

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 61 C 1569

JAMES WILLIAM WEBB, JR., and ANDRE
WEBB, minors, by JAMES R. WEBB, their
parent and next friend, et al.,
Plaintiffs,

vs.

BOARD OF EDUCATION OF THE CITY OF
CHICAGO and BENJAMIN C. WILLIS, as
General Superintendent of Public
Schools of the City of Chicago,
Defendants

MOTION TO DISMISS OR, IN THE ALTERNATIVE,
FOR PARTIAL SUMMARY JUDGMENT, AND SUG-
GESTING THE NECESSITY FOR A THREE-JUDGE
COURT.

Kirkland, Ellis, Hodson, Chaffetz & Masters
ATTORNEYS AT LAW
130 EAST RANDOLPH DRIVE
CHICAGO 1
TELEPHONE RANDOLPH 6-2929

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JAMES WILLIAM WEBB, JR., and ANDRE
WEBB, minors, by JAMES R. WEBB, their
parent and next friend, et al.,
Plaintiffs

vs.

BOARD OF EDUCATION OF THE CITY OF
CHICAGO and BENJAMIN C. WILLIS, as
General Superintendent of Public
Schools of the City of Chicago,
Defendants

FILED
NOV 20 1961
AT 10 O'CLOCK
ROY. H. JOHNSON
CLERK

No. 61 C 1569

MOTION TO DISMISS OR, IN THE ALTERNATIVE,
FOR PARTIAL SUMMARY JUDGMENT, AND SUGGESTING
THE NECESSITY FOR A THREE-JUDGE COURT.

NOW COME THE DEFENDANTS and respectfully move the
Court to dismiss the Amended Complaint herein on the grounds
that it fails to state a cause of action in the following
respects:

(1) Paragraph Fifteenth alleges that plaintiffs
have not exhausted the administrative remedy provided by
the laws of the State of Illinois for the reason that the
remedy so provided is allegedly inadequate to afford the
relief sought.

(2) Sections 2-3.8, 3-10, 22-19 and 34-18(7) of
the Illinois School Code of 1961, Smith-Hurd Ill. Ann. Stat.,
Ch. 122 (1961), and the Administrative Review Act, Ill. Rev.
Stat., Ch. 110 § 264 et seq. (1959) provide plaintiffs with a
full and complete remedy for all of their alleged complaints
and with a correction thereof, if warranted, by administrative

and judicial order.

IN THE ALTERNATIVE, the defendants respectfully move for a partial summary judgment denying

(a) plaintiffs' prayer for a decree that defendants have an affirmative duty and must provide plaintiffs and others of their class with a school system which is racially integrated; and

(b) denying plaintiffs' prayer for an injunction requiring defendants to provide plaintiffs and others of their class with a racially integrated school system and enjoining defendants from enforcing against plaintiffs and others of their class rules and resolutions requiring public school pupils to attend the school in the attendance area in which each resides.

DEFENDANTS FURTHER RESPECTFULLY SUGGEST to the Court that the issues presented and relief requested by the Amended Complaint herein necessitate the convening of a Three-Judge Court pursuant to 28 U.S.C. §§ 2281 and 2284 (1960), for the reasons that:

(1) This is an injunctive proceeding in which it is alleged by Paragraph Fifth that defendants have adopted and have pursued a policy of assigning children to public schools according to what is commonly known as the "neighborhood school" policy.

(2) It is further alleged by Paragraph Sixth that the defendants continue to maintain the alleged "neighborhood school" policy as a basis for the registration of children, contrary to the laws of the United States.

(3) It is further alleged by Paragraph Ninth that the defendants have an affirmative duty to provide the plaintiff children and others in their class with a racially integrated public school system.

(4) It is further alleged by Paragraphs Twelfth and Thirteenth that the plaintiffs and others in their class have been denied permits to transfer to schools outside of the attendance areas in which they reside.

(5) It is further alleged by Paragraph Sixteenth that plaintiffs are denied their constitutional rights under the Fourteenth Amendment by the refusal of the defendants to cease operation of the "neighborhood school" policy and that such "neighborhood school" policy is violative of the Fourteenth Amendment.

(6) The complaint prays, among other relief, for a decree declaring the continuation of the "neighborhood school" policy to be illegal and unconstitutional, and for a decree declaring that defendants have an affirmative duty to provide plaintiffs and others of their class with a racially integrated school system.

(7) Article VIII, Section 1 of the Constitution of the State of Illinois provides the following:

"The general assembly shall provide a thorough and efficient system of free schools, whereby all children of this state may receive a good common school education."

(8) The defendant Board of Education has adopted what plaintiffs refer to as a "neighborhood school" policy but what is more accurately described as an "attendance area system" pursuant to Section 34-18(7) of the Illinois School Code of 1961, empowering the defendant Board of Education:

"To divide the city into Sub-Districts and apportion the pupils to the several schools, but no pupil shall be excluded from or segregated in any such school on account of his color, race or nationality."

(9) Sections 10-21.3, 10-22.5, 11-9 and 32-1.1 of the Illinois School Code of 1961, providing for all other public schools, school districts and school systems in the State of Illinois, authorize the creation of attendance units and the assignment of pupils thereto.

(10) Section 6-7 of Chapter VI of the Rules of the Board of Education of the City of Chicago provides as follows:

"Pupils shall attend school in the Sub-District in which their parents reside except when granted permits by the District Superintendent, subject to the approval of the General Superintendent of Schools to attend a school in another Sub-District (attendance area)."

(11) On October 22, 1958, the defendant Board of Education adopted Board Report No. 66240 which provides, in part, the following:

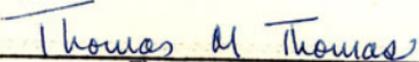
"The policy governing all students in regular elementary and high schools is that the individual is required to attend the school in which Sub-

District (attendance area) he resides with his parents."

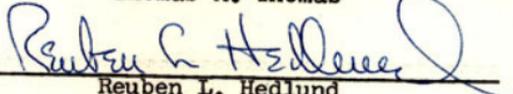
The above constitutional, statutory, rule and Board Report provisions authorize the maintenance of a "neighborhood school" policy (attendance area system), but do not place upon the defendant Board of Education or upon other persons and bodies responsible for the administration of public school systems throughout the State of Illinois an affirmative duty to provide a school system which is racially integrated through heterogenous mixing of all races, religions and nationalities in every school in Chicago and in Illinois.

It therefore follows that a decision on the Amended Complaint herein requires a judgment on the validity of Article 8, Section 1 of the Constitution of the State of Illinois, Sections 10-21.3, 10-22.5, 11-9, 32-1.1 and 34-18(7) of the Illinois School Code of 1961, Section 6-7 of Chapter VI of the Rules of the Board of Education of the City of Chicago and Board Report No. 66240 under the United States Constitution, wherefore a Three-Judge Court is required.

Respectfully submitted,



Thomas M. Thomas



Reuben L. Hedlund

Attorneys for Defendants

Of Counsel:

Kirkland, Ellis, Hodson,
Chaffetz & Masters
2900 Prudential Plaza
Chicago 1, Illinois