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IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE SOUTHERN DISTRICT  
OF FLORIDA.

No. 64-721-Civil-CA

DENISE SHARPTON, et al.,

Plaintiffs,

vs.

THE BOARD OF PUBLIC INSTRUCTION  
OF INDIAN RIVER COUNTY, FLORIDA,

Defendant.



ORDER

This cause coming on to be heard upon Plaintiffs' Motion for Further Relief and upon stipulation of counsel for entry of a Consent Order, and the Court having heard the argument of counsel and being fully advised in the premises, it is, therefore, upon consideration,

ORDERED, ADJUDGED AND DECREED that the Final Decree entered herein on the 19th day of April, 1965, as amended by Order dated November 12, 1965, and as corrected by Order entered December 30, 1965, be amended to read as follows:

1. Commencing with the 1967-68 school year, all grades, including kindergarten grades, in the public schools of Indian River County, Florida, shall be desegregated and students assigned to schools in these grades without regard to race or color. Every child eligible to enter and intending to enter any grade of the public schools of Indian River County, Florida, at the beginning of the 1967-1968 school year and subsequent school years may choose to attend any school in the county school system.

2. The following provisions shall apply to all grades:

(a) Who May Exercise Choice. A choice of schools may be exercised by a parent or other adult person serving as the student's

parent. A student may exercise his own choice if he (1) is exercising a choice for the ninth or a higher grade, or (2) has reached the age of fifteen at the time of the exercise of choice.

Such a choice by a student is controlling unless a different choice is exercised for him by his parent or other adult person serving as his parent during the choice period or at such later time as the student exercises a choice. Each reference in this decree to a student's exercising a choice means the exercise of the choice, as appropriate, by a parent or such other adult, or by the student himself.

(b) Annual Exercise of Choice. All students, both white and negro, shall be required to exercise a free choice of schools annually.

(c) Choice Period. The period for exercising choice of a school shall commence March 1 and end March 31 of each year. No student or prospective student who exercises his choice within the choice period shall be given any preference because of the time within the period when such choice was exercised.

(d) Mandatory Exercise of Choice. A failure to exercise a choice within the choice period shall not preclude any student from exercising a choice at any time up to one week before the opening of school for the Fall term for the year with respect to which the choice applies, but such choice may be subordinated to the choices of students who exercised choice before the expiration of the choice period. Any student who has not exercised his choice of school within a week before school opens shall be assigned to the school nearest his home where space is available under standards for determining available space which shall be applied uniformly throughout the system.

(e) Public Notice. On or within a week before the date the choice period opens, the defendants shall arrange for the conspicuous publication of a notice describing the provisions of this decree in the newspaper most generally circulated in the community. The text of the notice shall be substantially similar to the text of the explanatory letter sent home to parents. Publication as a legal notice will not be sufficient. Copies of this notice must also be given at that time to all radio and television stations serving the community. Copies of this decree shall be posted in each school in the school system and at the office of the Superintendent of Education.

(f) Mailing of Explanatory Letters and Choice Forms. No later than the first day of the choice period there shall be distributed by first-class mail an explanatory letter and a choice form to the parent (or other adult person acting as parent, if known to the defendants) of each student, together with a return envelope addressed to the Superintendent.

(g) Extra copies of the Explanatory Letter and Choice Form. Extra copies of the explanatory letter and choice form shall be freely available to parents, students, prospective students, and the general public at each school in the system and at the office of the Superintendent of Education during the times of the year when such schools are usually open.

(h) Content of Choice Form. Each choice form shall set forth the name and location of the grades offered at each school and may require of the person exercising the choice the name, address, age of student, school and grade currently

or most recently attended by the student, the school chosen, the signature of one parent or other adult person serving as parent, or where appropriate the signature of the student, and the identity of the person signing. No statement of reasons for a particular choice, or any other information, or any witness or other authentication, may be required or requested, without approval of the court.

(j) Return of Choice Form. At the option of the person completing the choice form, the choice may be returned by mail, in person, or by messenger to any school in the school system or to the office of the Superintendent.

(j) Choices not on Official Form. The exercise of choice may also be made by the submission in like manner of any other writing which contains information sufficient to identify the student and indicates that he has made a choice of school.

(k) Choice Forms Binding. When a choice form has once been submitted and the choice period has expired, the choice is binding for the entire school year and may not be changed except in cases of parents making different choices from their children under the conditions set forth in paragraph (a) of this decree and in the exceptional cases where, absent the consideration of race, a change is educationally called for or where compelling hardship is shown by the student.

(l) Preference in Assignment. In assigning students to schools, no preference shall be given to any student for prior

attendance at a school and, except with the approval of court in extraordinary circumstances, no choice shall be denied for any reason other than overcrowding. In case of overcrowding at any school, preference shall be given on the basis of the proximity of the school to the homes of the students choosing it, without regard to race or color. Standards for determining overcrowding shall be applied uniformly throughout the system.

(m) Second Choice Where First Choice is Denied.

✓ Any student whose choice is denied must be promptly notified in writing and given his choice of any school in the school system serving his grade level where space is available. The student shall have seven days from the receipt of notice of a denial of first choice in which to exercise a second choice.

(n) Assignment by Superintendent in Default of Choice by Student. In order to utilize existing school space to the best advantage, a student who has not made a choice of a particular school may be assigned to such school as the Superintendent shall determine, provided such assignment is not based on race, color or national origin of any individual.

(o) Transportation. Where transportation is generally provided, buses must be routed to the maximum extent feasible in light of the geographic distribution of students, so as to serve students assigned in accordance with the provisions of this decree. Every student choosing either the formerly white or the formerly negro school nearest his residence must be transported to the school to which he is assigned under these provisions, whether or not it is his first choice, if that school is sufficiently distant

from his home to make him eligible for transportation under generally applicable transportation rules.

(p) **Officials not to Influence Choice.** At no time shall any official, teacher or employee of the school system influence any parent, or other adult person serving as a parent, or any student, in the exercise of a choice or favor or penalize any person because of a choice made. If the defendant school board employs professional guidance counselors, such persons shall base their guidance and counselling on the individual student's particular personal, academic and vocational needs. Such guidance and counselling by teachers as well as professional guidance counsellors shall be available to all students without regard to race or color.

(q) **Protection of Persons Exercising Choice.** Within their authority school officials are responsible for the protection of persons exercising rights under or otherwise affected by this decree. They shall, without delay, take appropriate action with regard to any student or staff member who interferes with the successful operation of the plan. Such interference shall include harassment, intimidation, threats, hostile words or acts, and similar behavior. The school board shall not publish, allow or cause to be published, the names or addresses of pupils exercising rights or otherwise affected by this decree. If officials of the school system are not able to provide sufficient protection, they shall seek whatever assistance is necessary from other appropriate officials.

3. **Prospective Students.** Each prospective new student shall be required to exercise a choice of schools before or at the time of enrollment.

All such students known to defendants shall be furnished a copy of the prescribed letter to parents, and choice form, by mail or in person, on the date the choice period opens or on any date thereafter as the school system learns that he plans to enroll. Where there is no pre-registration procedure for newly entering students, copies of the choice forms shall be available at the Office of the Superintendent and at each school during the time the school is usually open.

#### 4. Transfers.

(a) Transfers for Students. Any student shall have the right, at the beginning of a new term, to transfer to any school from which he was excluded or would otherwise be excluded on account of his race or color.

(b) Transfers for Special Needs. Any student who requires a course of study not offered at the school to which he has been assigned may be permitted, upon his written application, at the beginning of any school term or semester, to transfer to another school which offers courses for his special needs if such student qualifies on his cumulative record; however, no such application shall be denied because of race, color or national origin.

(c) Special or Exceptional Schools. The assignment of pupils to special or exceptional schools and classes such as those for the physically handicapped, the emotionally disturbed, the brain damaged, the gifted, and the mentally retarded shall be made upon academic excellence, physical need, mental capacity, or emotional condition without regard to the nearness of such school of the residence of such pupil and without regard to race, color or national origin.

5. Services, Facilities, Activities and Programs. No student shall be segregated or discriminated against on account of race or color in any service, facility, activity or program (including transportation, athletics, or other extracurricular activity) that may be conducted or sponsored by or affiliated with the school in which he is enrolled. A student attending school for the first time on a desegregated basis may not be subject to any disqualification or waiting period for participation in activities and programs, including athletics, which might otherwise apply because he is a transfer or newly assigned student except that such transferees shall be subject to long-standing, non-racially based rules of city, county or state athletic associations dealing with the eligibility of transfer students for athletic contests. All school use or school-sponsored use of athletic fields, meeting rooms and all other school related services, facilities, activities and programs such as Commencement exercises and parent-teacher meetings which are open to persons other than enrolled students, shall be open to all persons without regard to race or color. All special educational programs conducted by the defendants shall be conducted without regard to race or color.

6. School Equalization.

(a) Inferior Schools. In the event that any schools heretofore maintained for Negro students should be determined to be inferior with regard to physical facilities, equipment, courses of instruction or instructional materials to the quality of those provided in schools previously maintained for white students, the defendants shall promptly take such steps as are necessary to provide physical facilities, equipment, courses of instruction, and instructional materials of quality equal to that provided in schools previously maintained for white



students. Conditions of overcrowding, as determined by pupil-teacher ratios and pupil-classroom ratios shall, to the extent feasible, be distributed evenly between schools formerly maintained for Negro students and those formerly maintained for white students. If for any reason it is not feasible to improve sufficiently any school formerly maintained for Negro students, where such improvement would otherwise be required by this subparagraph, such school shall be closed as soon as possible, and students enrolled in the school shall be reassigned on the basis of freedom of choice. By October of each year, defendants shall report to the Clerk of the Court pupil-teacher ratios, pupil-classroom ratios, and per-pupil expenditures both as to operating and capital improvement costs, and shall outline the steps to be taken and the time within which they shall accomplish the equalization of such schools.

(b) Remedial Programs. The defendants shall take steps to provide remedial education programs which will permit students attending or who have previously attended all Negro schools to overcome any past inadequacies in their education.

7. New Construction. The defendants, to the extent consistent with the proper operation of the school system as a whole, shall locate any new school and substantially expand any existing schools with the objective of eradicating the vestiges of the dual system and of eliminating the effects of segregation.

8. Faculty and Staff.

(a) Faculty Employment. Race or color shall not be a factor in the hiring, assignment, reassignment, promotion,

demotion, or dismissal of teachers and other professional staff members, including student teachers, except that race may be taken into account for the purpose of counteracting or correcting the effect of the segregated assignment of teachers in the dual system. Defendants shall take steps to assign teachers, principals and staff members to schools so that the faculty and staff is not composed exclusively of members of one race. Wherever possible, teachers shall be assigned so that more than one teacher of the minority race (white or Negro) shall be on a desegregated faculty. Defendants shall take positive and affirmative steps to accomplish the desegregation of their school faculties and to achieve substantial desegregation of faculties in as many of the schools as possible for the 1967-68 school year notwithstanding that teacher contracts for the 1967-68 school year may have already been signed and approved. The tenure of teachers in the system shall not be used as an excuse for failure to comply with this provision. The defendants shall establish as an objective that the pattern of teacher assignment to any particular school not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school.

(b) Dismissals. Teachers and other professional staff members may not be discriminatorily assigned, dismissed, demoted, or passed over for retention, promotion, or rehiring, on the ground of race or color. In any instance where one or more teachers or other professional staff members are to be displaced as a result of desegregation, no staff vacancy in the school system shall be filled

through recruitment from outside the system unless no such displaced staff member is qualified to fill the vacancy. If, as a result of desegregation, there is to be a reduction in the total professional staff of the school system, the qualifications of all staff members in the system shall be evaluated in selecting the staff member to be released without consideration of race or color. A report containing any such proposed dismissals, and the reasons therefor, shall be filed with the Clerk of the Court, serving copies upon opposing counsel, within five (5) days after such dismissal, demotion, etc., as proposed.

9. Reports to the Court.

(a) Report on Choice Period. The defendants shall serve upon the opposing parties and file with the Clerk of the Court on or before June 15, 1967, and in each subsequent year on or before June 1, a report tabulating by race the number of choice applications and transfer applications received for enrollment in each grade in each school in the system, and the number of choices and transfers granted and the number of denials in each grade of each school. The report shall also state any reasons relied upon in denying choice and shall tabulate, by school and by race of student, the number of choices and transfers denied for each such reason.

In addition, the report shall show the percentage of pupils actually transferred or assigned from segregated grades or to schools attended predominantly by pupils of a race other than the race of the applicant, for attendance during the 1966-67 school year, with comparable data for the 1965-66 school year. Such

additional information shall be included in the report served upon opposing counsel and filed with the Clerk of the Court.

(b) Report After School Opening. The defendants shall, in addition to reports elsewhere described, serve upon opposing counsel and file with the Clerk of the Court within 15 days after the opening of schools for the fall semester of each year, a report setting forth the following information:

(i) The name, address, grade, school of choice and school of present attendance of each student who has withdrawn or requested withdrawal of his choice of school or who has transferred after the start of the school year, together with a description of any action taken by the defendants on his request and the reasons therefor.

(ii) The number of faculty vacancies, by school, that have occurred or been filled by the defendants since the order of this Court or the latest report submitted pursuant to this subparagraph. This report shall state the race of the teacher employed to fill each such vacancy and indicate whether such teacher is newly employed or was transferred from within the system. The tabulation of the number of transfers within the system shall indicate the schools from

which and to which the transfers were made. The report shall also set forth the number of faculty members of each race assigned to each school for the current year.

(iii) The number of students, by race, in each grade of each school.

10. Explanatory Letter. The defendants in complying with the provisions of Paragraph 2 of this decree, with regard to the mailing of explanatory letters and choice forms, shall use explanatory letters and choice forms in substantially the following form:

Board of Public Instruction  
Indian River County  
Vero Beach, Florida 32960

(Date Sent)

Dear Parent:

All grades in our school system will be desegregated next year. Any student who will be entering one of these grades next year may choose to attend any school in our system, regardless of whether that school was formerly all-white or all-Negro. It does not matter which school your child is attending this year. You and your child may select any school you wish.

Every student, white and Negro, must make a choice of schools. If a child is entering the ninth or higher grade, or if the child is fifteen years old or older, he may make the choice himself. Otherwise a parent or other adult serving as parent must sign the choice form. A child enrolling in the school system for the first time must make a choice of schools before or at the time of his enrollment.

The form on which the choice should be made is attached to this letter. It should be completed and returned by March 31, 1967. You may mail it in the enclosed envelope, or deliver it by messenger or by hand to any school principal or to the Office of the Superintendent. No one may require you to return your choice form before March 31, 1967 and no preference is given for returning the choice form early.

No principal, teacher or other school official is permitted to influence anyone in making a choice or to require early return of the choice form. No one is permitted to favor or penalize any student or other person because of a choice made. A choice once made cannot be changed except for serious hardship.

No child will be denied his choice unless for reasons of overcrowding at the school chosen, in which case children living nearest the school will have preference.

Transportation will be provided, if reasonably possible, no matter what school is chosen.

All parents will be sent a notice of the school to which their child will be assigned no later than June 2, 1967, by first class mail to their last known address.

Additional information concerning assignment procedures may be obtained by contacting Mr. Drennen Browne, Director of Educational Services, at the County School Office located at 1426 - 19th Street or by calling telephone number 562-6468.

Your School Board and the school staff will do everything we can to see to it that the rights of all students are protected and that desegregation of our schools is carried out successfully.

Sincerely yours,  
Superintendent.

CHOICE FORM

This form is provided for you to choose a school for your child to attend next year. You have 30 days to make your choice. It does not matter which school your child attended last year, and does not matter whether the school you choose was formerly a white or Negro school. This form must be mailed or brought to the principal of any school in the system or to the office of the Superintendent, Board of Public Instruction, Indian River County, Vero Beach, Florida 32960, by June 1, 1967. A choice is required for each child.

Name of child \_\_\_\_\_  
(Last) (First) (Middle)

Address \_\_\_\_\_

Mailing address, if different from above \_\_\_\_\_

Telephone No. at Home \_\_\_\_\_ Telephone No. at Work \_\_\_\_\_

Name of Parent or other adult serving as parent \_\_\_\_\_

If child is entering first grade, date of birth:  
\_\_\_\_\_  
(Month) (Day) (Year)

Grade child is entering \_\_\_\_\_

School attended last year \_\_\_\_\_

Choose one of the following schools by marking an X beside the name.

Name of School	Grade	Location
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Signature \_\_\_\_\_  
Date \_\_\_\_\_

To be filled in by Superintendent:  
School Assigned \_\_\_\_\_

11. Jurisdiction is hereby retained to assure the full implementation of this Order and to make such other and further Orders that the Court may deem necessary and just and as changes and circumstances might require.

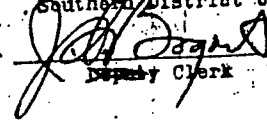
DONE AND ORDERED at Miami, Florida, this 13<sup>th</sup> day of May, 1967.

**C. CLYDE ATKINS**

Judge

I certify the foregoing to be a true and correct copy of the original which has been filed of record in this Office.  
Joseph I. Bogart, Clerk  
United States District Court  
Southern District of Florida

By

  
Deputy Clerk