that only the

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[94]Joyner v. McDowell County Board of Education, 92 S.E. 2d 795 (1956).

parent or guardian could appeal the assignment. This ruling clarified and reinforced the law that each student assignment case must be handled on an individual basis and class action suits could not be used to force the desegregation of the schools in a school system if student assignment was the cause of the complaint.[95]

As discussed in **JOYNER v. MCDOWELL COUNTY BOARD OF EDUCATION**, early class action suits were dismissed by the federal courts until all administrative remedies had been exhausted as provided for under the statues of the Pupil Assignment Act. The Fourth Circuit Court of Appeals found for the defendants in **COVINGTON v. EDWARDS**[96] citing the decision in **CARSON v. BOARD OF EDUCATION** that required all administrative remedies to be exhausted in regard to student assignment. The court did distinguish between administrative and judicial remedies in suggesting that plaintiffs could seek federal review in regards to constitutional rights of the individual after exhausting administrative remedies. The court indicated that class action suits involving constitutional rights were not subject to the same considerations as administrative remedies here. In both of these cases, the courts ruled that individuals must exhaust their administrative remedies. The next two cases clarify the

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[95]Id.

[96]Covington v. Edwards, 264 F. 2d 780 (1959).

role that the parent must play in pursuing the reassignment and the exhaustion of the administrative remedies.

In **McKISSICK v. DURHAM CITY BOARD OF EDUCATION**[97], the plaintiffs were denied reassignment of their child on the grounds that their appeal to the State Superintendent for relief did not follow the established administrative procedures and the State Superintendent did not have the authority to assign students. Two additional elements arose in this case. The parents, although they requested a hearing before the school board, did not appear before the board and the board did not request them to do so. The second element to be noted in this case by the U.S. District Court in Durham was that the request for reassignment was not to a specific school or a reason giving for the reassignment but seemed to be an attempt to desegregate all of the schools in Durham City. This decision further reinforced the individualistic emphasis on the decision to grant a change in the assignment of students to schools.

The U.S. Fourth Circuit Court of Appeals upheld the decision of the U.S. Eastern District Court in **HOLT v. RALEIGH CITY BOARD OF EDUCATION**[98] that refused to grant an injunction on the grounds that the defendants had not requested that the parents be present in case there were questions about the

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[97]McKissick v. Durham City Board of Education, 176 F. Supra 3 (1959).

[98]Holt v. Raleigh City Board of Education, 265 F. 2d 95 (1959).

reassignment. The school board had denied the request and the parents requested a hearing. The parents again sought relief on the grounds that the statute did not require the parents to be present and the board did not have the right to require their presence. The court did rule that the boards did have quasi-judicial rights as a government agency as generally accepted by the courts and the plaintiffs did not exhaust all of the administrative remedies afforded them under the statute.

As decisions of the courts are rendered in each case, we see the plaintiffs building upon each case in attempting to meet the criteria as set by the federal courts that will eventually allow the cases to be heard as cases of discrimination and not just pupil assignment issues.

In 1959, the Fourth Circuit Court of Appeals reversed the first case involving student assignment coming out of the District Court. Circuit Judge Soper in **McCOY v. GREENSBORO CITY BOARD OF EDUCATION**[99] remanded the case back to the District Court for further consideration. The District Court had ruled that all administrative remedies had not been exhausted by the plaintiffs as provided for by the Pupil Assignment Act. Judge Soper found that all administrative remedies had been exhausted on an individual basis and that

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[99]McCoy v. Greensboro City Board of Education, 283 F. 2d 671 (1960).

the constitutional rights of the plaintiffs were the issue.[100] It put school boards on notice that manipulation of the state statute concerning student assignment would not be tolerated by the courts and that we were entering a new era in North Carolina regarding desegregation of the schools.

Blocking School Assignments

What would be the reaction of white parents if a board of education did reassign minority students to a previously all white school? Could they prevent the reassignment and what were the rights of the white parent? In **APPLICATION FOR REASSIGNMENT OF PUPILS,**[101] the court clarifies "aggrieved" in regard to reassignment requests. In May, 1957, the Greensboro City Board of Education adopted rules and regulations for the enrollment and assignment of students. Applications were made by black parents for their children to attend schools previously restricted to white students. They were individual and indicated a specific school assignment and the reason for the request. The board approved the requests.

A group of white parents then filed a notice of appeal to the Superior Court to block the assignments claiming they were aggrieved because of the action of the school board. They claimed that the action would disrupt the school, impair

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[100]Id.

[101]In RE Assignment of Pupils, 101 S.E. 2d 359 (1958).

instruction and endanger the welfare of the children enrolled there. The Superior Court declined to issue a restraining order to block the assignments.[102]

Upon appeal to the North Carolina Supreme Court, the Court upheld the decision on the grounds that only a student requesting a change in school assignment could be considered the "person aggrieved".[103] This case ruled out the possibility of parents using the administrative appeals process to block the assignment of students to a school and that only those requesting reassignment can be considered to be aggrieved.[104] Parents not wishing their children to attend school with minority children could request reassignment, but they had no legal means by which to block the transfer of another student.

Board Procedure for Reassignment Requests

The process by which boards heard appeals had not been specified in the Pupil Assignment law but had been left to the discretion of each individual school board. As more pressure was being exerted on boards to desegregate the schools, it was only a matter of time before the courts began to require specific procedures of boards in hearing reassignment requests

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[102]Id.

[103]Id.

[104]Id.

and reasons for denials. In 1959 and again in 1960, the Durham City Board of Education followed a process for hearing reassignment appeals that resulted in **WHEELER v. DURHAM CITY BOARD OF EDUCATION.**[105] The Durham City Board of Education denied all but a few requests for reassignment of minority children to previously all white schools. By resolution the board denied all requests where there was not a parent present and then denied all other requests on the grounds that new schools were being built and any mass movement of students at this time would be disruptive.

A class action suit was brought against the board and was heard in the U.S. District Court of North Carolina in Durham. The impact of this case was to have a tremendous impact on how school boards would conduct appeal hearings for reassignment. The court citing **McKISSICK v. DURHAM, CARSON v. BOARD OF EDUCATION OF McDOWELL COUNTY, COVINGTON v. EDWARDS** and **HOLT v. RALEIGH CITY BOARD OF EDUCATION** agreed that where parents had been present they had exhausted their administrative remedies and they had a right to ask for relief from the federal courts on grounds of infringement of their constitutional rights.

Significantly, the courts required that the board of education was to consider each application one at a time and on its own merit. They were to give specific reasons for the denial of an application. They were also to report to the

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[105]Wheeler v. Durham City Board of Education, 196 F. Supp 71 (1961).

courts specific criteria used in considering the applications. This action began to tighten the appeals process for the reassignment of students. Boards were in the future going to be required to hear each appeal individually and be specific as to the reason for denial. Boards would need to develop policies that specify grounds for reassignment and denial. These instructions by the court were beginning to set the legal precedent for decisions of student assignment to be in the "best interest" of each individual student.

Discrimination in Student Assignment

In 1960, the U.S. District Court in Asheville ruled that the plaintiffs in **GRIFFITH v. BOARD OF EDUCATION OF YANCEY COUNTY** had exhausted all of their administrative remedies and that they had been done on an individual basis. The refusal of the board to admit the black students to the previously all white schools was ruled to be discriminatory, unlawful and in violation of their constitutional rights.[106] The assignment of students outside of the county because of race was discriminatory. The board was required to assign the black children to previously all white schools within thirty days and ordered a remedy which required the integration of the entire system within thirty days.[107]

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[106]Griffith v. Board of Education of Yancey County, Supra 92, 186 F. Supp 511 (1960).

[107]Id.

Ironically, in **MORROW v. MECKLENBURG COUNTY BOARD OF EDUCATION**[108] just a year later, Judge Warlick, who handed down the decision in **GRIFFITH v. BOARD OF EDUCATION**, ruled against the plaintiffs. The fathers' of eight minority children sought reassignment to previously all white schools in 1957 and 1958 and relief in federal court on the grounds they had been discriminated against by the board of education when their requests for reassignments had been denied. Judge Warlick agreed that they had exhausted their administrative remedies but judged that the board was just acting in a cautious and conservative manner in denying their request. He found no grounds that the board had acted in a discriminative manner. He ruled that there was no evidence sufficient to show any unconstitutional administration of the Pupil Assignment law.

These cases were an anomaly. In both of these cases, all administrative remedies had been exhausted and plaintiffs had applied to the federal courts for relief on the grounds of discrimination. On the one hand, Judge Warlick found for the defendants in **GRIFFITH** and ordered judicial intervention. Yet, in a case closer to home, he did not find evidence of discrimination.

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[108]Morrow v. Mecklenburg County Board of Education, 195 F. Supp. 109 (1961).

Two years later, Judge Warlick in **CHANCE v. BOARD OF EDUCATION OF HARNETT COUNTY**[109], finds for the Indian plaintiffs who have filed suit on the grounds of discrimination. Harnett County had been operating schools on a segregated basis for white, black and Indian children though the Indian High School students had been assigned to a formerly all white high school since 1962. Harnett continued to operate a separate Indian elementary school and had denied requests for reassignment by the parents of some of the students. Judge Warlick found that the board was operating a segregated system and citing **JEFFERS v. WHITLEY and WHEELER v. DURHAM CITY BOARD OF EDUCATION,** reassigned students to the school to which reassignment had been requested. The courts began to look at discrimination within the system but did not seem to be able to clearly define what that meant. We see a clearer definition in the next two cases cited. The courts were no longer dealing with individual requests for reassignment but were beginning to scrutinize systemwide assignment plans and the constitutionality of plans that maintained a dual system of schools.

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[109]Chance v. Board of Education of Harnett County, 224 F. Supp 422 (1963).

In both **FELDER v. HARNETT COUNTY BOARD OF EDUCATION**[110] and **WHITLEY v. WILSON CITY BOARD OF EDUCATION**[111] the courts found that the student assignment plans were unconstitutional because they did not provide for a unitary school system. The court ruled that the interest of white parents to sue for their children for a unitary system was no less than of black students.[112] It allowed white students for the first time to challenge an existing dual system of schools regardless of their assignment. In both of these cases, the courts ruled that plaintiffs did not have to exhaust administrative remedies under the Pupil Assignment Act because the school boards school assignments by their very nature were discriminatory and unconstitutional. The federal courts still upheld the right of the school boards to assign students but if those assignments were discriminatory, the courts would begin to take a caretaker role in school assignment plans.

Freedom of Choice

As the courts began to become more involved in student assignment plans in school districts, some systems proposed that students be allowed to chose the school they would

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[110]Felder v. Harnett County Board of Education, 349 F. 2d 366 (1965).

[111]Whitley v. Wilson City Board of Education, 427 F. 2d 179 (1970).

[112]Felder Supra N 110.

attend. "Freedom of choice" became another method for systems to assign students and attempt to limit integration. In **BOWDITCH v. BUNCOMBE COUNTY BOARD OF EDUCATION**[113] and **NESBITT v. STATESVILLE CITY BOARD OF EDUCATION**[114] the courts allowed open transfer of students without requiring hearings before the school boards. The students would be able to fill out applications for reassignment to schools within their school zones and without administrative hearings, the transfers would be approved. This differed greatly from previous court decisions that had specifically required strict adherence to the Pupil Assignment Act and the procedures required to obtain a transfer on an individual basis.

The courts affirmed the constitutionality of "freedom of choice" plans in the assignment of students in **TEEL v. PITT COUNTY BOARD OF EDUCATION**[115] citing **BRADLEY v. SCHOOL BOARD OF CITY OF RICHMOND.**[116] The court held that in "promulgating a plan giving every pupil the unrestricted right to attend the school of his or her parent's choice, limited only by time requirements for transfer applications and lack of capacity in the school to which transfer is sought, the school board in

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[113]Bowditch v. Buncombe County Board of Education, 345 F. 2d 333 (1965).

[114]Nesbitt v. Statesville City Board of Education, 345 F. 2d 337 (1965).

[115]Teel v. Pitt County Board of Education, 272 F. Supp. 703 (1967).

[116]Bradley v. School Board of City of Richmond.

question adequately discharged its duty under the law."[117] The court in **TEEL v. PITT** did find that the plan was not adequate as integration had declined and required the Pitt County Board of Education to formulate a new pupil assignment plan to correct the situation. The courts were beginning to question the effectiveness of "freedom of choice" and the good faith efforts of the school boards.

Citing the Supreme Court in **GREEN v. COUNTY SCHOOL BOARD OF NEW KENT COUNTY**, 391 U.S. 430, the courts proclaimed in **BOOMER v. BEAUFORT COUNTY BOARD OF EDUCATION**[118] that "freedom of choice" was unconstitutional and an impermissible means for desegregation for the Beaufort County Schools. The same findings by the courts were found in **COPPEDGE v. FRANKLIN COUNTY BOARD OF EDUCATION**[119] and the **UNITED STATES v. BERTIE COUNTY BOARD OF EDUCATION**[120]. In each case the defendants were ordered to prepare and submit to the courts a student assignment plan that would create a unitary system of non-racial geographic attendance zones. Pupil assignment would not be dependant upon choice by students and their parents. Students were to be assigned to schools based on a plan, not

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[117]Teel Supra N 115.

[118]Boone v. Beaufort County Board of Education, 294 F. Supp. 179 (1968).

[119]Coppedge v. Franklin County Board of Education, 273 F. Supp. 289 (1961).

[120]United States v. Bertie County Board of Education, 293 F. Supp. 1276 (1968).

based on race or color, that would result in a unitary school system. The procedures as provided for in the Pupil Assignment Act would be followed when students wished to be reassigned.

The courts had come full circle in its opinions of "freedom of choice" and its constitutionality. Systems would no longer be able to provide students with a choice of schools but must provide a student assignment plan that would provide for a unitary system of schools.

Supreme Court decisions in **ALEXANDER v. HOLMES COUNTY**[121] and **GREEN v. COUNTY SCHOOL BOARD OF NEW KENT COUNTY**[122] were used to escalate the intervention of the courts in the desegregation of the schools of North Carolina and the nation. In **ALEXANDER v. HOLMES** the Supreme Court reversed the decision of the Fifth Circuit Court of Appeals which had postponed the desegregation of thirty Mississippi school districts and had extended their deadline for filing desegregation plans.[123] The Supreme Court declared 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 but deliberate speed' for desegregation is no longer constitutionally permissible. Under the explicit holdings of this Court, the obligation of every school district is to terminate dual school

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[121]Alexander v. Holmes County Board of Education, 90 Sct. 29, (1969).

[122]Green v. County School Board of New Kent County, 88 Sct. 1689 (1968).

[123]Alexander v. Holmes Supra N 121.

systems at once and to operate now and hereafter only unitary schools".[124]

Using this precedent the United States District Court of the Western District North Carolina ordered the Charlotte-Mecklenburg Board of Education in **SWANN v. CHARLOTTE-MECKLENBURG BOARD OF EDUCATION**[125] to immediately devise a plan that would fully integrate the schools of the district by all possible means. Cost, public opinion nor "natural boundaries" were to limit this order or in any way impede the order of the court. Race was to be considered in eliminating segregation. Busing was an acceptable means by which a student assignment plan to desegregate the schools could be accomplished.[126] The court would retain jurisdiction until they were assured that the state imposed segregation was completely eliminated.

Other school districts took note of this decision and began to formulate school assignment plans that utilized busing and grade clustering to eliminate segregation. In **FRIES v. ROWAN COUNTY BOARD OF EDUCATION,**[127] members of the Save Our Schools Committee filed action to have the assignment

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[124]Id.

[125]Swann v. Charlotte-Mecklenburg Board of Education, 91 Sct. 1267 (1971).

[126]Id.

[127]Fries v. Rowan County Board of Education, 172 S.E. 2d 75 (1970).

plan adopted by the Rowan Board put aside. They claimed it was a violation of the North Carolina Anti-Busing Law to assign students because of race and to use busing as a means of achieving this end.[128]

As the courts had become more involved in the actual assignment of students, the North Carolina legislature enacted the Anti-busing law. The text follows.

AN ACT TO PROTECT THE NEIGHBORHOOD SCHOOL SYSTEM AND TO PROHIBIT THE INVOLUNTARY BUSSING OF PUPILS OUTSIDE THE DISTRICT IN WHICH THEY RESIDE.

Section 1. There is hereby created a new Section of Chapter 115 of the General Statutes to be codified as G.S. 115-176.1 and to read as follows:

> "G.S. 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, creeds, 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

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[128]Id.

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 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 re-assignment 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."

Sec. 2. All laws and clauses of laws in conflict with this Act are hereby repealed.

Sec. 3. If part of the Act is held to be in violation of the Constitution of the United States or North Carolina, such part shall be severed and the remainder shall remain in full force and effect.

Sec. 4. This Act shall be in full force and effect upon its ratification.[129]

This act was intended to remove the means by which school boards could carry out court orders to integrate schools. It would limit boards to following a neighborhood school concept and deprive them of state transportation funds to develop student assignment plans that would integrate schools other than those considered to be neighborhood schools.

The Court of Appeals in **FRIES v. ROWAN** affirmed the action of the lower courts that found in favor of the defendants. The court found that the Pupil Assignment Act

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[129]North Carolina General Statutes 1969, Chapter 1274.

gave the school board the authority to assign students and that the plaintiffs had not followed the proper administrative procedures as outlined by this act. The court in this case refused to decide the constitutionality of the North Carolina Anti-Busing Law which sought to limit public funds for cross-busing of students to achieve integration. This was to be left to the Supreme Court of the United States.[130]

On April 20, 1971, the Supreme Court upheld the lower courts in **SWANN v. MECKLENBURG** and other companion cases. This decision affirmed the belief in the constitutionality of busing as a means of eliminating dual school systems. The Supreme Court invalidated the North Carolina Anti-Busing Law that forbid "the assignment of any student on account of race or for purpose of creating a racial balance in the schools and forbidding busing for such purpose",[131] on the grounds that this law would deprive the authorities the means to fulfill their constitutional obligation to eliminate the state imposed segregation.[132]

With the exception of several challenges to student assignment plans involving busing and using race to desegregate school systems the **SWANN v. CHARLOTTE-MECKLENBURG BOARD OF EDUCATION** was the last desegregation case to involve

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[130]Fries v. Rowan Supra N 127 at 124.

[131]Edward C. Bolmier, School in the Legal Structure 80 (Cincinnati, W. H. Anderson Company) 1973.

[132]Id. 81.

the Pupil Assignment Act. This case provided the legal impetus for all school systems in North Carolina to begin to integrate their schools.

The last case to come to the federal courts challenging school boards and the Pupil Assignment Act was **MARTIN v. CHARLOTTE-MECKLENBURG BOARD OF EDUCATION.**[133] A class action suit was brought against the board to prohibit the reassignment of students under a new student assignment plan that would eliminate a majority of minority students in any of the schools. The court affirmed the action of the lower court, citing the legal authority of the board to assign students under the Pupil Assignment Act and as a board the broad authority to set policy concerning this issue.

The Pupil Assignment Act had served its purpose. It had delayed the complete integration of the schools for sixteen years. Case by case the Pupil Assignment Act was challenged by the plaintiffs until a clear interpretation of its procedures and administrative remedies were clarified. With the declaration of the Supreme Court that systems use whatever means possible, including busing and race, to integrate their schools, the challenges to the Pupil Assignment Act took a new focus.

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[133]Martin v. Charlotte-Mecklenburg Board of Education, 626 F. 2d 1165 (1980).

The Best Interest of the Student

In 1963, a request by a student for reassignment from a city district to a county high school provided the first case in which the "best interest of the student" becomes the focus of a court decision. Susan Hayes was assigned to the city high school after having attended the county high school the previous year before she had taken Latin I and participated in band. Her parents requested a transfer on the grounds that the city high school did not have band or offer Latin. The city board denied the transfer and the case went to the Superior Court. The case, **IN RE REASSIGNMENT OF HAYES,**[134] eventually was decided by the North Carolina Supreme Court. The Court affirmed the decision of the lower court by agreeing that cases of reassignment should be heard individually and decided on what was in the "best interest of the student" as long as it did not interfere with the administration of the school or interfere in the instructional program for other students in the school to which the transfer was being requested. Two dissenting opinions expressed concern about smaller systems with less resources losing students to systems with more educational opportunities and resources.[135]

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[134]In RE Assignment of Hayes, 135 S.E. 2d 645 (1964).

[135]Id.

In a similar case the North Carolina Supreme Court upheld a Superior Court ruling **IN RE VARNER**[136] that the "best interest of the student" superseded all other mandates, including that of a federal agency threatening to withhold funds. This student had attended schools in Davidson County all of his life with the agreement of the Randolph County School Board. The board had denied his transfer on the grounds that it would put them out of compliance with their desegregation plan and could result in the loss of federal funds. The Court ruled that the transfer should be allowed on the grounds that the students in that area had been going to Davidson County schools[137] for the last thirty years and that it was in the best interest of the student to continue in the Davidson County schools. The Court ordered the Randolph County School Board to release the student and for the Davidson County School Board to accept him. The Courts usurped the power of the school board to assign this student in his best interest.

In a case decided by the Court of Appeals, **IN RE ALBRIGHT**,[138] the court, concurred with a restraining order from the Superior Court that restrained the Orange County Board from enforcing the assignment of 256 children who had

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[136]In RE Assignment Varner, 146 S.E. 2d 710 (1966).

[137]Id.

[138]In RE Reassignment of Albright, 180 S.E. 2d 798 (1971).

previously attended Alamance County schools to Orange County schools. The decision was rendered "in the best interest of the student." All students had exhausted administrative remedies as provided for by the Pupil Assignment Act and were appealing to the Superior Court in what was in the "best interest of the student." The court found that these students had historically attended school in Alamance County with the agreement of the Orange County School Board, that they were being assigned to overcrowded schools, there was sufficient room in the schools in Alamance County and that the students lived substantially closer to schools in Alamance than Orange.

With this case, "in the best interest of the student", became the basis for all future court decisions involving cases of reassignment. If administrative remedies had been exhausted, and there would be no interference with the operations of the schools or endangerment to the safety or health of the children enrolled in the school to which assignment was being requested, school boards must use "in the best interest of the student" as the criteria for approving or denying the reassignment request. The Pupil Assignment Act through the years had evolved from an act to preserve segregation in the schools in North Carolina to a means by which transfers were deemed acceptable if they were, first, in the best interest of the student and, secondly, not harmful to the operations of the school and the students to which the student was requesting transfer.

Compulsory Attendance to Enforce School Assignment

The last case involving Pupil Assignment was **STATE v. CHAVIS.**[139] Under HEW guidelines the children of Indian parents had been assigned to a school different from the one they had previously attended. The parents insisted on enrolling their children in their previous school on the claim that their Indian heritage exempted them from any Federal mandates. The state compulsory law was used to convict the parents of failing to enroll their children in the school to which they were assigned by the school board. Only if the students attended private school could the compulsory attendance statute not be used to force compliance with the student's assignment.[140]

There have been no legal challenges to move beyond the Superior Courts of North Carolina involving Pupil Assignment since **STATE v. CHAVIS.** The 1981 legislature did amend the Pupil Assignment statute by replacing the word "residence" with "domicile". In an opinion to Wade Mobley, Superintendent, Rowan County Schools in 1985, the Attorney General for the State clarified and defined "domicile". As previously discussed on page forty-five, "domicile" is where the student, parents or legal guardian intend to make their

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[139]State v. Chavis.

[140]Id.

home, permanently or indefinitely.[141] It was his opinion at the time school boards could deny the enrollment of a student if they could prove that they were not domiciled within their administrative area. This would not infringe on the constitutional rights of the student if the decision is not based upon discriminatory policies or practices. A guardian could not be appointed as a ruse to enroll a student in a school other than where he is domiciled. His last opinion to Mr. Mobley's question dealt with extracurricular activities. He felt that barring unusual circumstances no restrictions could be placed on students where two boards had agreed to a transfer of the student between the systems.[142]

During the 1991 legislative session, the General Assembly ratified Senate Bill 324, An Act to Clarify the Pupil Assignment Act and to Provide for the Assignment of Children of Homeless Individuals and of Homeless Children. This was the first major change to occur in the Pupil Assignment laws since 1956. No changes occurred in the administrative procedures or remedies as were previously discussed. This clarification provides boards with a clear understanding of how to deal with homeless children and their parents who do not have a domicile. It interestingly strikes the section that details the school boards' student assignments based on

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[141]Attorney General Opinions, 64, Volume 54.

[142]Id. 64.

the orderly administration of schools, effective instruction and health, safety and general welfare of each student. The rewritten section, G.S. 155C-366 follows:

(a) All students under the age of 21 years who are domiciled in a school administrative unit who have not been removed from school for cause, or who have not obtained a high school diploma, are entitled to all the privileges and advantages of the public schools to which they are assigned by the local boards of education. The assignment of students living in one local school administrative unit or district to a school located in another local school administrative unit or district, shall have no effect upon the right of the local school administrative unit or district to which the students are assigned to levy and collect any supplemental tax heretofore or hereafter voted in that local school administrative unit or district.

(a1) Children living in and cared for and supported by an institution established, operated, or incorporated for the purpose of rearing and caring for children who do not live with their parents shall be considered legal residents of the local school administrative unit in which the institution is located. These children shall be deemed to qualify for admission to the public schools of the local school administrative unit as provided in this section. This subsection shall apply to foster homes and group homes.

(a2) It is the policy of the State that every child of a homeless individual and every homeless child have access to a free, appropriate public education on the same basis as all children who are domiciled in this State. The local board of education having jurisdiction where the child is actually living shall enroll the child in the school administrative unit where the child is actually living. In no event shall the child be denied enrollment because of uncertainty regarding his domiciliary status, regardless of whether the child is living with the homeless parents or has been temporarily placed elsewhere by the parents. The local board shall not charge the homeless child, as defined in this subsection, tuition for enrollment. The child's parent, guardian, or person standing in **loco parentis** to the child, may apply to the State Board of Education for a determination of whether a particular local board of education shall enroll the child, and this determination shall be binding on the local board of education, subject to judicial review. As used in this subsection, the term 'homeless' refers to an individual who (i) lacks a fixed, regular, and adequate nighttime residence or (ii) has a primary nighttime residence

in a supervised publicly or privately operated shelter for temporary accommodations, lives in an institution providing temporary residence for individuals intended to be institutionalized, or a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings. The term does not include persons who are imprisoned or otherwise detained pursuant to federal or State law.

(b) Each local board of education shall assign to a public school each student qualified for assignment under this section. Except as otherwise provided by law, the authority of each board of education in the matter of assignment of children to the public schools shall be full and complete, and its decision as to the assignment of any child to any school shall be final.

(c) Any child who is qualified under the laws of this State for admission to a public school and who has a place of residence in a local school administrative unit incident to his parent's or guardian's service in the General Assembly, other than the local school administrative unit in which he is domiciled, is entitled to attend school in the local school administrative unit of that residence as if he were domiciled there, subject to the payment of applicable out-of-county fees in effect at the time.

(d) A student domiciled in one local school administrative unit may be assigned either with or without the payment of tuition to a public school in another local school administrative unit upon the terms and conditions agreed to in writing between the local boards of education involved and entered in the official records of the boards. The assignment shall be effective only for the current school year, but may be renewed annually in the discretion of the boards involved.

(e) The boards of education of adjacent local school administrative units may operate schools in adjacent units upon written agreements between the respective boards of education and approval by the county commissioners and the State Board of Education.

(f) This section shall not be construed to allow students to transfer from one local school administrative unit to another for athletic participation purposes in violation of eligibility requirements established by the State Board of Education and the North Carolina High School Athletic Association."[143]

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[143]North Carolina General Statutes 1991.

As society changes and needs arise, the Pupil Assignment law will change. The discussion of "choice" being proposed by both state and national politicians if adopted is sure to result in additional changes and court challenges. The law as it is now written, is only as sound as the challenges to it. It can certainly be said, the Pupil Assignment laws of 1955-56 withstood all challenges. The actions of school boards and the underlying motivation of those boards were the constitutional issues to be resolved.

CHAPTER IV

REVIEW OF NORTH CAROLINA PUPIL ASSIGNMENT COURT DECISIONS

INTRODUCTION

In Chapter III, it was shown how the Pupil Assignment Law had evolved over the last forty-six years through court decisions and the enactment of legislation by the General Assembly. The decisions by the court established the right of the school boards to assign students, establish procedures and rules in regard to requests for reassignment, and established their authority as a quasi-judicial body. Court decisions also gradually eroded the obstacles in the Pupil Assignment Law that would prevent minorities from seeking to integrate the schools.

Legal precedent is all important in court decisions as it acts as a guide for the presiding court. The first court case to involve the Pupil Assignment Law was initiated in 1954. Beginning with this case, cases involving the North Carolina Pupil Assignment Law will be reviewed in chronological order. It is important for the reader to understand the relationship from case to case and how the cases are interrelated over the years. Cases involving desegregation orders will not be discussed unless they are related to a student assignment issue.

A brief synopsis of the facts in the case will be cited, followed by the decision of the court and a discussion of the significance of that decision in regard to the Pupil Assignment Law, school boards and students. Where legal precedence is evident, it will be noted. Note the patterns that develop as each case is adjudicated and its significance for the cases that follow.

In the Matter of ASSIGNMENT OF THE SCHOOL CHILDREN IN THE STELLA COMMUNITY OF CARTERET COUNTY to the White Oak School in Onslow County (S.C. 242 NC 500 1955).

FACTS

Some of the school patrons of the Stella community preferred that their children be assigned to the elementary and high school in Jones County because of accessibility. Some of the patrons petitioned the State School Board to reassign their children. The North Carolina State School Board at its May, 1954 meeting assigned the Stella school children to attend the Jones County Schools effective with the 1954-55 school year. The Division of Transportation was instructed to make transportation arrangements. By petition in the Superior Court, parents of some of the children of Stella challenged the order, and had a restraining order brought against the State School Board. In December, 1954, Judge Frizzelle upheld the State School Board decision of May, 1954. Petitioners accepted and appealed the case.[144]

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[144]In RE Assignment of School Children at 501 S.C. 252, N.C. 500 (1955).

DECISION

The State Supreme Court ruled that the proceeding challenging the order of the State School Board was moot. The Session laws of 1955 took away the power of the State School Board to assign students and they no longer had the authority or ability to enforce student assignments.[145]

DISCUSSION

This ruling established the authority of the local school boards to assign students to schools. It removed the State School Board as the agent for assigning students under Chapter 1372, Session Laws of 1955, Subchapter VIII, Article 19, Section 3.

CARSON v. BOARD OF EDUCATION OF McDOWELL COUNTY
227 F.2d 789 (1955)

FACTS

Action was brought by black children against the **McDOWELL COUNTY BOARD OF EDUCATION** to provide educational facilities equal to those provided for white children. The plaintiffs alleged they were not allowed to attend schools maintained by the board in Old Fort in McDowell County but were required to go to school in Marion, fifteen miles away, and that this discrimination was solely because of race and color. This action was filed prior to the Supreme Court decision on **BROWN v. TOPEKA**, and the case was dismissed by the U.S. District Court for the Western District of North Carolina on the

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[145]Id. at 503.

grounds that the relief sought by the plaintiffs in the courts based on the decision of the Supreme Court had been made inappropriately.[146]

DECISION

The Court of Appeals (Fourth Circuit) vacated the decision by the district court on the grounds that the plaintiffs could be heard in regard to discrimination on account of race and color as alleged to their denial of attendance in schools in Old Fort. The Supreme Court decision did not destroy or restrict these rights, except to the right of separate schools. The plaintiffs should have had their prayers for declaratory judgments considered in light of the Supreme Court decision. Further consideration should have been given to the case in light of the fact that the State of North Carolina had provided an administrative remedy for persons who felt aggrieved with respect to their enrollment in the public schools. The Act of March 30, 1955, entitled "An Act to Provide for the Enrollment of Pupils in Public Schools" provided administrative procedures through the school board and the state court system. The case was remanded to the lower court until the plaintiffs had exhausted their administrative remedies under the statute.[147]

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[146]Carson v. Board of Education of McDowell County, 227 F. 2d 789 (1955).

[147]Id. 790.

DISCUSSION

The court ruling was very specific in regard to the courts becoming involved before administrative remedies had been exhausted.

"The federal courts manifestly cannot operate the schools. All that they have power to do in the premises is to enjoin violation of constitutional rights in operation of schools by state authorities. Where the state law provides adequate administrative procedures for the protection of such rights, the federal courts should not interfere with the operation of the schools until such administrative procedures have been exhausted and the intervention of the federal courts is shown to be necessary."[148]

In the eyes of the court, the Pupil Assignment Act provided administrative remedies for individuals who were not satisfied with the assignment of their child and the individual would have to exhaust those remedies before seeking relief from the federal courts. Citing Mr. Justice Stone in **MATTHEWS v. RODGERS**, 248 U.S. 525,:

"...scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts, and a proper reluctance to interfere with by injunction with their fiscal operations, require that such relief should be denied in every case where the asserted federal right may be preserved without it."[149]

Legal precedent had been set. The federal courts recognize the constitutionality of the Pupil Assignment Act and the administrative remedies provided by the law. The

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[148]Id. 790.

[149]Id. 791.

court clearly stated its reluctance to become involved in the operations of the schools and would only do so if it could be shown that the constitutional rights of the individual were being denied.

JOYNER v. McDOWELL COUNTY BOARD OF EDUCATION
92 S.E. 2d 795 (1956)

FACTS

This was a proceeding by petitioners "on behalf of their children and themselves and on behalf of other Negro children and parents similarly situated" to mandate to the County Superintendent and the school principal, requiring them to admit their children and other black children to school and school facilities in the town of Old Fort.[150] The Superior Court judge entered judgment sustaining a demurrer and the petitioner appealed to the State Supreme Court. The petitioners had appeared before the board of education of McDowell County and claimed that they had been denied admittance to the Old Fort school on 24 August 1955 by the principal. The principal claimed that the denial was based on the board action which stated that school children were "not to be assigned to the schools of McDowell County during the school year 1955-56 on any basis other than that which had previously existed." The petitioners claimed that the primary, if not the sole basis for assignment of children of

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[150]Joyner v. McDowell County Board of Education, 795 92 S.E. 2d (1956).

McDowell, was on the basis of race or color. The petitioners appeared before the school board on October 3, 1955 in support of their request. In a letter dated January 5, 1956, the petitioners were informed of the January 2nd decision of the board denying their petition. The petitioners gave notice of appeal to the Superior Court.[151]Following an appeal to Superior Court the plaintiffs sought redress from the North Carolina Supreme Court.

DECISION

The appeal was denied by the Supreme Court. The decision of the Court was based on the statutes governing the enrollment of pupils in the public schools of North Carolina, and in the opinion of the Court, did not authorize the institution of class suits upon denial of an application for enrollment in a particular school.

The Court cited General Statutes 115-176, 115-178, 115-179, as providing the proper procedures for administrative remedies in requesting a reassignment. Concern was expressed by the Court that the school board set a designated date by which applications for reassignment would need to be heard, so as not to interfere with the operation of the schools.[152]

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[151]Id. 796.

[152]Id. 799.

DISCUSSION

The North Carolina Supreme Court clarified the legal aspects of the Pupil Assignment Act in addressing class action suits such as this one seemed to be. Only parents or those standing in **loco parentis** to such children could appeal the assignment of the child to a school. Collective appeals could not be heard under this statute. The Court also recognized the legality of assigning a student from one administrative unit to another pursuant to G.S. 115-163. It was noted by the Court that it would seem

> ...desirable if not imperative for the orderly operation of the schools that applications for admission to schools other than those theretofore designated by the board of education or city administrative unit, be made reasonably in advance of the opening of school.[153]

In this case the Supreme Court accepted the constitutionality of the Pupil Assignment Act. There is a concern about the board of education setting a deadline for requests for reassignment to be heard. This is one of those rules and procedures that were left to board policy and is the first of a number of cases in which the courts will suggest procedures for boards to adopt.

JEFFERS v. WHITLEY
165 F. Supp 951 (1952)

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[153]Id. 799.

FACTS

Twenty-three adult plaintiffs, individually and as parents and next of friends of forty-three minor plaintiffs, on behalf of themselves and other interested parties, on December 10, 1956, brought action against the Superintendent of County Schools of Caswell County, the individual members of the Caswell County School Board, the State Superintendent of Public Instruction and the individual members of the State Board of Education. The plaintiffs alleged that the Caswell County Schools were being operated on a segregated basis in accordance with the direction and authority of the State Constitution, State Statutes and State administrative orders and legislative policy, and that the State Superintendent of Public Instruction and the State Board of Education were charged with the general supervision and administration of the public schools of North Carolina.[154] The plaintiffs on August 6, 1956 petitioned the Caswell County Board of Education to desegregate the schools within its jurisdiction. The petition was refused. The plaintiffs then appealed to the State Board of Education and the State Superintendent of Public Instruction to order the Caswell County Board of Education to desegregate. This was refused on the basis that the State School Board had no authority to assign students to schools and that the sole authority to do so rests with the

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[154]Jeffers v. Whitley, 952 165 F. Supp 951.

local school boards as designated in the Pupil Assignment Act of 1955. The Caswell County School Board answered the allegations by asserting that the plaintiffs had not exhausted all of their administrative remedies available to them under the law and that the local school board is the only administrative body with the authority to assign students to schools.

On February 10, 1958, the plaintiffs filed a motion to file a supplemental complaint alleging that they had individually filed letters with the Caswell County School Board protesting the reassignment of their children to a segregated school system. Upon exhausting their administrative remedies under the Pupil Assignment Act, they petitioned the State School Board and the State Superintendent of Public Instruction to reassign the students to schools in the districts nearest their homes on a non-segregated basis. The matters before the court for determination were (1) to grant the plaintiffs motion to file a supplemental complaint (2) whether the defendants, State Board of Education and State Superintendent of Public Instruction were indispensable and necessary parties to the action.[155]

DECISION

The U.S. Middle District Court in Greensboro on September 12, 1958, agreed with the plaintiffs that they seemingly had

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[155]Id. 954.

exhausted all administrative remedies under the Pupil Assignment Act of 1955 and that their motion for leave to file supplemental complaint should be granted. In regards to the State Board of Education and the State Superintendent of Public Instruction being parties in this action, the court ruled that they have no authority whatever over the assignment of pupils in public schools in Caswell County, or any other county in the state. County officials have the sole authority over the assignment and reassignment of any and all pupils to the public schools of Caswell County. The court found that the General Assembly in 1955 and at a special session in 1956 amended, renumbered and rearranged and rewrote Chapter 115 of the General Statutes, which was the basic school law of the State, to give the local units, which actually administer and control the system, more authority. The action was dismissed against the state officials.[156]

DISCUSSION

This case continued to establish the authority of the local school board to assign students to the schools within their district and with agreement of other boards outside of the district. The administrative remedies were again a vital part of the Pupil Assignment Act. Each individual request must be handled on an individual basis and exhausted before the federal courts will hear the case. The dismissal of the

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[156]Id. 957.

action against the State School Board and the State Superintendent of Public Instruction was important because it removed the state from any authority to assign students and did not allow one action to prevail for the state. The court reaffirmed the authority of the local school board to control the schools within its district especially in regard to pupil assignment. This case would be resurrected again in 1962.

APPLICATION FOR REASSIGNMENT OF PUPILS
101 S.E. 2d 359 (1958)

FACTS

Under rules and regulations adopted by the Greensboro City Board of Education in May, 1957 for the enrollment and assignment of pupils, applications were made by parents of black children for reassignment from schools they had previously attended to schools restricted to white children. The application designated the school they wished their child to attend and the reason for the requested reassignment. Separate requests were filed for each child. The board held a public hearing on each application on June 18, 1957. At its regular meeting on July 23, 1957, the board again considered each of these applications and directed the enrollment of each of these six children in the school specified.[157]

On August 2, 1957, James E. Turner, Jr., James A. Strunks, and James W. Cudworth filed in Superior Court a notice of appeal for the applications for reassignment granted

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[157]In Reassignment of Pupils, 361, 101 S.E. 2d 359, 1958.

the six black students by the Greensboro City School Board. Claiming to be aggrieved by the order or orders of the school board, they had on their own behalf and on the behalf of all other parents and taxpayers appealed the decision of the board. Their claim stated that the order of the board directing the reassignment of the black children to a school previously operated exclusively for white children

> "will disrupt the orderly and efficient administration of said public school and will greatly impair the proper and effective instruction of the pupils there enrolled and will gravely endanger the health, safety, and welfare of the children there enrolled."

They claimed that under statue, c. 366, S.L. 1955, G.S. 115-179 they were aggrieved parties.[158]

The board filed for a motion to dismiss on the grounds that the parties were not "person aggrieved" and hence, had no right to an appeal, and appeals could only be taken from decisions made on individual applications.

The Superior Court found that the board acted in good faith and that the assignment statute was constitutional. The court ruled that Turner, Strunks, and Cudworth were not parties aggrieved under the statute and that appeals could only be taken by an aggrieved party from a ruling on a specific application, and for that reason the attempted action was ineffective. The judge declined to issue a restraining

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[158]Id. 363.

order against the board from assigning the named children. The petitioners appealed on errors to the Supreme Court of North Carolina.[159]

DECISION

Justice Rodman found that Judge Preyer of the Superior Court of Guilford County had grounds for dismissal of the suit. After reviewing the history of the Pupil Assignment Act, the court found that "persons aggrieved" permitted to appeal from a decision of a school board assigning a child was the child assigned or some one acting in behalf of that child. The interpretation by the court found that a parent who was dissatisfied with the assignment of other children to the school to which their children were assigned could request the reassignment of his child, not to appeal the assignment of other pupils. The court limited the right to appeal as worded in the statute to the parent, guardian, or person standing in **loco parentis** to the child seeking reassignment. No notice was required to be given to other parties as they were not parties to the hearing.[160]

Justice Rodman defined an aggrieved party "as one who has been injuriously affected by the act complained of, one who has thereby suffered an injury to person or party."[161] He

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[159]Id. 366.

[160]Id. 366.

[161]Id. 366.

stated that if every parent was given the right to challenge the assignment of a student to a school because it was not in the best interest of their child, it would make the administration of the schools an impossibility. He also reemphasized the Supreme Court interpretation that the statute on pupil assignment did not provide for class action suits and that each case must be decided on the individual appeal of each student.[162]

DISCUSSION

This case ruled out the possibility that parents could use the Pupil Assignment Act appeals process to block the assignment of any child to a particular school. It again strengthened the premise that the process was to be based on individual requests and class action requests could not be applied to reassignment requests. It upheld the right of the school board to assign students. In defining "aggrieved persons", the court made it plain that only those parties who have filed for reassignment and denied, can appeal.

HOLT v. RALEIGH CITY BOARD OF EDUCATION
265 F. 2d 95 (1959)

FACTS

The action was brought on behalf of Joseph Hiram Holt , Jr., a black student residing in Raleigh, North Carolina to secure a transfer from Ligon High School to the Broughton High School in the same city. This action found the plaintiffs to

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[162]Id. 367.

be the minor child and his parents. On May 30, 1957 the board of education assigned the student to the same school for the following school year. On June 8, 1957, his parents filed with the principal of the school an application for reassignment to Broughton High School on the grounds that Broughton High was two miles closer to his home, the academic and extra-curricular program was fuller and that the transfer would remove the stigma of racial segregation.[163]

The application was referred to the board of education who requested that the secretary of the board ask the parents to attend the board meeting on August 6 since the board would probably have questions they would wish to ask. The parents were notified, but failed to attend the meeting. The parents' attorney notified the board the parents would await the board's decision citing the statute that the board's initial action on an application for reassignment was purely ex parte. The board denied the application for reassignment. The plaintiffs were notified of the decision and they made application for a hearing within ten days. The board called for a meeting on August 23 and notified the plaintiffs. The parents failed to appear again but were represented by their attorney. The board appointed a committee to study the matter and report back at the next meeting of the board. The committee recommended that the prior actions of the board were

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[163]Holt v. Raleigh City Board of Education, 96, 265 F. 2d 95 (1958).

correct and that the prior action not be rescinded. The board approved this recommendation.[164]

The parents then instituted the suit for the court to issue an injunction for their son to attend Broughton High. The U.S. Eastern District Court of North Carolina refused to grant the injunction on the grounds that the plaintiffs had not exhausted administrative remedies as outlined by the Pupil Assignment Statute by refusing to attend the meetings of the school board while their application was under consideration. The plaintiffs contended that the statute does not require the parents to attend a hearing on the application for reassignment and that they had exhausted their administrative remedies.[165]

The case was appealed to the U.S. Fourth Circuit Court of Appeals.

DECISION

The plaintiffs having filed the application for reassignment and the petition for hearing within the time limits prescribed by law, and having had their attorneys present for the hearing, felt that they had satisfied the requirements of the Pupil Assignment Act. The plaintiffs argued that the statute did not provide the board with investigative powers and functions and also with the authority

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[164]Id. 97.

[165]Id. 97.

and duty to conduct a final hearing of a quasi-judicial character in order to make a final determination of the plaintiffs application. They argued that this would interfere with the board being able to conduct an impartial hearing which the statute required them to do. An appearance before the board by the parents would be improper and the board had no power to request them to submit to interrogation.[166] The Fourth Circuit Court of Appeals disagreed with this interpretation of the statute. It was the court's contention that when administrative agencies and tribunals carry on the operations of the government in many fields of activity, it would be an anachronism to hold that investigatory and quasi-judicial powers may not be conferred upon the same government agency.[167] It was an established practice generally approved by the courts. The North Carolina statues implied that both functions were to be exercised by the boards of education. The court found that the board was within its rights to request the parents to attend the hearing and also to interrogate them about concerns they might have. The parents were delinquent by not appearing and as such did not pursue all the administrative remedies provided by the Pupil Assignment Act.

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[166]Id. 97.

[167]Id. 98.

The court did address the issue of segregation in the schools as being perpetuated by this statute but that this issue could not be addressed by the court at this time because they could not hear cases where all administrative remedies had not been exhausted at the state level.[168]

DISCUSSION

The Court of Appeals affirmed the right of the boards of education to request parents to appear before the board in a quasi-judicial format to determine the causes for request of reassignment to another school. By failing to appear, the plaintiffs did not exhaust the remedies afforded them by statute of the state and were not entitled to appeal for relief to the federal court from adverse decisions. The courts were beginning to define what procedures and rules boards can employ and formulate in setting policy in dealing with request for reassignment.

COVINGTON v. EDWARDS
264 F.2d 780 (1959)

FACTS

The parents of a number of black children in Montgomery County, North Carolina sought an injunction against the superintendent of the schools and the county board of Education directing the defendants to present a plan of desegregation of the races in the schools and forbidding them to assign blacks to particular schools because of their race.

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[168]Id. 98.

It was filed as a class action on July 29, 1955. The superintendent and school board filed an answer on September 22, 1955, alleging that the plaintiffs had not exhausted all administrative remedies provided by the state in requesting reassignment of their children. The District Judge after hearing the case, dismissed it. A suit to secure an injunction was then filed in the U.S. District Court for the Middle District of North Carolina at Rockingham. The court entered judgement for the defendants and the plaintiffs appealed to the Fourth Circuit Court of Appeals.[169]

DECISION

The Fourth Circuit upheld the judgment of the defendants citing the decision of **CARSON v. BOARD OF EDUCATION** which upheld the Pupil Assignment Act and the administrative remedies cited in the case. The court also cited the case in disallowing class action suits where students reassignment was an issue.

The court did state that only administrative remedies needed to be exhausted concerning reassignment. They distinguished between administrative and judicial remedies in suggesting that plaintiffs could seek federal review in regards to constitutional rights of the individual after exhausting administrative remedies. There was nothing to

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[169]Covington v. Edwards 781, 264 F. 2d 780 (1959).

forbid class action suits being filed in federal court in regards to constitutional rights.[170]

DISCUSSION

This case was similar in many ways to **CARSON v. BOARD OF EDUCATION** that was reviewed earlier. It differs in that the federal courts were now distinguishing between judicial remedies and administrative remedies as outlined by the Pupil Assignment Act. The court indicated that individuals needed to follow the statute but that there was not a need to exhaust judicial remedies before filing suit in federal court for relief if they could show that they had been discriminated against because of their race. The court also implied that there would be no objection to the joining of a number of applicants in the same suit if all of the them had exhausted their administrative remedies on an individual basis.

McKISSICK v. DURHAM CITY BOARD OF EDUCATION
176 F. Supp 3 (1959)[171]

FACTS

The plaintiffs, Joycelyn McKissick and Elaine Richardson, through their parents, were seeking an injunctive relief in regard to desegregation of the public schools of Durham City. Upon receiving notice through the newspaper that all students

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[170]Id. 782.

[171]McKissick v. Durham City Board of Education, 176 F. Supp 3 (1959).

would continue to be assigned to the schools previously attended, the parents filed application for reassignment with the superintendent of schools.[172] The school board met and did not approve any reassignments using overcrowded conditions as a reason. The parents and attorneys of the plaintiffs then requested a hearing before the board. The parents did not appear before the board and they were not requested to do so by the board. The board again denied the request for reassignment whereupon the plaintiffs requested the State Superintendent of Public Instruction to require the school board to comply with the request. The State Superintendent replied that he did not have any authority in regards to student assignment under the General Statutes of the State of North Carolina. The plaintiffs then filed for relief with the U.S. District Court in Durham.[173]

DECISION

District Judge J. Stanley ruled that the legal precedents set forth in **JEFFERS v. WHITLEY**, and in **COVINGTON v. EDWARDS** prevailed in the case. He stated that there was no indication that the plaintiffs tried to exhaust all of their administrative remedies granted them under the law. He cited the fact that neither one of the plaintiffs specified to which school they wished to be reassigned and for what reason. The

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[172]Id. 10.

[173]Id. 11.

request was for reassignment to a school that was integrated closer to their residence. He concluded from the facts that the plaintiffs were actually seeking a general injunction requiring the desegregation of the Durham City Schools, rather than seeking, as individuals, admission to any particular school. Judge Stanley concluded that they had not exhausted their administrative remedies and the complaint should be dismissed.[174]

DISCUSSION

This decision was a reaffirmation of previous cases reviewed. A new element of request for reassignment to arise from this case was that the individual seeking reassignment must be specific about the school and the reason for requesting reassignment. This made the request individualistic and would need to be judged on its own merit. Boards and individuals requesting reassignment are being placed on notice that requests will need to be specific in regard to the wish to transfer and that action by the board will require them to be specific in the decisions.

McCOY v. GREENSBORO CITY BOARD OF EDUCATION
283 F.2d 687 (1960)

FACTS

This action was brought by four black children and their fathers against the Greensboro City School Board. On June 8, 1958, the McCoy children were assigned by the board to the

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[174]Id. 16.

same school for the forthcoming year. On June 11, 1958, the father filed an application on behalf of the children for reassignment to Caldwell School on the grounds that it was only four blocks from their residence and that the facilities were better than the Pearson Street Branch. The applications were denied on August 11, 1958 and the denial affirmed at the subsequent hearing. The plaintiffs then filed this action on February 10, 1959. Subsequently, on May 26, 1959 the school board voted to merge the two schools involved and assigned all the students, both black and white, to Caldwell School for the 1959-60 school year. Shortly thereafter, the board received the approved reassignment requests from all the white children and teachers assigned to Caldwell School which resulted in an all black school. The plaintiffs found themselves in a segregated school.[175] The District Judge, nevertheless, dismissed the case on the grounds the plaintiffs had not exhausted all administrative remedies as provided for under the Pupil Assignment Act. The plaintiffs appealed.

DECISION

Circuit Judge Soper of the U.S. Fourth Court of Appeals reversed the District Court and remanded the case for further consideration. He decided it was not necessary for the fathers to go through the administrative process to obtain reassignment. Through the actions of the school board, the

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[175]McCoy v. Greensboro City Board of Education, 668, 283 F. 2d 687 (1960).

plaintiffs were denied reassignment to the Caldwell School in fact because the board through manipulation maintained a segregated school. He decreed the District Court retain jurisdiction of the case so that the board might reassign the minor plaintiffs to an appropriate school in accordance with their constitutional rights, and that if these rights were denied, they could apply to the court for further relief in the pending action.[176]

DISCUSSION

This was the first case to come to the Fourth Circuit Court of Appeals that was reversed. There was agreement that all administrative remedies had been exhausted on an individual basis and that the constitutional rights of the plaintiffs were the issue. It also put school boards on notice that manipulation of the state statute concerning student assignment would not be looked upon favorably by the federal courts.

GRIFFITH v. BOARD OF EDUCATION OF YANCEY COUNTY.
186 F. Supp 511 (1960)

FACTS

At the end of the 1958-59 school year, upon receipt of their report cards from the Asheville schools they had been attending, the plaintiffs, all of the black children of school age in the county, applied individually for reassignment to schools within Yancey County. Subsequent to that, the

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[176]Id. 669.

children had been transported over forty miles (one-way) to schools in Asheville though eight elementary and two high schools were operated in the county for the white students. As the applications for reassignment were filed, the plaintiffs filed a petition stating their right to attend school in the county of their residence.[177]

On August 10, 1959, the board denied their request on grounds of being premature. The board then constructed a two room school and assigned all the plaintiffs regardless of age and grade to that school. The plaintiffs then reapplied for reassignment. Again, they were denied. Action was initiated on November 11, 1959 against the school board and the superintendent of the county schools.

DECISION

District Judge Warlick of the U.S. District Court in Asheville heard the complaint. It was his opinion that the plaintiffs had exhausted all administrative remedies afforded them under the North Carolina statutes and that they had been done on an individual basis. He declared that refusing to admit black students to the white schools operated within the county was discriminatory, unlawful, and in violation of constitutional rights of black children. Judge Warlick found that the board of education of school districts was without legal authority to assign black students to schools outside

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[177]Griffith v. Board of Education of Yancey County, 514, 186 F. Supp 511 (1960).

the county while operating schools for white children within the county. He ordered the county school board to assign the black children to previously all white schools within thirty days.[178]

DISCUSSION

This decision disallowed boards of education from assigning students to schools outside the county in which they lived for racial reasons. It also was the first case that found a board assigning students for discriminatory reasons unconstitutional and ordered a remedy which required the integration of an entire school system.

WHEELER v. DURHAM CITY BOARD OF EDUCATION.
196 F. Supp 71 (1961)

FACTS

On August 4, 1959, the Durham City School Board approved the initial assignments of all students in the system. Notices were published in the Durham Morning Herald on August 7 and August 14, 1959. Each child was assigned to the same school for the 1959-60 school year; students graduating were assigned to the next level of school. The initial assignments continued the policy of segregated schools according to zones for black and white children. The assignments, with a few exceptions, resulted in black children being assigned to the all black school nearest their home and the white children being assigned to the nearest all white school. Following the

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[178]Id. 517-518.

initial assignments, approximately 225 black children, including the plaintiffs, filed with the board of education to be reassigned to schools attended solely by white students. On August 25 and 28, 1959, the board considered each of the applications for reassignment and three students were assigned to Durham High School, two to Brogden Junior High, and two to Carr Junior High School, all being schools presently attended solely by white students. No elementary students were reassigned.[179]

The plaintiffs then gave notice of appeal and requested a hearing before the board in respect to their applications for reassignment. In almost every instance, the plaintiffs listed the reason for desiring reassignment as wanting to attend desegregated schools. During the hearing on September 21, 1959, the chairman called the names of each of the applicants to determine their presence. The board chairman stated that it was not necessary for the minor to be present, but that at least one parent should be present, and that it was not enough for the parents to be represented by counsel. An initial resolution denying all applications for reassignment where a parent was not present was passed. All the other applications were denied on the basis that the school system was building new schools and adding additional

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[179]Wheeler v. Durham City Board of Education, 73-77, 196 F. Supp 71 (1961).

classroom space and that any mass movement of students at this time would be disruptive.[180]

On August 1, 1960, the school board again made initial assignments based on the previous years attendance zones. Again, a large group of black students applied for reassignment. The actions of both the board and the plaintiffs, followed the same pattern as in the previous year and all applications for reassignment were denied. The plaintiffs then brought a class action suit in U.S. District Court of North Carolina in Durham.[181]

DECISION

Judge Stanley citing **McKISSICK v. DURHAM, CARSON v. BOARD OF EDUCATION OF McDOWELL COUNTY, COVINGTON v. EDWARDS** and **HOLT v. RALEIGH CITY BOARD OF EDUCATION** agreed that where parents had followed the administrative remedies under state statute and were present at the hearing, they had a right to ask for relief from the federal courts on grounds of infringement of their constitutional rights. Those parents who did not attend the hearings had not exhausted their administrative remedies, and were not able to ask for relief. He found that where the parents had adequately exhausted their administrative remedies, the plaintiffs were entitled to be admitted to a school of their choice without regard to race or color. He

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[180]Id. 74.

[181]Id. 75.

required that each plaintiff resubmit an application for reassignment to the school board with very specific reasons for reassignment indicated on the application. The board was to consider the applications one at a time and on its own merit. The board must then specify the reason for denial of each application. In addition, the board should report to the court the criteria or standards used in considering the applications, any action it had taken with reference to the future use of dual attendance areas maps, and any action taken with reference to notifying pupils and parents of initial assignments.[182]

DISCUSSION

Judge Stanley's decision raised the question of the failure of school boards to adopt any criteria or standards for considering applications for reassignment and the failure of the board to apply such criteria equally to whites and blacks seeking reassignment to another school. It could be construed that without adopted criteria or standards, the denial of applications for reassignment could be considered discriminatory.

In requiring the board to review each application on its own merit and stating a specific reason for denial of the application, boards would no longer be able to deny applications for reassignment by resolution. Each application

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[182]Id. 80-83.

would need to be heard individually with the parent present for the appeal. He reaffirmed the courts previous decisions, that parents must be specific in seeking reassignment. It was not sufficient to want to attend a desegregated school as a reason for reassignment. Individuals seeking reassignment would have to cite specific reasons for seeking transfer, specify which school they wished to attend and why. Boards of education would be required to have a set of criteria adopted for determining the denial or approval of reassignment requests, hear each case individually, and provide a specific reason if the request is denied.

MORROW v. MECKLENBURG COUNTY BOARD OF EDUCATION. 195 F. Supp 109 (1961)

FACTS

A small suit was instituted by the parents of black children seeking to enjoin the Mecklenburg County Board of Education from refusing to reassign them to certain schools within the board's jurisdiction, allegedly on account of their race and color.[183] The parents had applied for their children to attend schools closer to their home. The students were being bussed past all white schools that were considerably closer to their homes. They had followed all of the administrative procedures as outlined in the Pupil Assignment Law.[184]

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[183]Id. 109.

[184]Id. 110

The board of education had denied the requests for reassignment, justifying its action, by citing overcrowded conditions. The board showed evidence that it had denied the request to transfer to the same school for white children.

The parents were seeking relief on the grounds of discrimination as an action arising under the Fourteenth Amendment of the Constitution of the United States.[185]

DECISION

The courts found the Pupil Assignment Act gave authority to the board of educations to assign students and this law had been found to be constitutional. The plaintiffs had exhausted all of their administrative remedies and were entitled to be heard by the federal courts.

It was the opinion of Chief Judge Warlick that in light of the conditions existing at the time, the board had acted in good faith in denying the requests and did not discriminate because of race or color. It was not found that the defendant board had unconstitutionally applied the provisions of the North Carolina Pupil Assignment Act.[186]

DISCUSSION

Judge Warlick upheld the constitutionality of the Pupil Assignment Act with this decision. It should be noted, that this is the same judge who ruled in favor of the plaintiffs

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[185]Id. 110-111.

[186]Id. 115.

GRIFFITH v. BOARD OF EDUCATION OF YANCEY COUNTY, and ordered the immediate integration of the entire system. This case seemed to defy logic in the decision rendered. Judge Warlick spent a considerable amount of time stressing the personal attributes of the board members and justifying the bussing of minority students as just part of the systems problems in dealing with its size. This case is interesting because of the contrast of the judge's decision with others that he had rendered and would render.

JEFFERS v. WHITLEY.
309 F. 2d. 621 (1962)

FACTS

John Jeffers had with others filed earlier requesting the desegregation of the schools in Caswell County. The previous case was dismissed on the grounds that state authorities had no legal authority to involve themselves in the assignment of students. This same parent and others on behalf of their children sought an injunction requiring the school board to grant their request for reassignment. The grounds for the injunction was that they had exhausted all of their administrative remedies and the board had denied the request on the basis of race and color, which was discriminatory under the Fourteenth Amendment to the U.S. Constitution.[187]

The board denied the requests because the reason given for transfer was "to an integrated school system regardless of

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[187]Id. 621-624.

race, creed or color" and implied that parents could chose to enroll their children in the first grade at the school of their choice and they had not done so. Other reasons were given for the denial of the requests.[188]

The United States District Court found for the plaintiffs and they were entitled to relief. They ordered two of the children to be assigned to the school of their choice.

DECISION

The Fourth Circuit Court of Appeals affirmed the decision of the District Court. The court found that the board had never informed parents that they could enroll their first grade child in the school of their choice and the administrators at the schools controlled who enrolled in the schools. It was also noted that when reassignment requests are made, it is expected that administrators will take steps to relieve victims of discrimination and that when there is a failure of the administrative process, the aggrieved can seek relief. Administrative remedies have a place in a voluntary system of racial separation but when they are used to foreclose judicial intervention, relief can be sought. When it is shown that others have similarly sought relief and have been denied, class action is available. The court further admonished the school board and placed the responsibility to

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[188]Id. 625.

recognize the constitutional rights of pupils primarily upon the school board.[189]

DISCUSSION

The courts recognized that class action relief can be sought in the federal courts when it seems that the use of administrative remedies are being used to maintain segregated schools and deny the constitutional rights of the individual students. For the first time, the courts placed the responsibility of ensuring the constitutional rights of every student squarely on the school board. School boards have an obligation, under oath, to uphold the laws of the state and Constitution of the United States. Boards of education should publicly notify all students of their assignments and if there is "choice" in the schools that they can attend.

As each case is decided, school boards are being held more accountable for their actions. Additional procedures for assignment and administrative remedies became necessary in order to stay within the framework of the law.

FREMONT CITY BOARD OF EDUCATION v. WAYNE COUNTY BOARD OF EDUCATION, 130 S.E. 2d 408 (1963)

FACTS

Fremont City Board of Education brought action against the Wayne County Board of Education seeking an injunction to keep the county from enrolling students that the City Board had assigned to the city high school. The students maintained

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[189]Id. 626-627.

a residence within the Fremont Administrative Area. The Superior Court of Wayne County dismissed the action and the plaintiff appealed to the Supreme Court of North Carolina.[190]

DECISION

The North Carolina Supreme Court reversed the decision of the Superior Court of Wayne County. Justice Rodman, writing the decision, based the decision on several areas. The Constitution of North Carolina had divided the state into several administrative areas and, further, the school boards within these areas were charged with the responsibility of operating the schools. They alone had the authority and were required to assign students living within the school administrative unit. A child could be assigned to a school outside the administrative unit by agreement with the school board affected by the change of assignment. This agreement must be in writing and entered into the official records of the boards involved. He cites G.S. 115-176, "no child shall be enrolled in or permitted to attend any public school other than the public school to which the child has been assigned by the appropriate board of education." If a board were to violate the law by accepting students outside of its attendance area, it could lead to impairment in the operation of the schools in the plaintiff's area.[191]

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[190]Fremont City Board of Education v, Wayne County Board of Education at 408, 130 S.E. 2d 408 (1963).

[191]Id. 409-410.

DISCUSSION

This decision recognized that only the school board of an administrative unit had the right to assign students maintaining a residence within that area. A school board of another administrative unit could not legally accept a student not residing within its administrative boundaries without the written agreement of the administrative unit being affected by the loss of the students. With this decision, it became necessary for systems to work out a system with each other that would allow for some request for reassignment from one system to another. Only with the agreement of both administrative unit could the reassignment take place.

CHANCE v. BOARD OF EDUCATION OF HARNETT COUNTY.
224 F. Supp 472 (1963)

FACTS

Harnett County had maintained three types of public schools, one system for white students, one system for black students and one system for Indian students. Twenty-seven Indian students, their parents acting on their behalf, had requested transfer to previously all white schools. The board had assigned all Indian children since 1962 to Dunn High School which had previously operated as an all white school. All of the Indian students within the county were transported past both black and white schools to attend Maple Grove

School. All initial assignments of children in Harnett County had been to segregated schools.[192]

The Harnett County Board of Education denied all requests for transfer though the procedures outlined by the board were followed during the 1961-62 school year. In the spring of 1962, parents again requested transfer to other schools and when the requests were denied the parents filed suit for relief on the grounds that any further action on their part would not change the decision based on the action of the prior year.

DECISION

Judge Warlick of the Unites States District Court found that the Harnett County Board of Education was operating a segregated system of schools and the plaintiffs had sought relief under the Pupil Assignment Act and were not granted their request for transfer. He ordered the students to be reassigned to the requested schools. He ordered that the board and each member be restrained and enjoined from using racial considerations when considering requests for reassignment under the North Carolina Pupil Assignment Act.[193]

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[192]Chance v. Board of Education of Harnett County, 472-475, 224 F. Supp 472 (1963).

[193]Id. 478.

DISCUSSION

This was the first case in North Carolina to apply the **BROWN** I decision to separate schools for Indians. By ordering the board to reassign the Indian students, the opportunity for black students to request reassignment and to be approved was enhanced. It must be noted that this case was brought before the courts based on the fact that the plaintiffs had exhausted their administrative remedies the previous years and because of the denials, did not seek them in the year the case was filed.

BOWDITCH v. BUNCOMBE COUNTY BOARD OF EDUCATION. 345 F. 2d 329 (1964) NESBIT v. STATESVILLE CITY BOARD OF EDUCATION. 345 F. 2d 333 (1964)

DISCUSSION

Both of these were school desegregation cases involving plans submitted to the court for approval. These cases are important because they allowed open transfers of student without requiring hearings before the school board. Students would be allowed, depending on grade level, in specific years to fill out applications for reassignment to schools within their attendance zones. Without administrative hearings the transfers would be approved. This was "freedom of choice" and in many ways bypassed the Pupil Assignment Act and former legal decisions that required transfers to be decided based on their individual merit.

IN RE REASSIGNMENT OF HAYES.
135 S.E. 2d 645 (1964)

FACTS

One June 5, 1963, the parents of Suzanne Perry Hayes, 15, filed with the Fremont City Board of Education a formal application requesting the reassignment of their daughter to Charles B. Aycock High School in Wayne County for the 1963-64 school year. The parents contention for the reassignment was Suzanne attended Aycock High School the previous year, took Latin I and participated in the school band. Fremont High School to which she was currently assigned did not have a band and did not offer any courses in Latin. The Fremont City Board of Education denied the request for reassignment. The parents served notice of appeal to the Superior Court of Wayne County. By consent, the judge appointed a referee to hear the case. The referee found that the plaintiff was an outstanding student, wished to go to college and then to medical school. In order to better prepare herself, the plaintiff wished to take four years of foreign language, including Latin which was not available at Fremont High School. He found that the request for transfer should be granted on the grounds that it was in the best interest of the plaintiff and that the "reassignment will not interfere with the proper administration of said school; neither will her reassignment interfere with the proper instruction of the pupils enrolled therein and it will not endanger the health or safety of the children therein." The court accepted the findings of the referee after hearing from counsel for both sides. He ruled

that the action of the Fremont City School Board denying the reassignment be set aside on the basis that it was in the best interest of the plaintiff to be granted the request. He ordered the city school board to reassign the plaintiff to the Wayne County Board of Education for enrollment in Charles B. Aycock High School. The case was appealed to the North Carolina Supreme Court.[194]

DECISION

The Supreme Court affirmed the decision with two judges dissenting. The controversy arose under Statute 115-176 which required each county/city school board of education to provide for the assignment to a public school of each student residing within the administrative unit who was qualified for admission to public school. The statute gave the school boards sole responsibility for the assignment of students and they were only able to assign students to another administrative unit with a written agreement between both administrative units. Statute 115-178 provided for administrative remedies if the plaintiff wished to request reassignment to another school. Each case was to be heard individually and based on the "best interest of the student" and that it will not cause any suffering instructionally, or harm to children in the school

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[194]In RE Reassignment of Hayes 646-648, 135 S.E. 2d 645 (1964).

being attended. Based on these statutes, the court affirmed the decision.[195]

Justice Moore dissented on the grounds that though the statutes did provide recourse on an individual basis it was not the intent of the legislature that one administrative unit could not determine what would interfere with instruction, or pose a danger to students in a school in another administrative unit. He contended that a board can only determine the conditions in its own schools and cannot have jurisdiction over another unit. It was not intended that upon showing better advantages of one system over another that students become legally entitled to reassignment. Logically and carried to its extreme, it could result in depopulating a school district.[196]

Justice Rodman concurred with the decision but indicated that administrative units should have written agreement of classes of students that would be eligible to transfer and those within the described class may be assigned, or reassigned to the contracting school.[197]

DISCUSSION

Affirmed and reinforced the basic arguments that reassignment should be in the "best interest of the child"

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[195]Id. 648-649.

[196]Id. 650.

[197]Id. 651.

which included better educational opportunities for the student. The case also was important because the court reassigned a student outside the administrative unit of their residence. This could have a pronounced effect on smaller systems or those with fewer educational opportunities than their neighboring administrative units.

FELDER v. HARNETT COUNTY BOARD OF EDUCATION.
349 F.2d 366 (1965)

DECISION

The United States Fourth Circuit Court of Appeals affirmed decision of the District Court for the Eastern District of North Carolina in Raleigh against the Harnett County Board of Education for using North Carolina's Assignment and Enrollment of Pupils Act in an unconstitutional application. The federal courts had declared this act facially constitutional and when it was applied to discriminate against black pupils it was given an unconstitutional application.[198] They upheld the following orders from the District Court to the school board:

1) to admit the infant plaintiffs to the schools of their choice
2) until the Board adopted some other non-discriminatory, to advise all pupils and parents of a free choice of schools at the time of initial assignments and such reasonable intervals thereafter as the Court might approve, and

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[198]Felder v. Harnett County Board of Education, 366, 349 F. 2d 366 (1965).

3) to abandon all burdensome or discriminatory practices and procedures[199]

The court found that the board never intended to operate under a freedom of choice plan as they were seeking relief from the orders of the District Court on the grounds that freedom of choice in assignment and transfers would produce chaotic conditions.

The school board contended that it had complied with the Pupil Assignment Act and that since the court had found that act facially constitutional, the board's actions were unassailable. The court answered that where the Act was used to discriminate against black pupils it was given an unconstitutional application. Criteria could not be used to screen and deny black applicants to a particular school if they were not used in the same manner to screen and deny white applicants in similar situations.[200]

DISCUSSION

For the first time, the court had said that the Pupil Assignment Act if used to discriminate could be ruled to be unconstitutional. Freedom of choice came under attack from the court. The court questioned the use of "freedom of choice" plans when by tradition there had been segregated schools and individuals were not given proper notification of their right to go to the school of their choice. School

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[199]Id. 366-367.

[200]Id. 367.

boards were to be responsible for adopting desegregation plans that carried out the intent of the law.

IN RE VARNER.
146 S.E. 2d 710 (1966)

FACTS

James Varner, 15 years old, resided in Randolph County with his parents at the time of this action. He had been attending school in Davidson County since first grade. By agreement of the Davidson County School Board and the Randolph County School Board, the children residing in the portion of Randolph County where the Varner's lived, had been attending schools in Davidson County for over thirty years with tuition being charged by Davidson County. In the school year 1965-66, he would have attended the new East Davidson High School which replaced Fair Grove due to consolidation. There was ample space for the student and Davidson County was willing to accept him.

On June 10, 1965, the Randolph County Board of Education assigned James Varner to attend Trinity School for the 1965-66 school year. The parents applied for reassignment to East Davidson High stating that the school was closer than the one to which he was being assigned and that the curriculum at East Davidson included a greater range of subjects which would better prepare their son for college. They also noted that the children of that area had been going to Davidson County

schools for over thirty years. The reassignment was requested in the best interest of the child.

The Randolph County Board of Education denied the request. The parents requested a hearing and again the request was denied by the board. The Varner's gave notice of appeal to Superior Court. They then filed in Superior Court for an injunction restraining the Randolph County School Board from enforcing the assignment of their son to Trinity School pending the final determination of their appeal. The injunction was granted and the Randolph County Board of Education appealed to the North Carolina Supreme Court.[201]

The school board offered as evidence two letters from officials of the United States Department of Health , Education and Welfare, that indicated the board would be out of compliance with the desegregation plan if they were to approve the reassignment of students outside of Randolph County. The board also demurred on the ground that the Court had no jurisdiction to assign the Varner child to a school in Davidson County. The board stated that its decision was based on the fact that if they were found out of compliance with the desegregation plan, they could suffer loss of federal funds.[202]

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[201]In RE Varner, 409-415, 146 S.E. 2d 710 (1966).

[202]Id. 409.

DECISION

The Supreme Court affirmed the judgement of the Superior Court. The Court found that the Pupil Assignment Act placed upon the board of education of the respective administrative units the duty to assign and reassign pupils in accordance with the procedures and standards set forth in the Act, with emphasis on the welfare of the individual pupil and the effect of assignment and reassignment upon the respective units. The board could not by contract or agreement limit its power in this regard even under threat of loss of funds from an employee of the federal government. Where there was no indication that race was a factor, the Civil Rights Act of 1964 had no application to proceedings to determine to which two administrative units a pupil should be assigned when such proceeding was based solely on what was in the best interest of the individual pupil.[203]

They cited **IN RE HAYES** giving the courts authority to assign a student from one administrative unit to another. The court did reaffirm the belief that one administrative unit could not permit enrollment of any student from another administrative solely upon its willingness to do so and the desire of the child or its parents to attend that school. The court could reassign.[204]

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[203]Id. 414.

[204]Id. 416.

DISCUSSION

The court reaffirmed its right to reassign students from one administrative unit to another if it would have no adverse effect on the pupils in the receiving school. The welfare of the individual student was placed above compliance with desegregation plans as long as race was not a factor. The decision would also indicate that school boards would not be able to assign students back to their unit and not be open for approving reassignment if traditionally the students had been attending schools by agreement of both boards in another unit. In this decision, was seen a much stronger interpretation of the Pupil Assignment Act that placed responsibility on the school board to make all pupil assignments in the best interests of the individual student.

TEEL v. PITT COUNTY BOARD OF EDUCATION.
272 F. Supp 703 (1967)

FACTS

Teel and plaintiffs, brought action of injunctive relief against the board of education's operation and administration of public schools on a racially discriminatory basis. The plaintiffs held that instances of intimidation in effect interfered or prohibited the free exercise of choice of school by black students, necessitating the elimination of provision

for automatic reassignment to schools previously attended if students should indicate no choice.[205]

DECISION

The court found that in the area of student assignment, "freedom of choice" plans were generally upheld as constitutional in concept. In **BRADLEY v. SCHOOL BOARD OF CITY OF RICHMOND**, the court held that "...in promulgating a plan giving every pupil the unrestricted right to attend the school of his or her parent's choice, limited only by time requirements for transfer applications and lack of capacity in the school to which transfer is sought, the school board in question adequately discharged its duty under the law."[206] The court did find that the plan in effect in Pitt County was not adequate as the degree of integration had declined and ordered the Pitt County Board of Education to formulate a new pupil assignment plan to correct the findings in the case brought before the court.[207]

DISCUSSION

The courts affirmed the constitutionality of "freedom of choice" plans in the assignment of students. The courts were beginning to question the effectiveness of the plans and were

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[205]Teel v. Pitt County Board of Education, 703, 272 F. Supp 703 (1967).

[206]Id. 706.

[207]Id. 711.

questioning the good faith of the boards in carrying out the plans.

COPPEDGE v. FRANKLIN COUNTY BOARD OF EDUCATION. 273 F. SUPP 289 (1967), BOOMER v. BEAUFORT COUNTY BOARD OF EDUCATION. 294 F. SUPP 179 (1968), UNITED STATES v. BERTIE COUNTY BOARD OF EDUCATION. 293 F. SUPP 1276 (1968)

FACTS

The use of "freedom of choice" to integrate the school system was the cause for action in these three cases. All three systems were using "freedom of choice" to meet the burden of proof that the boards were moving from segregated school systems to racially non-discriminatory school systems. For purposes of this study, the cases are so similar and primarily concerned with the desegregation of schools that they will be discussed as one.

DECISION

During the years since the decision of the Supreme Court in the **BROWN** I case and the years that each system had utilized "freedom of choice" plans, reasonable progress had not been toward the elimination of dual school systems in each system based on race or color. The courts in **BOOMER v. BEAUFORT COUNTY BOARD OF EDUCATION** proclaimed that "freedom of choice" was an unconstitutional and impermissible means for desegregation for the Beaufort County Schools.[208] It was therefore directed that the defendants implement a plan

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[208]Boomer v. Beaufort County Board of Education 179, 294 F Supp 179 (1968).

consistent with the decisions of the United States Supreme Court in **GREEN v. KENT COUNTY SCHOOL BOARD OF EDUCATION**, 391 U.S. 430, 88 S. Ct. 1689, 20 L.Ed.2d 716.

In all three cases the defendants were ordered to prepare and submit to the courts a student assignment plan that assigned students on the basis of a unitary system of non-racial geographic attendance zones, or consolidation of grades or schools or some combination of the foregoing, and pupil assignment would not depend upon a choice to be exercised by or on behalf of such students.

DISCUSSION

These decisions in effect eliminated "freedom of choice" as a means of student assignment. Students were to be assigned to schools based on a plan, not based on race or color, that resulted in a unitary school system. Students wishing to be reassigned would be required to follow the state statutes involving request for reassignment.

SWANN v. CHARLOTTE-MECKLENBURG BOARD OF EDUCATION.
300 F. Supp 1299 (W.D.N.C. 1969) 402 U.S. 1 (1971)

FACTS

The Charlotte-Mecklenburg School System was challenged over its efforts in desegregating its schools using "freedom-of-choice" and a "neighborhood" pupil assignment plan.[209] The plaintiffs claimed that though some effort had been made to satisfy the court order to desegregate the schools, the pupil

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[209]Bryson v. Bentley Supra N 72 at 98.

assignment plan proposed would continue to perpetuate a dual system of schools and prolong the integration of the schools. Evidence was shown that not one white child had requested to attend a previously all black school and that most requests for both blacks and whites were to schools where they would not be in a minority. The plan proposed by the board continued to have some all black and all white schools. The board had placed restrictions on the consultant to the extent that a plan could not be drawn that would allow any flexibility in desegregating the schools.[210]

Using achievement scores, it was shown that the students in predominantly or all black schools were achieving significantly lower than those at predominantly white or all white schools. The contention of the plaintiffs was that the students were not receiving an equal education.[211]

DECISION

Judge McMillian in the United States District Court in the Western District heard the case. He cited **ALEXANDER v. HOLMES**, 90 S.Ct. 29, in denying defendants an extension of time to totally desegregate the school system as being outside of the courts discretion considering the mandate by the Supreme Court. He further ruled that "freedom of choice" does

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[210]Swann v, Charlotte-Mecklenburg Board of Education, 1302-1306 300 F Supp 1358 (1969).

[211]Id. 1309-1310.

not make a segregated school system lawful.[212] He required the school board to formulate a student assignment plan using all means possible, to include clustering, pairing and busing, to proceed with the immediate elimination of a dual school system. The plan was to provide for a unitary system of schools. There was to be no consideration of cost or the feelings of the public. The only consideration to be given was to the welfare of the children as to their safety and well being. Race was to be used as one of the criteria in developing a student assignment plan.[213]

Judge McMillian's decision was affirmed by the United States Supreme Court in 1971. The Court upheld the constitutionality of bussing as a means to achieving an integrated school system. The Court struck down the North Carolina Anti-Busing Law as being unconstitutional on the grounds that if you cannot use race in developing student assignment plans and buses to carry out the plan, the major tool that school boards need to eliminate a dual school system, has been denied to them.[214]

In a related case **MARTIN v. CHARLOTTE-MECKLENBURG BOARD OF EDUCATION**, 626 F. 2d 1165 (1980), a group of parents and children brought suit against the board of education seeking

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[212]Id. 1299.

[213]Id. 1299-1300.

[214]Bolmier Supra N 131 at 80.

an order to prohibit the board from implementing a new pupil assignment plan. Judge McMillian denied the request on grounds that the board of education had the authority to set policy that a school should not have a majority of minority students.[215]

DISCUSSION

The decisions by Judge McMillian and the affirmation by the Supreme Court, provided the means by which the courts across the country and North Carolina could require school boards to totally eliminate single majority schools. No longer would boards be able to use the neighborhood school as an argument for a dual school system. The courts would expect an immediate end to segregated schools and boards would be expected to comply. School boards are placed on notice that the use of race in formulating student assignment plans is both constitutional and in some cases necessary to eliminate segregation in the schools. Also important in this case, is the concept that segregation caused by residential patterns does not always have to be corrected by the school board if it was not caused by official actions of the school board.(Bryson 99) This was the last case involving desegregation to be adjudicated in the federal courts of North Carolina involving student assignment issues.

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[215]Martin v. Charlotte-Mecklenburg Board of Education, 1167, 626 F. 2d 1165 (1980).

WHITLEY v. WILSON CITY BOARD OF EDUCATION.
427 F. 2d 179 (1970)

FACTS

Cynthia Whitley and her brother, Will Whitley, were assigned to attend a previously all black elementary school by the Wilson City Board of Education. The Wilson City Board of Education complying with court rulings that required the disestablishment of a former dual school system and the replacement with a unitary system in which students were assigned to schools without regard to race or color assigned one hundred twenty-three white students to attend previously all black schools. These students lived within the school district but outside of the city limits. Other white students in the same grades and other zones were not explicitly assigned by race to previously all black schools. The assignment plan left the vast majority of the other white students in their previous schools. The plaintiffs argued that they did not have to pursue redress through procedures as outlined by the Pupil Assignment Act because they were being denied equal protection of the laws as guaranteed to them by the Fourteenth Amendment to the Constitution because the school to which they were assigned was not a part of a unitary school system. They argued that this school had been singled

out to appease the Department of Health, Education and Welfare and the federal courts.[216]

The school board contended that the plaintiffs were not entitled to injunctive relief because (1) they had not exhausted their state administrative remedies and (2) they were "attempting to interfere with the discretionary statutory power (to assign pupils) reposed in the board."[217]

DECISION

The court ruled that the plaintiffs did have the right to sue for injunctive relief because their rights had been denied to them afforded by the Fourteenth Amendment. The court held that the Wilson City Board of Education was not operating a unitary school system and that the school board must submit a plan for the implementation of a unitary school system in the City of Wilson School District to become effective no later than the 1970-71 school year.[218]

DISCUSSION

The court ruled that this was a constitutional issue and the white students had standing to sue because of the school board's overall assignment policies. They found that the students had no need to seek remedy through the state's pupil assignment provisions. "When an assignment plan is

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[216]Whitley v. Wilson City Board of Education, 181-182 427 F. 2d 179 (1970).

[217]Id. 182.

[218]Id. 182-183.

unconstitutional, the assigned pupils have every right to attack it despite its discretionary nature".[219] The interest of white students or their parents to sue to provide for a unitary school system was of no less importance than that of black students. It allowed white students for the first time to challenge an existing dual system of schools without regard to where they were assigned.

FRIES v. ROWAN COUNTY BOARD OF EDUCATION.
172 S.E.2d 75 (1970)

FACTS

George Fries, and other members, acting on behalf of the Save Our Schools Committee filed action attacking school pupil assignment plan. The plaintiffs were seeking relief from pupil assignment plan adopted by the Rowan County School Board on March 20, 1969. This plan would provide for two schools to have different grades placed in them which would require increased busing and cross-busing. The plan also prohibited any student from seeking a transfer to another school within his own district to attend where one class of its kind was available. The plaintiffs argued that this plan made assignments without regard to the orderly and efficient administration of the public, failed to provide for the effective instruction, created unnecessary additional hazard to health and safety of the pupils so assigned and was detrimental to the general welfare of all students in the

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[219]Id. 180.

district. They also argued that it was a violation of N.C. G.S. 115-176, and compelled students to attend schools under a plan designed to create a balance of race and compelled them to accept involuntary busing for which public funds must be used to pay the cost, in violation of N.C. G.S. 115-176.1. The plaintiffs sought that the action of the school board be ruled invalid and restrained from putting the plan into effect.[220]

DECISION

On July 18, 1969 Judge Lupton, holding the courts of the Nineteenth Judicial District, entered an order to show cause why the injunction should not be granted. He returned it to Judge McConnell in Cabarrus County on 4 August 1969.[221]

Judge McConnell ruled neither the complaint nor the affidavits of the plaintiffs alleged or showed that the Rowan County School Board acted arbitrarily or acted in other than good faith in adopting on March 20, 1969 a plan for operation and assignment of pupils in the North Rowan School District of Rowan County for the 1969-70 school year. He further ruled that though the plaintiffs had a right to object, it did not appear that their rights had been violated under the Constitution of the United States of America or the Constitution of the State of North Carolina. It further

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[220]Fries v. Rowan County Board of Education, 76, 172 S.E. 2d 75 (1970).

[221]Id. 77.

appeared as if G.S. 115-176.1 referred to in the complaint was not adopted until July 2, 1969 which was after the adoption of the plan. The demurrer was sustained and the action dismissed on August 6, 1969. The case was appealed to the Court of Appeals.[222]

Judge Campbell affirmed the action on February 25, 1970. He affirmed on the grounds that the Pupil Assignment Act established a method of assignment of public school students and a method of challenge of that assignment. He was not able to find any record that this procedure was followed and stated "when such an "integrated and adequate" procedure is established by the Legislature, it is meant to be followed."[223]

He also found that since this plan had been in effect since August 27, 1969 and most of the present year had passed, that to permit this type of action would result in complete chaos and confusion for the school system.[224]

DISCUSSION

The ruling upheld the procedures of the Pupil Assignment Act and the fact that they must be followed before the plaintiff could seek relief unless there was a question of discrimination. The ruling also reinforced the concept that

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[222]Id. 77.

[223]Id. 78.

[224]Id. 78.

relief would not be granted during the middle of a school year. Of importance was the refusal of the court to become embroiled in deciding the constitutionality of G.S. 115-176.1 which sought to limit the use of public funds for the cross-busing of students to achieve integration.

IN RE ALBRIGHT.
180 S.E.2d 798 (1971)

FACTS

The Board of Education of Orange County assigned 256 children residing in Orange County to attend designated schools in Orange County for the school year 1970-71. The parents of these children following the procedures outlined in the Pupil Assignment Act petitioned for their children to be reassigned to schools in Alamance County. Upon denial of the petitions for reassignment, the petitioners appealed to the Superior Court of Orange County for relief.[225]

After the appeal was docketed in the Superior Court, the petitioners then asked for a temporary restraining order to allow the students to begin the school year in the Alamance County Schools.

DECISION

Judge Robert Martin issued a restraining order that restrained the Orange County Board of Education from enforcing the assignment of the children involved in the proceedings and

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[225]In RE Albright 799-800 180 S.E. 2d 798 (1971).

that the children be allowed to attend schools in Alamance County.

Judge Martin found for the plaintiffs on some of the following major facts:

1. Petitioners lived in the western part of Orange County near the town of Mebane and that since approximately 1903 the children living in this areas had attended schools in Mebane and Alamance County. Prior to the school year beginning 1970-71, the Board of Education had not assigned children in area where petitioners lived to Orange County schools.
2. The assignment of the children to the Junior High School in Hillsborough would result in additional overcrowding of a school that was currently overcrowded.
3. The petitioners lived substantially closer to the schools in Alamance County.
4. Many of the children involved had attended schools in Alamance County all of their lives.
5. The assignment of these children to Alamance County would not interfere with the operations of those schools nor endanger the health or safety of the children enrolled there.
6. The Alamance County Board of Education had agreed to accept the children for the 1970-71 school year.
7. It would be in the best interest of the students to continue to attend schools in Alamance County pending the final determination of this case.[226]

The restraining order was granted on the facts and the judges opinion that the petitioners would be able to sustain their position at the trial on the merits of these actions and that without this injunction irreparable harm and damage would result to the children involved in this proceeding.

The Board of Education of Orange County appealed and Court of Appeals affirmed the injunction based on the legal validity of Judge Martin's order.

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[226]Id. 800.

DISCUSSION

The Superior Court found for the petitioners upon coming to trial. The "best interest of the child" was coming to the forefront in determining pupil assignment cases. If the parties requesting reassignment followed all of the procedures of G.S. 115-179, then the decision was going to be determined by what was in the best interest of the child, if the receiving school would not be hindered in its administration or the safety or well being of the students currently attending were not endangered.

STATE v. CHAVIS.
N.C. App., 263 S.E.2d 356

FACTS

Parents of Indian descent were convicted in the Superior Court, Robeson County in violation of compulsory school attendance law. They appealed on the grounds that the presiding judge did not follow the request of the defendants to instruct the jury as follows: "if defendants had failed to send their children to the assigned school as the result of a good faith belief that as American Indians they are exempt from guidelines of the local school board mandated by the Department of HEW, then you were to return a verdict of not guilty."[227]

The parents had arrived at Prospect School of the first day of class of the 1978-79 school year to attend school

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[227]State v. Chavis 357 North Carolina App 263 S. E. 2d 356.

there. They had been assigned to Prospect School in years past but had been reassigned for the current year when it was discovered that they lived in another school district. The board by HEW mandate and under threat of loss of federal funds was required to assign students to districts and the schools within those districts. The parents claimed that because they were Indian that the Civil Rights Law of 1964 did not apply to them and they were exempt from any mandate by HEW because of their Indian heritage.

DECISION

The defendants were found guilty of violation of the compulsory attendance law for not sending their children to the school to which they had been assigned by the school board. The Court of Appeals affirmed the conviction not in regard to an assignment question but to the fact the court properly did not give the instructions to the jury as requested by the defendants.[228]

DISCUSSION

The state school compulsory law (G.S. 115-169) was being used as a way to force the attendance of a child to the school to which they were assigned by the school board. This statute in conjunction with G.S. 115-176, allowed charges to be brought against parents not complying with school assignment of their child even though they could take them to another

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[228]Id. 360.

public school. Only if they were enrolled in a private school does the school assignment not apply.

CHAPTER V

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

This study was designed to research and analyze case law relating to student assignment in North Carolina. The writer surveyed the governance of the public schools from the early 1800's to 1955 and traced the changing nature of school boards and the state board of education. With the passage of the Pupil Assignment Act in 1955, local boards of education were given the authority to assign students. The basis for this study were the court cases that challenged school boards and their right to assign students.

All court cases to be adjudicated in the Courts of Appeal of North Carolina and the federal courts relating to student assignment in North Carolina were reviewed. These cases were discussed in regard to the legal aspects of the decisions of the courts and their effect in establishing precedent for litigation that was to follow. Having discussed the legal aspects of the Pupil Assignment Act, the facts of each case were summarized, the legal decision rendered was cited and the decision discussed as to its legal significance.

As a guide to the research and the formulation of guidelines and recommendations, several questions were listed in the introductory chapter of this study. The answers to these questions will provide background on the Pupil

Assignment Act and assist school administrators and school boards with legal guidelines in formulating policies related to student assignment, reassignment and transfer requests.

SUMMARY

The first research question asked when and why did the responsibilities of the state school board change in relation to student assignment.

With the U.S. Supreme Court decision in **BROWN v. TOPEKA**, the state sought any means possible to delay or permanently forestall the desegregation of the schools. The N.C. General Assembly in 1955 and 1956 passed legislation that would provide boards of education the legal basis for maintaining segregated schools if they desired. They are as follows:

1. Close the public schools and/or
2. Provide educational grants to those desiring to attend private schools as provided for by constitutional amendment in 1956, or
3. Use the authority of the board to assign students to maintain a dual system of schools if that was the desire of the board.

The Pupil Assignment Act of 1956 revoked the authority of the state board of education to assign students and placed that responsibility solely upon the boards of education of each administrative unit. This removed the possibility of a decision by the federal courts affecting the entire state in regard to the desegregation of all of the schools in the state at one time. Each case would be ligated on its own merit and directed against the local administrative unit and

authorities.

The second question asked about the sociological and political conditions that led to the enactment of the Pupil Assignment Act. Following the Civil War, a dual system of schools for blacks and whites was organized by law to serve the children of North Carolina. As long as the federal judiciary supported a "separate but equal" doctrine for the races, the public schools, operated as a dual school system. The only variances were the governance issues. The State Superintendent and State Board of Education were responsible for the education of students and their assignment to schools.

The third guide question listed in Chapter I was concerned with identifying the areas of litigation most frequently involved concerning denial or approval of student transfer. An analysis of the legal issues in Chapter III and a review of the cases in Chapter IV indicated the following major areas of litigation in North Carolina:

1. the authority to assign students to schools
2. minorities seeking to desegregate the schools
3. attempts to block the reassignment of students
4. constitutional rights of individuals to have an equal education
5. "in the best interest of the student"
6. the school boards authority to use whatever means possible to fulfill their constitutional obligations
7. the constitutionality of "freedom of choice" plans to desegregate schools

The decisions by the courts at both the federal and state level provided the basis for the fourth research study question. The essence of the fourth question asked the

identification of the legal principles established by landmark decisions that have guided the decisions of lower courts and school boards. Chapter III and IV reviewed and analyzed the major cases in North Carolina, citing Supreme Court decisions that provided precedent for the lower courts. The following are examples of related legal principle established by these decisions:

1. The doctrine of "separate but equal" has no place in American education.
2. In North Carolina the school board of each administrative unit has the sole authority and responsibility for assigning students domiciled within their unit.
3. All administrative remedies as provided for by the Pupil Assignment Law must be exhausted before a judicial review.
4. Each request for reassignment must be done by the parent or guardian on an individual basis.
5. Local school boards have the duty and responsibility for assigning students and operating the schools in a constitutional manner.
6. School boards may use any means possible to eliminate the vestiges of a dual school system including affirmative action and bussing.
7. School boards must act "in the best interest of the student" in school assignments.
8. Once established by the state, public education becomes a property right and is protected by the Fourteenth Amendment.
9. Boards of education have quasi-judicial authority as recognized by the courts.
10. Boards of education are responsible for the establishment of rules and procedures governing requests for reassignment.
11. Boards of education can enter into agreements to assign students to other administrative units as long as it is not discriminatory and it's in the best interest of the student.
12. Parents acting on behalf of their children have a right to request reassignment to another school.

Each of these legal principles must be considered by school boards when developing policies related to school

assignment and administrative review of those assignments.

The final two guide questions concerning student assignment issues which the study attempted to answer were related to the rights of the student seeking reassignment and the future political and sociological considerations that might be forthcoming which would provide an increase in student transfer requests.

CONCLUSIONS

The Pupil Assignment Act was enacted in reaction to the **BROWN I** decision as one of three ways to maintain segregated schools. As history shows, not one school was closed or an educational grant paid as provided for in the constitutional amendment of 1956. The Pupil Assignment Law provided the mechanism for boards of education to delay the integration of the schools. As discussed in Chapter III, almost fifteen years passed before the federal courts finally decreed that boards of education had a duty to recognize the constitutional rights of students and proceed with the elimination of a dual system of schools by all means possible including the use of bussing and affirmative action in developing student assignment plans. The U.S. Supreme Courts' affirmation of the lower courts decision in **SWANN v. CHARLOTTE-MECKLENBURG BOARD OF EDUCATION** ended the use of pupil assignment as an issue in maintaining a dual school system. From 1955 to 1971, the courts forced boards to examine their policies related to

student assignment and requests for reassignment. The major issues involving student assignment moved from efforts of minorities to desegregate the schools to student request for reassignment in what they considered to be in their best interest.

Drawing specific conclusions from legal research is very difficult. Even though legal issues appear to be similar, a different set of circumstances can produce an entirely different opinion. Though the legal issues may change in respect to time, many of the issues remain the same. The following conclusions are presented on the legal aspects of student assignment, based on an analysis of cases:

1. The assignment of students that in any way denies their right to an equal education will continue to come under scrutiny of the courts.

2. The authority of school boards to assign students is recognized by the courts. The courts will not become involved in the operation of the schools unless there is evidence of the violation of a students' constitutional right.

3. Students have a right to request reassignment and if due process has been granted, all administrative remedies must be exhausted before a judicial remedy can be sought.

4. Boards of education must have sound reasons for denying a request for reassignment. The courts will look at what is "in the best interest of the student" in determining the actions of the board. The legal question of what is "in the best interest of the student" will continue to be a legal issue for the courts to explore and define.

5. The issue of "in the best interest of the student" and "in the best interest of the school system" will continue to be an area of conflict that the courts may involve themselves.

6. With "choice" being advocated by politicians at both the national and local level, the question of its

constitutionality will again become an issue for the courts to decide. If "choice" is allowed, when does the equalization issue become more important for those less fortunate.

7. A continuing legal issue within the state is the large number of students requesting transfers to systems with better resources from systems with fewer resources. When does the interest of the school system take precedence?

8. The issue of racial balance may again become a major area of litigation in North Carolina as predominantly black city systems merge with predominantly white county systems. Student assignment plans will come under close scrutiny by the public and the courts may again be asked to become involved in the operation of the public schools.

RECOMMENDATIONS

The purpose of this study, as stated in the introduction was to review and analyze the legal issues and judicial cases related to pupil assignment in North Carolina. As a result of this study, school administrators and school boards will use this information to develop guidelines and policies for student assignment. As the authority to assign students has been designated by the state to rest in the hands of the local school board, it is imperative that school boards understand their role and provide due process as required by the constitution to every student in regard to student assignment.

Based on analysis of data, the following guidelines on student assignment have been formulated. These guidelines are based on the court decisions reviewed and opinions of the Attorney General of North Carolina.

Guidelines for Student Assignment

1. School boards must notify each student of his school

assignment at the end of the school year to provide sufficient time for a request for reassignment to be made.

2. A systemwide student assignment plan must be in place and it cannot in anyway deny any student of his constitutional right to an equal education.

3. If a school board assigns a student outside of its administrative unit, it must have a written agreement with the other unit and the assignment cannot be perceived to be discriminatory.

4. A mechanism must be in place for the parent or guardian to request reassignment to another school either within the same administrative unit or to another administrative unit.

5. If the board denies the request and the parent or guardian requests a hearing, the school board must hear each request individually and give a specific reason for the denial of the request.

6. If the board does deny the request, it must show that it acted "in the best interest of the student" or that the transfer would somehow be detrimental to the students currently attending that school. (i.e. overcrowded school)

7. School boards have a quasi-judicial standing and have the authority to act as such.

8. School boards will be required to determine the "domicile" of each student and assign the student according to the student assignment plan.

9. Specific procedures for requesting reassignment should be made available to parents and the school board should follow the procedures as outlined.

10. School boards should have written policies outlining their student assignment plan, procedures for requesting reassignment and administrative remedies available if the request is denied.

11. As a general policy, the school board should have a statement that it intends to protect the constitutional rights of all students and a statement of "non-discrimination".

Recommendations for Further Study

This study has been limited to student assignment in North Carolina and litigation relating to the Pupil Assignment Act. Recommendations for further study are as follows:

1. a comprehensive study of the present student assignment policies of school boards in North Carolina,

2. the financial and demographic effects of student transfers between systems and schools to include actual number of transfer students in each school system, and,

3. a study of student assignment authority in each state.

Further study would provide increased knowledge of the extent of student transfers in North Carolina and its affect on school systems.

CONCLUDING STATEMENT

As society has changed over the last twenty years in North Carolina, the issues involved in student assignment have changed. It has been the experience of the writer that most requests for reassignment today are due to child care problems, athletics and the desire of parents to have their child in a school or system with better resources. Often requests are made by parents because they perceive a school to be better than another or it is socially more acceptable. It is the writer's opinion that requests for reassignment will increase throughout the state as our work force becomes more mobile and urbanization increases.

As this study has drawn to a close, the courts are again being asked to decide issues of student assignment. The U.S. Supreme Court in the last weeks of April, 1992, has declared that systems no longer are required to provide a unitary system if the segregation of schools was not caused by actions of the school board but by housing patterns. The Court will again hear arguments involving Topeka, Kansas, the original plaintiff in **BROWN I**. Thirty-eight years after the original decision that eliminated the "separate but equal" doctrine, the courts have come full circle and again are upholding separate but equal schools if the school board has made every attempt to desegregate. This will most likely affect all of the school systems of North Carolina as most have school assignment plans that were approved by HEW guidelines that called for the formation of unitary systems to eliminate all segregated schools. The effect of this decision and others yet to come will place additional burdens on the school board's authority to assign students.

Two major issues that will be cause for additional requests for reassignment across the state will be, first, the passage of state or federal laws that provide for parents to have a "choice" of schools, and secondly, the mergers now taking place between cities and counties where there are marked differences in demographics. School boards need to be prepared to deal with these issues as well as others that may challenge their student assignment plans. There are no

guidelines or school board policies that will ensure against litigation by individuals but boards of education can reduce the probability of litigation by formulating policies and guidelines to govern school assignment and requests for reassignment.

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