FREDRICK DOUGLASS

FOR A HIGHER QUALITY OF ADVOCACY

National Association for the Advancement
of Colored People,

Plaintiff

v.

The Transitional Desegregation
Plan of Tuckahoe, Et. Al.,

Defendants

STATEMENT OF FACTS

In 1960, Black American ("Black(s)") parents initiated a class action suit against the Board of Education of Tuckahoe, Douglass to desegregate their public schools. In the wake of the Denver and Detroit decisions, the federal district court hearing the case ordered the Tuckahoe School Board (the "Board") to prepare a plan that complied with the standards set in those decisions. Subsequently the Court of Appeals for the Thirteenth Circuit affirmed the Total Integration Plan (the "Total Plan") reluctantly submitted by the Board and approved by the district court.

When the original suit was commenced, Blacks comprised 25 percent of the Tuckahoe school population. The Total Plan calls for the distribution of the district's current 60 percent Black school population on a similar percentage (plus or minus 5%) throughout each of the district's schools. The plan contemplates closing a number of older, predominantly Black schools, and in some instances requires students to ride buses for up to fifty-five minutes each way to reach their assigned schools. The Board is obligated by the plan to purchase 30 buses at a cost of $30,000 each to accomplish the busing required by the plan.

The decision has not been popular in the white community. Several new private schools have opened, and it is expected that several hundred white families will move to predominantly white suburban communities. City officials predict that the Black school population, only 25 percent five years ago, will climb to 85 percent in two years if the plan is implemented.

Because of the provisions closing Black schools and placing a heavier busing burden on its children, the Black community has not been overjoyed by the decision although there is general gratification that the courts are continuing to "follow the law." Plaintiffs' attorneys, all local practitioners, have been inundated with complaints by the named plaintiffs and dozens of parents whose children would be bused for long distances under the Total Plan. They are concerned that "white flight" will soon render the busing burden placed on their children meaningless and permanently end their hope of bringing about an integrated school system.

In May of 1975, the district court appointed a "Bi-racial Committee" to mediate settlement talks between the parties in an effort to obtain a plan which would be acceptable to them. After several weeks of negotiation, counsel for Plaintiffs and the Board agreed to a "Transitional Desegregation Plan" (the "Transitional Plan") with the following provisions:

> (a) For a three year period, school desegregation will be limited to the use of all available techniques, including the busing of children, provided that no child will be assigned to a school located more than 20 minutes and/or two miles from the child's home. Only a few Black schools will be closed but 60 percent of the Black students will remain in schools 90 percent or more Black.[1]
>
> (b) The school board will take all necessary steps including the appropriation and expenditure of additional funds—up to double the per pupil average in schools that are predominantly (60 percent or more) white—to ensure that achievement averages on standardized tests in schools with predominantly (75 percent or more) Black enrollments are brought up to and maintained on a level equal with achievement levels at predominantly white schools. Measurable progress toward such achievement parity must be made by the second year and be obtained by the fourth school year. The failure of the school system to obtain this progress toward achievement parity will justify the immediate reopening of the suit for the purpose of reinstating the Total Integration Order.
>
> (c) A plan for desegregation of the administration and staff of the Board and schools which would designate several Board positions for occupancy by Blacks, including the superintendent's slot. Staff assignment would be effected such that in no case would the racial composition of any school's staff indicate that a school is intended for either Black or white students.

There has been a split in the Black community over the appropriateness of the plan. ONE VIEW represented by the national N.A.A.C.P., stated simply, is that separate schools, are, as the Supreme Court said they were, inherently unequal, and that the best efforts have to be made to integrate them, and to the greatest extent possible. This view is generally supported by Black leaders with poor, rather than middle-class constituencies. They, and whites who have worked towards school integration for years, say the agreement amounted to "trading off quality education for a few big jobs for a few big Negroes," and that it is unfair, inconsistent and unconstitutional.

The underlying motivation for this position, at least on the part of the poorer Blacks, is tactical. They have abandoned the original basis of ingegration—that equality of education can never be realized so long as Black children are segregated from white children—in favor of alternatives that would produce "Quality Education." Hence they are said to think of integration only as tactic: "Attention will be paid—attention by the school administration, attention by the teachers and principals to the students—only if a certain number of whites are in attendance."

The OTHER VIEW held by the Tuckahoe branch of the NAACP, moderate, middle-class Black leaders and influential white businesspersons is that a drastic integration scheme such as the Total Integration Plan would

1. On this basis, several attempts to intervene by groups such as CORE, NAACP, etc. allegedly representing individuals in the plaintiff class, were denied. However, the court considered these diametrically opposed views on an amicus basis.

create large-scale white flight. And, in addition to leaving the Black children no one to integrate with, it is thought that the ensuing economic and social instability would work to the disadvantage of all segments of the community. Accordingly, this grouping has pressed for Black administrative participation rather than classroom integration.

PROCEEDINGS AND FINDINGS BELOW

The original integration suit known as Cause No. 7511, denominated *D.T. Calhoun, v. R.S. Coker*, was brought in 1960 under old Federal Rule of Civil Procedure (FRCP) 23(a)(3) [New FRCP 23(b)(2)]. It resulted in the initial integration of the Tuckahoe public schools in 1963. However, due to the historic policy of the school board to go no further toward integration than the courts demanded, and sometimes not that far, the case is still in the courts.

In an effort to reach a final resolution of the matter, at the end of its last term, the Court of Appeals for the Thirteenth Circuit ordered Tuckahoe to produce a plan that would *in fact* integrate the schools.

In May of 1975 the district court exercising jurisdiction over the original suit appointed a "Bi-racial Committee" to mediate settlement talks between parties. Negotiating sessions were held regularly thereafter, and culminated in the controversial Transitional Desegregation Plan of August 26, 1975. The plan was adopted by the attorneys for the parties pursuant to the settlement agreement.

At a hearing for such purposes held on June 18, 1975, the question of representation was heard and all parties and persons were granted an opportunity to object to representation of record. None were advanced. Thereafter, by voluntary agreement, counsel for the Plaintiffs was determined, such counsel to be the exclusive representatives of the Plaintiff in all their dealings with the Defendants and the court. However, the Legal Defense Fund, Inc. (the "LDF"), one of the counsel of record for the plaintiff class, reversed its position after reviewing the plan and directed the staff attorney handling the suit not to sign it.

The national office of the NAACP said the agreement was a violation of the NAACP policy of "ending all forms of segregated education." The local branch of the NAACP was directed to repudiate the Agreement. It refused, and instead had its counsel, also of record, sign it. Thereupon, the national office suspended the branch's officers. The district court ruled that the plan would be summarily enforced on the grounds that a settlement agreement once entered into cannot be repudiated by either party. Thereafter, the LDF filed a motion on behalf of the NAACP to intervene in the suit under FRCP 24(a) and in accordance with FRCP 5(a), 5(b) and 7(b), on the ground that the interests of the membership of the NAACP affected by the order were not adequately represented.

The district court denied the NAACP's motion to intervene on the ground that the class was adequately represented, the question having been

decided by the court upon its original holding that the class action was maintainable under Rule 23. The court entered the order without opinion.[2]

Subsequently, the district court, after reforming the plan to include a provision requiring semi-annual reporting, approved the plan. The court found as follows:

> (a) the plan incorporated the mandatory Thirteenth Circuit provisions of majority (white) to minority (Black) transfer and faculty and staff desegregation, and complied with the circuit's interim directive, dated October 30, 1974, setting forth guidelines for the specifics of settlement.
>
> (b) the plan provided for a reasonable pupil assignment scheme in the existent circumstances. More specifically, the court found that a pro rata distribution of whites to Blacks throughout the entire system is not required where there is a relatively small percentage (40%) of white children remaining in the school system, and all white students are assigned to integrated schools;
>
> (c) that the plan was "viable, realistic and workable", in light of the circumstances, even though it varied in some "irrelevant" particulars from plans approved in similar cases.

In adopting the plan as its final decree, the district court found that it was "fair, adequate and reasonable." And that ". . . upon due consideration of the motion [of the parties to the original suit asking that the court approve and adopt the plan], the stated objections and amicus briefs . . . the proposed plan is approved both (a) as a proper settlement under Rule 23(e), and (b) insofar as lawful on its merits."

FILED IN CLERK'S OFFICE
Aug. 28, 1975
BEN H. CARTER, Clerk
by Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF DOUGLASS

D. T. CALHOUN, ET. AL., Plaintiffs, -vs- R. S. COKER, ET. AL., Defendants	)))))	CIVIL ACTION NO. 7511

PLAN OF PROPOSED SETTLEMENT AS DEVISED AND AGREED UPON BETWEEN PLAINTIFFS AND DEFENDANTS IN THE ABOVE-CAPTIONED CAUSE

COME now Plaintiffs and Defendants and submit to the Court their jointly proposed plan of settlement for approval by the Court and conforming Orders subject to any Court modification. Said proposed settlement plan contemplates full resolution of the Plaintiffs' claims regarding pupil assignment, faculty desegregation and administrative desegregation in the above-captioned cause, except for the questions of

2. The notice was published in
The Tuckahoe Journal
The Tuckahoe Constitution
The Tuckahoe Daily World
The Tuckahoe Enquirer
The Fulton Reporter

assessment of any cost and/or attorneys' fees, which issues are reserved for further proceedings in accordance with the Court's directions.

WHEREFORE, Plaintiffs and Defendants respectfully request that the Court accept for review the Plaintiffs' and Defendants' plan of proposed settlement in accordance with the above set forth stipulations and enter appropriate conforming Orders.

Respectfully submitted,

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INTRODUCTION OF PLAN FOR PROPOSED SETTLEMENT

Pursuant to Court Orders and the directives of the named principal parties, representatives of Plaintiffs conducted a series of negotiating sessions under the auspices of the court appointed "Bi-Racial Committee." The negotiations were oriented towards seeking an educationally sound and practical resolution of the Plaintiffs' claims, and they proceeded in an atmosphere of vigorous discussion and mutual good faith. Having reached an accord, the representatives sought and received adoption and approval of a plan of proposed settlement from their principals, the parties to this action.

The plan includes certain general provisions which are uniformly applicable throughout the proposal's constitutent parts, those parts being a "plan for desegregation of administration," a "plan for staff desegregation," a "majority to minority pupil transfer plan," and a "student assignment plan."

It is the expectation and firm commitment of the parties to carry out implementation of a court approved settlement plan within the context of mutual respect and good faith.

GENERAL PROVISIONS TO PLAN OF PROPOSED SETTLEMENT

1. The following proposals, in toto, constitute a compromise settlement of the Plaintiffs' claims as limited by the foregoing "introduction" subject to Court approval and continuing jurisdiction over the implementation of said proposals for a period of three years hereafter.

2. Representatives of the plaintiff and defendant shall meet no less frequently than quarterly for the purpose of reviewing past, current, and future implementation of the following proposals. The first of these meetings shall be held no later than two weeks prior to the beginning of the third quarter school (spring) session, 1976.* It is a proposed recommendation to the Court that these quarterly meetings be conducted under the direction of the current "Bi-Racial Committee."

* The Tuckahoe School year is divided into quarters as follows:
September to November — First Quarter
December to February — Second Quarter
March to May — Third Quarter
June to August — Fourth Quarter

3. For the purpose of subsequent compliance reviews, each of the following proposals shall be considered severally; accordingly, a failure to achieve any specified aspect(s) of the following proposals shall not void the entire proposed plan, and the parties shall endeavor to mutually resolve any alleged noncompliance. Any subsequent appeal for court intervention with respect to noncompliance shall be limited to identified, specific issues and shall not expose for court review other areas of the plan in which there is compliance.

4. Unless otherwise indicated in the following sections, all of the following proposals shall become immediately effective upon approval of the plan by the Court.

5. Plaintiffs and Defendants jointly support local efforts towards open housing, and in the past have, and now again recommend open housing to the City of Tuckahoe.

PLAN FOR DESEGREGATION OF THE ADMINISTRATION

The following staff positions initially shall be filed in their entirety no earlier than January 1, 1976, and no later than March 30, 1976, and for period of three years thereafter, said positions shall be maintained in terms of function and salary. The new superintendent would have the authority to structure and reorganize the administration in keeping with the guidelines agreed upon by the Plaintiffs and Defendants. Further, in accordance with continuing remedial nature of these proposals, an overall racial balance of administrative staff positions shall be maintained for a period of three years from the date of implementation. Further, all persons occupying the position of area superintendent shall have direct access to the superintendent. The contemplated additional cost of the following "new staff positions" including adjunct clerical support is in the amount of $539,534.40.

	Number of Positions	Race
Superintendent	1	Black
Associate Superintendent—Administration	1	White—New Staff Position
Associate Superintendent—Operations	1	Black—New Staff Position
Assistant Superintendent—Community Affairs	1	Black
Assistant Superintendent—Administrative Services	1	White
Assistant Superintendent—Personnel	1	Black
Comptroller—Finance	1	White
Deputy Comptroller—Finance	1	Black—New Staff Position
Assistant Superintendent—Plant Planning	1	White
Director of Plant Planning	1	Black—New Staff Position

*Assistant Superintendent—Research and Development	1	
Director of Research and Development	1	Black—New Staff Position
*Assistant Superintendent—Vocational Education	1	New Staff Position
*Assistant Superintendent—Intergovernmental Programs	1	New Staff Position
Assistant Superintendent—Instruction	1	Black
Area Superintendents	5	3 Black 2 White
Staff Attorney—Director Level	1	Black
Coordinator—Liason Services	1	Black—New Staff Position
Director of Payroll and Certification	1	Black—New Staff Position
Coordinator of Vocational Personnel	1	Black—New Staff Position
Deputy Director of Educational Broadcasting	1	Black—New Staff Position
Food Service Coordinators	3	Black—New Staff Position
Assistant Area Superintendent	5	2 Must be Black—New Staff Position
Director of M to M Transfers	1	Black—New Staff Position
Coordinator of M to M Transfers	1	White—New Staff Position
Directors	2	Black

* At least one of these positions must be filled by a Black.

PLAN FOR STAFF DESEGREGATION

Plaintiffs and the Tuckahoe Board of Education agree to implement the requirements embodied in Singleton v. Jackson Municipal Separate School District, 419 F.2d 1211 (5th Cir. 1970), as adopted *in toto* by the decision of the Circuit Court for this circuit in Ainsworth v. Harvard, No. 0000 (13th Cir., Feb. 29, 1975), and to assign all personnel working directly with children at any school, so that in no case will the racial composition of a school's staff indicate that a school is intended for either Black or White students, in accordance with the following:

1. "Staff working directly with children at any school" shall be defined to include all principals, teachers, teacher's aides and other staff, whether itinerant or special part-time. For the purposes of this agreement, staff under this definition shall be considered in four separate categories:

GROUP1: All full-time permanent teaching personnel assigned to one school on a non-rotating basis and salaried from normal school funds, including librarians, but excluding principal and vice-principals.

GROUP II: All full-time paemanent teaching personnel who rotate between two or more schools and are salaried from normal school funds (itinerant teachers).

GROUP III: Special project teachers or teachers' aides who are full-time permanent teaching personnel assigned to one school on a non-rotation basis, but salaried out of special funds, such as Title I, Title III, Neighborhood Youth Corps, Title IVa and Model Cities.

GROUP IV: All assistant and full principals.

2. "Compliance" with the mandates of *Singleton* under this agreement shall be defined as a school meeting the following requirements:

(a) The racial ratio of Group I teachers, is within two teachers and ten percent (10% above or below the system average for elementary, middle or high school teachers) as appropriate, for any one school year after March, 1976 and

(b) The school has maintained a ratio in compliance with the above, for three consecutive school years, provided that for years subsequent to 1975-76 an expanded variation of five percent (5%) shall be allowed on a case by case basis where one of the following justifications can be established:

(1) Failure to comply with *Singleton* results from resignations, and declining enrollment makes replacements unnecessary;

(2) The faculty, having complied with *Singleton*, has remained constant since its first year of compliance;

(3) An imbalance cannot be corrected due to unique teaching needs and a supply of teaching personnel only of the unrequested race.

3. System-wide compliance with *Singleton* shall also mean that all Group II teachers meet within any given area the requirements of 2(a) above, considering such Group II teachers in terms of their own system wide racial ratio.

4. Where application of the criteria set forth in Paragraphs 2 and 3 result in a need for the transfer of personnel after 1975-76, such transfers as are necessary shall be done after the end of the spring quarter in any given school year.

5. Schools not in compliance with *Singleton* as defined in Paragraph 2 above as of the date of this agreement have been identified and appear below as Schedule "A". These schools only shall be brought into compliance with *Singleton* by the beginning of the 1976-77 school year, using the following methods in order of preference:

(a) Proper use of assignment of new personnel;
(b) Assignment of personnel returning from maternity leave;
(c) Re-assignment of surplus personnel and personnel displaced as a result of the de-funding of certain federally funded programs;
(d) Voluntary transfers;
(e) Re-assignment of personnel from schools to be closed or reorganized;
(f) Re-assignment of personnel by involuntary transfer.

6. The Tuckahoe School Board will immediately formulate and initiate an in-service training program for all involved staff in order to insure the successful integration of the Tuckahoe Public Schools.

7. It is understood by all parties that the over-all ratio of staff will change due to resignation, leave, etc. Therefore, there will be no requirements to maintain any given racial ratio for staff. Teachers shall be hired, fired, promoted, demoted and recruited on the basis of non-discriminatory, individual qualifications: School assignments alone of persons so hired will be made in an effort to maintain the *Singleton* compliance outlined above.

SCHEDULE A
TEACHER CHANGES RESULTING FROM PROPOSED STAFF INTEGRATION PLAN

[ ] Denotes teachers removed. Non-bracketed numbers denote teachers added.

ELEMENTARY

	B	W
Ben Hill	3	[3]
Bethune	[3]	3
Birney	4	[4]
Continental Colony	5	[5]
English	[2]	2
Fain	[2]	2
Home Park	3	[3]
Hope, R. L.	3	[3]
Hutchinson	2	[2]
Inman	3	[3]
Jackson	3	[3]
Kimberly	3	[3]
Morningside	2	[2]
Pitts	[2]	2
Wesley	[3]	3
Changes Required (Persons Involved)	43	43

HIGH

	B	W
Archer	[6]	6
Dykes	12	[12]
Fulton	4	[4]
Grady	4	[4]
Howard	[5]	5
North Fulton	4	[4]
Northside	10	[10]
O'Keefe	3	[3]
Price	[5]	5
Roosevelt	4	[4]
Turner	[5]	5
Washington	[5]	5
Changes Required (Persons Involved)	67	67
TOTAL	220	

MAJORITY TO MINORITY PUPIL TRANSFER PLAN

In 1973, the Tuckahoe Public School System inaugurated a program whereby students could request transfer to schools of their choice, if such transfers would further the desegregation of the school system. This Majority to Minority (the "M & M" program) transfer plan has resulted in over two thousand students being voluntarily reassigned this past year.

As part of this agreement, the M & M program will be substantially expanded, beginning with the third quarter of the current school year. The expanded M & M plan will ge significantly different from the existing one both in its structure and operation. Of the changes, the most significant will be the aggressive and continuing emphasis upon expanding the educational value of the program.

Specifically, the program will have as its goals:

1. Increase current level of M & M participation.
2. Assumption of M & M administrative and financial responsibility by the Tuckahoe School System.
3. Developing broad based community support for the M & M program.
4. Movement towards racial parity of participants in the M & M program.
5. Commitment by the school system to achieving certain levels of racial balance in specified schools by September, 1976 (i.e., Jackson - 30% black; Smith - 30% black; Garden Hills - 35% black; E.P. Howell - 30% black; Captiol View - 30% black; Sylvan Hills - 30% black; West - 30% black).
6. Active and continuing efforts to make every part of the M & M program, including transportation to and from each student's school of choice, a significant part of the educational process.

Structure of the Program:

Toward this end, the ultimate responsibility for the program will be assigned to the Assistant Superintendent for community affairs. Until such time as this position is filled, a currently employed Assistant Superintendent agreeable to Plaintiffs and Defendants will supervise the development and immediate implementation of the program.

Operational responsibility for all aspects of the program will be assigned to an individual occupying a director-level staff position, who shall devote full time to the program's immediate development and implementation.

At the same time, a "Citizens Advisory Council" will be created to assist with the development and operation of the community, including: Private citizens currently active in the M & M program, parents of students presently enrolled in the public schools, and representatives of diversified community interest organizations (neighborhood organizations, church organizations, business organizations, etc.) Further, the members on the committee shall represent racial, economic, and geographical balance.

Within the schools, such area superintendent will designate an administrator who will be responsible for M & M activities within the area of his superintendency.

Program Development

The system-wide Citizens Advisory Council and the Assistant Superintendent shall have primary responsibility for the development and general supervision of the M & M Program, and shall share with the designated area wide personnel responsibility for the recruitment of students for M & M participation and follow-up responsibilities to assure the successful operation of the program. This group would make certain that the needs of each student who elects M & M transfer are being met. The Advisory Council would, for example, make certain that his transportation needs are satisfied, that his adjustment to a new school is satisfactory, and that his family has confidence in the transfer.

Prior to the beginning of the third quarter of school, the Tuckahoe Public Schools shall:

1. Establish a school-financed transportation system for students currently participating in the M & M program.
2. Appoint a full-time, system-wide coordinator of the new M & M program, together with creating a system-wide Citizens Advisory Group. A preliminary program to implement the goals outlined above shall be prepared.

Immediately upon his appointment, the new Assistant Superintendent for Community Affairs shall begin preparing a long-range program to accomplish the goals of the M & M program, submitting to the Board of Education no later than thirty (30) days after his appointment.

Quarterly progress reports on the program shall be submitted to the plaintiffs, defendants and the Bi-Racial Committee.

Illustrative Program Elements

The final shape of the upgraded M & M Program will be determined by a cooperative effort of the citizens of Tuckahoe, participants in the program, and appropriate school officials. The following, while not a definitive description of program elements, illustrate the type of activities that would be considered during the program development.

Prior to the Program:

Two critical steps must be undertaken even before the program can be launched. It will be necessary to fully inform the community, using every means available, of the precise nature and advantages of the program. In addition, citizens of all parts of the community must be encouraged to participate in the program.

The burden of informing the community lies with the public school. They will actively seek to feed information to all mass media in the city, both print and electronic. In addition, the school radio and TV stations will develop special programming related to the significant changes in the M & M Program. It is anticipated that ETV will be especially valuable in this respect. Where appropriate, respected community leaders and members of the Citizens Advisory Group should be encouraged to appear on panels or TV talk shows to describe the M & M Program.

In addition, existing community organizations or ad hoc groups may wish to take full-page ads in the various newspapers or prepare public service spots for radio and TV.

The schools may also want to develop special publications devoted to the M & M Program. Already there are plans for new media to be created by the schools that can be utilized as vehicles for disseminating information about the program to the community and to school staff. Some of these would be addressed to citizens organizations; others to parents. In this way, a full range of information may be quickly distributed to people whose interest in the M & M Program is most intense.

Finally, it is vital that the schools' staffs be fully informed of the M & M Program, the changes being made in it, and the improved educational opportunities it will provide.

Although further refinement may be necessary, the preliminary goals for the Citizens Advisory Group are as follows:

1. To assist in the development of creative plans for the M & M program implementation.
2. To solicit the support of a broad range of the community for the expanded and improved M & M transfer plan.
3. To create, through the dissemination of accurate and precise information, a positive climate of understanding and support of the M & M program.

In accomplishing these goals, the Citizens Advisory Group will be working quite closely with the PTAs in Tuckahoe, the local school staffs, parents and neighborhood organizations.

As the Program is Launched: Three factors may play critical roles in the success of the new M & M Program over the first days and weeks after it is initiated. Initially, it will be necessary to orient participants, both at the receiving and sending ends. Then it will be important to familiarize all participants and their parents with the operations of the program. Meanwhile, it is vital that the safety and comfort of all participants be assured. Each of these will be addressed from the first moment the newly expanded program becomes operational.

Formal orientation programs will need to be drawn up through the cooperative efforts of the Citizens Advisory Group and school officials. Familiarization with the new M & M Program can be provided through activities such as the following: Parents may be offered a trial-run ride to their children's schools, where they can meet the principal and teachers. School staff, both principals and teachers, can be encouraged to make a special effort in the halls welcoming students, learning new names, and reassuring the school family by his or her presence. School personnel and/or college interns could be stationed where they would be highly visible throughout the day, ready to assist in solving little problems that may grow out of the initial transfers.

To assure the safety and comfort of each M & M student, monitors would be stationed on the bus. It might be feasible, for example, to utilize college students who could diplomatically, yet firmly, resolve the little inconveniences and discomforts of a new procedure for students.

As the Program Becomes Operational: As soon as possible after the new M & M Program is launched, it will be desirable to establish and implement for all school personnel a special program with the assistance of interested community and school people. A committee of principals could be immediately assigned the task of developing a training program that will enable school personnel to fully meet the needs of the transferees. This training should be developed by a reputable outside organization and highly publicized, as a means of insuring its credibility with the community.

Continuing and formal communications vehicles must be developed and implemented, keeping the community and parents informed about the progress of the program.

Educational Enhancement: Perhaps the most significant—and the most challenging—part of the newly expanded M & M Program will be the effort to enhance the educational process even as the students are getting from one school to another. Toward this end, a number of ideas and concepts must be explored, assessed and implemented. Among those that might be considered are:

1. *Mini-tours*. Students moving from one school to another may pass near significant and interesting institutions within the city. As part of an enriched curriculum, arrangements would be made for students to stop at a museum or concert hall or other areas of educational interest. There they could briefly explore ideas and programs related to their studies in the classroom.

It would also be possible to bring the classroom into the school bus. With the installation of portable television sets, for example, younger children could be grouped in one section of the bus to watch Sesame Street or other regularly scheduled educational programs. The school television station may be able to create special programming for M & M students. Where feasible it may be desirable to utilize videocassette television for specially tailored educational programs for M & M students. It would even be possible to schedule movies, utilizing some of the recently developed portable projection units that handle single concept films, etc.

Over the near term, it would be possible to create specially designed self-paced, self-instructional materials for use by M & M students. The best of these have demonstrated that it is possible to compact learning time, substantially increasing the speed with which individual students can master a subject.

The Citizens Advisory Council may agree to undertake a continuing program called 'Conversations' with the Community. Such a program would bring community people aboard the bus to discuss their work and their careers with M & M students. One day, for example, a businessman may outline briefly what his day-to-day operations are and answer questions from the students. The next, a home economist might review strategies for shopping. The program could be as varied as the imagination allows, with substantial informal learning occurring.

Finally, it may be desirable in some instances to offer students an opportunity for a nourishing breakfast as they are en route to school. Such a program would offer at least two immediate benefits: parents of M & M

students could save approximately 30 minutes each morning—at the same time being certain their children were receiving a good meal.

STUDENT ASSIGNMENT PLAN

The following plan shall be implemented by the beginning of the third quarter—Spring session, 1976. However, all children enrolled in kindergarten shall be exempt from the transfer provisions of the following plan and they shall remain in their presently assigned school unless the facility is phased out or closed.

In arriving at the student plan the parties agreed upon the following criteria as guidelines, attempting to adhere to them in all events unless circumstances relative to a particular school necessitated a deviation:

1) No school would contain less than 30% Black students.
2) No exceptions unless a school was shown to be stable and integrated 20% or more Black.
3) White students would be transferred only into schools where the resulting enrollment would be 30% or more.
4) All Black schools unaffected or left "untouched" would be determined according to agreed upon objective criteria such as condition of the building, classroom space, distance to other schools, and phasing out.
5) Rules 1 through 4 would be applied in an effort to maximize integration of all students.

It was further agreed that the following methods would be employed toward reaching the above in the listed order of priority:

1) Redrawing of zone lines
2) Closing of schools
3) Pairing with the closest schools of the opposite race

In applying the above criteria, it was determined and agreed that the following schools contained less than 30% Black student enrollment as of September 30, 1975:

Bolton	.0%	Lin	17.7
Brewer	18.5	McClatchey	19.3
Capitol View	24.9	Mitchell	9.3
Cleveland	11.9	Moreland	21.6
Garden Hills	3.4	Morningside	1.2
Grant Park	4.3	Mt. Vernon	6.3
Grant Park Pri.	29.5	Perkerson	1.4
Guice	11.4	Rock Springs	2.7
Highland	4.5	Smith, Sara	21.5
Home Park	4.4	Spring	7.7
Hope, R.L.	5.4	Sylvan Hills	14.0
Howell, E.P.	3.9	West	9.6
Humphries	27.9	Sutton	17.9
Hutchinson	6.5	Dykes	1.1
Inman	1.5		(See Sutton)
Jackson	16.8	North Fulton	2.9
Lakewood	10.0%		

In addition to the above schools, it was agreed that O'Keef High School would be changed to a Middle School with resulting enrollment of 35.3% Black enrollment.

SCHOOLS EXEMPT UNDER CRITERIA NO. 2

Moreland	Humphries
Grant Park Primary	Lin
Capitol View	

SCHOOLS CLOSED

McClatchey	Mt. Vernon
R. .L. Hope	Highland
Rock Springs	Sutton Middle (See Dykes below)

(Schools not on list also closed: Goldsmith & Luckie)
(Dykes closed and changed to Sutton Middle)

* * *

[Individual plans for integration of the above named "target" schools are omitted. These plans will be provided *in toto* if any competition participant deems them necessary to his or her preparation].

TRANSPORTATION

Cost estimates for transportation under the above plan contemplate the transportation of 2,761 students utilizing 25 buses at a cost of $30,000 each. This amounts to $750,000.00.

RESULTS OF PLAN FOR EACH SCHOOL

						Transported		
	B	%	W	O	Total	B	W	M-M
Bolton-Mitchell	231	(29.8%)	545	4	780	195	305	—
Brewer	117	(31.8%)	251	0	368	—	—	60
Capitol View	89	(24.9%)	268	0	357	—	—	—
Cleveland	225	(35.0%)	418	4	647	166	0	—
Garden Hills	128	(39.3%)	198	99	425	—	—	120
Grant Park Primary	52	(29.5%)	124	0	176	—	—	—
Guice	114	(30.2%)	259	4	377	—	—	—
Highland			CLOSED					
Home Park	108	(30.2%)	250	4	362	96	113	—
Hope, R.L.			CLOSED					
Howell, E.P.	125	(30.0%)	291	0	416	—	—	25
Humphries	122	(27.9%)	315	0	437	—	—	—
Hutchinson	123	(27.0%)	333	0	456	100	0	—
Inman	146	(30.4%)	335	54	535	—	—	—

Results of Plan for Each School Continued:

						Transported		
	B	%	W	O	Total	B	W	M-M
Jackson	109	(32.5%)	226	0	335	—	—	60
Lakewood	170	(33.7%)	333	1	504	133	0	—
Lin	162	(25.6%)	472	1	635	—	—	60
McClatchey			CLOSED					
Mitchell-Bolton			See Bolton					
Moreland	173	(29.8%)	407	4	584	—	—	60
Morningside	108	(33.5%)	214	0	322	76	106	—
Mt. Vernon		CLOSED				9	135	—
Perkerson	125	(37.1%)	212	0	337	122	5	—
Rock Springs		CLOSED						

Smith, S.	162	(29.1%)	394	0	556	—	—	75
Spring	94	(34.1%)	182	9	285	76	0	—
Sylvan Hills	120	(24.7%)	365	3	488	—	—	60
West	99	(21.3%)	365	4	468	—	—	60
Sutton (to Dykes Bldg.)	319	(32.5%)	662	0	981	—	1	125
Dykes		CLOSED						
North Fulton	297	(30.2%)	687	49	1033	248	0	—
O'Keefe	414	(35.8%)	742	27	1183	25	150	—
	4062	(30.7%)	9153	269	13483	1246	814	705

* Black % is number of blacks divided by total number of black plus white.

CONCLUSION

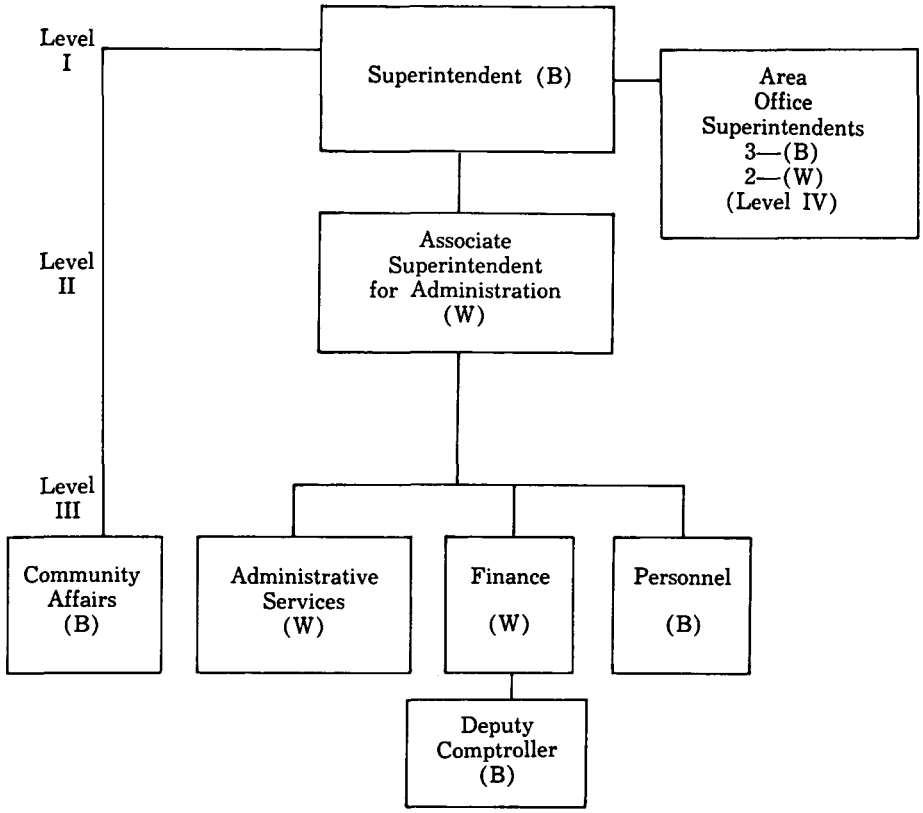
There is attached hereto as Exhibit "A" a graphic representation of the Administrative Plan herein set forth.

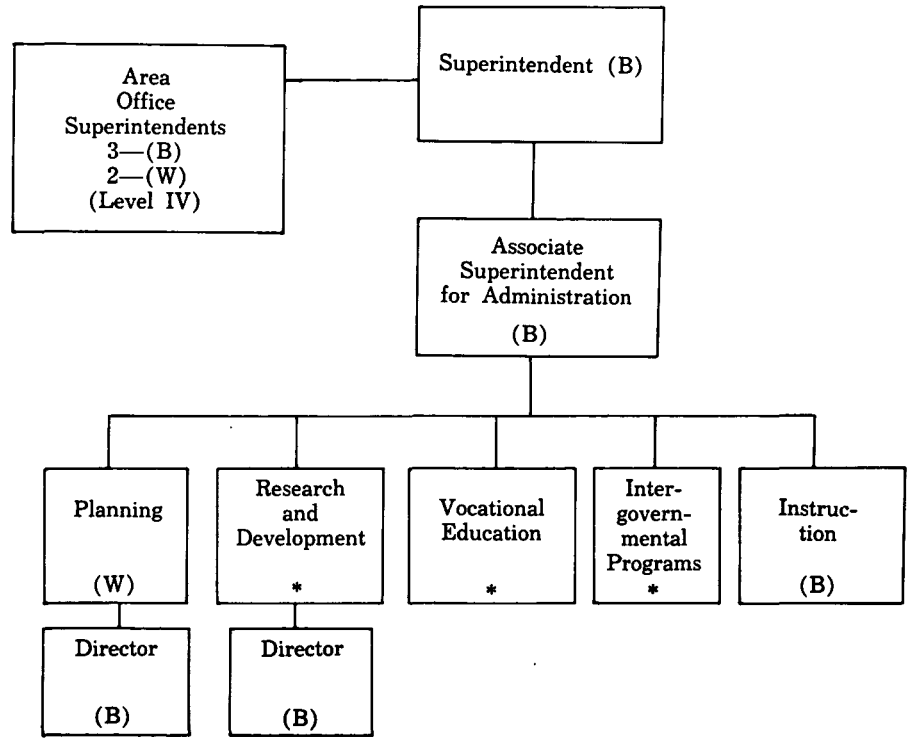
Other than as specifically stated herein, every effort will be made to implement this plan immediately in that there will begin an immediate search for qualified persons to fill the administrative positions, recruitment for M to M transfers and reassignment of staff by attrition.

In the event of an alleged non-compliance, notice by the complaining party shall be given to the Bi-Racial Committee, who shall convene a meeting of the parties for a resolution of the issue.

The racial designations indicated in the plan for desegregation of administration are made to remedy alleged past discriminatory practices with respect to the hiring of administrative personnel. These racial designations are on a one-time basis only and all future hiring, firing, promoting, demoting and recruiting shall be based on non-discriminatory individual qualifications without regard to race.

Accordingly, Plaintiffs and Defendants with the approval of the Court appointed Bi-Racial Committee submit the foregoing compromise plan to this Court for an appropriate Order adopting the same as the Desegregation Plan for the Tuckahoe Public School System.


Level I
Level II
Level III
Superintendent (B)
Area Office Superintendents 3—(B) 2—(W) (Level IV)
Associate Superintendent for Administration (W)
Community Affairs (B)
Administrative Services (W)
Finance (W)
Personnel (B)
Deputy Comptroller (B)


Area Office Superintendents 3—(B) 2—(W) (Level IV)
Superintendent (B)
Associate Superintendent for Administration (B)
Planning (W)
Research and Development *
Vocational Education *
Inter-govern-mental Programs *
Instruc-tion (B)
Director (B)
Director (B)

FILED IN CLERK'S OFFICE
OCT. 16, 1975
Ben H. Carter, Clerk
By: Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF DOUGLASS
TUCKAHOE DIVISION

D.T. CALHOUN, Et. Al.,)
Plaintiffs,)
vs.) CIVIL ACTION
R.S. COKER, Et. Al.,) NO. 7511
Defendants)

ORDER

The Court, having examined the petition of . . . [names of petitioners omitted] to file an *amicus curiae* brief in the above-styled case, and good cause appearing for petitioners to file said brief, permission is hereby granted petitioners to file an *amicus curiae* brief in the above captioned case.

IT IS SO ORDERED
This the 15th day of October 1975.

TIMOTHY O. SIDNEY
United States District Judge

EDGAR A. ALBERT III
United States District Judge

FILED IN CLERK'S OFFICE
OCT. 16, 1975
Ben. H. Carter, Clerk
By: Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF DOUGLASS
TUCKAHOE DIVISION

D.T. CALHOUN, Et. Al.,)
Plaintiffs,)
vs.) CIVIL ACTION
R.S. COKER, Et. Al.,) NO. 7511
Defendants.)

ORDER

The court, having examined the petition of the National Association for the Advancement of Colored People, and other individual petitioners, to intervene in the above captioned case under Rule 24(a), and finding that the plaintiff class is adequately represented, such question having been decided by the court upon its original holding that the class action was maintainable under Rule 23, hereby deny the motion of the petitioners to intervene as a party in the above captioned case.

IT IS SO ORDERED
This the 15th day of October 1975.

TIMOTHY O. SYDNEY
United States District Judge

EDGAR A. ALBERT III
United States District Judge

FILED IN CLERK'S OFFICE
OCT. 29, 1975
BEN H. CARTER, Clerk
By: Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF DOUGLASS
TUCKAHOE DIVISION

VIVIAN CALHOUN, Et. Al., Plaintiffs,	)	
vs.	)	CIVIL ACTION
ED. S. COKER, Et. Al., Defendants.	)	NO. 6298

ORDER

This is an ancient class action filed in 1960 involving the desegregation of the Tuckahoe Public Schools, brought on behalf of the parents of all black students enrolled therein. In concept, it is a classic civil rights class action under old Rule 23(a)(3) [New Rule 23(b)(2)].

Heretofore, on August 28, 1975, the plaintiffs and defendants presented to the court a jointly proposed plan for settlement and final resolution of all issues covered therein. The court has carefully reviewed the plan and it appears that the plan was freely involved by the parties, together with the Bi-racial Committee previously appointed by the court, and that the plan is consented to by an attorney of record for each of the parties for its adoption by the court.

The Settlement

At a prior hearing for such purposes on June 18, 1975, the question of representation was heard and all parties and persons were granted an opportunity to object to representation of record. None was advanced. By voluntary agreement, it was then to be represented exclusively thereafter by Attorneys Bernestine E. Walker, Augustus Washington, and Spaulding W. Montgomery, jointly and severally, in all their dealings with defendants, and the court. It is undisputed that Ms. Walker and Mr. Montgomery, in the absence of Mr. Washington, were designated to handle the settlement negotiations for the entire plaintiff class and did, in fact, proceed in good faith to do so through numerous lengthy conferences for such purpose. Substantial portions of the plan were drafted by both. When the agreed plan was filed with the court on August 28, 1975, it was signed by Attorney Montgomery only. Upon inquiry Attorney Walker stated that she had "no objections" to its adoption by the court and had the express authority to allow its approval in such posture. However, since that time, she advised the court that her authority to do so has since beeen withdrawn by her employers. Thus, at the September 13th hearing, she and Attorney Washington made appearances to present objections to acceptance of the plan by the court.

Where the record reveals that counsel in fact (as here) negotiated and agreed on a compromise prior to trial, federal courts have held under a great variety of circumstances that a settlement agreement once entered into cannot be repudiated by either party and will be summarily enforced by the court . . . [authorities cited]. Under such circumstances, the court views such eleventh hour maneuvering as inconsequential and without legal effect. The question presently before the court is advisability of approval under Rule 23(e).

The Notice

The filing of the plan and the hearing of September 8th received wide publicity within the several schools and through the local press, radio and television and the court is satisfied that all interested persons were more aware of its pendency by such means than could possibly be effected by a legal notice or otherwise to the parents of some 75,000 Black school pupils enrolled in the Tuckahoe system, and comprising the plaintiff class.

However, notice by such means was questioned at the hearing. Accordingly, by an order of September 12th the court ordered publication of notice of the pending settlement proposal in the newspapers of general circulation in the City on a daily basis until another hearing. Copies of the proposal were made available at the Clerk's office, the School Board office, and during both day and night hours at a centrally located school in each of the City's Wards.

Both hearings were well attended and numerous counsel, officials, parties, and other interested persons stated their views to the court.[3] In addition, both formal and informal written communications were received by the court,[4] all of which have been considered and filed.

The Plan

The plan incorporates the mandatory Thirteenth Circuit provisions of majority-to-minority transfer [*United States v. Jefferson County Board of Education*, 372 F.2d 836 (5th Cir. 1966)] and faculty and staff desegregation[5] [*Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211 (5th Cir. 1970)].[6] It also provides a reasonable pupil assignment plan considering the small percentage of white Children (40%) now remaining in the system, and all white pupils are assigned to integrated schools.[7] This preponderance of Blacks is in itself a unique situation. Under such circumstances, it is not necessary to distribute the remaining minority whites pro-rata throughout the entire system. The proposal, together with the previous orders of the court, produces a result which, in light of the circumstances present, is "viable realistic and workable." *Green v. County School Board of New Kent County*, 391 U.S. 430 (1968); *Swann v. Charlotte-Mecklenberg Board of Education*, 402 U.S. 1 (1971). The fact that it might be handled

3. Several efforts to subpoena witnesses to testify as to the merits of the plan and several alternate proposals were quashed. The facts have been developed in numerous prior hearings and the case has been thoroughly tried prior to this time. The court sees no need, in the present posture, to retry these issues again.

4. The court has received some 30-odd separate items in writing by letter, resolution, or amicus curiae brief. Most objections, other than those filed by counsel, appear to be from objecting white parents, not in the plaintiff class. Some members of the class object to the plan because of the busing proposed. Many urge adoption by the court. Several thousand of the plaintiff class have signed petitions urging approval by the court. On balance and considering the size of the plaintiff class, the objections appear minimal in number.

5. There need not be an annual reassignment of faculty and staff under *Singleton*. See *Swann v. Board of Education*, 402 U.S. 1 (1971). The problem is specifically handled by the agreed plan, which provides for a stract *Singleton* assignment for three years retrospectively or prospectively. The court, of course, could not on its own, order any hiring or firing except on the basis of merit. Only by settlement could specific jobs be designated as "Black" or "white", even for initial appointment.

6. These Fifth Circuit decisions have been adopted *in toto* in the Thirteenth Circuit. *Ainsworth v. Harvard*, No. 0000 (13th Cir., Feb. 29, 1975).

7. Basically, the plan provides that all listed schools contain no less than 30% blacks. Under exceptional circumstances where an integrated school has already stabilized it may be no less than 20% black. The corrective addendum to the Plan [relating to individual integration plans for target schools] which the court was notified would be forthcoming by Attorneys, does not appear to cause any substantial change in the basic plan.

differently in some particular is irrelevant. It likewise properly meets the specifics of settlement contained in the Thirteenth Circuit interim directive of October 31, 1974 (P. 3)

However, it omits the semi-annual reporting provisions for the period of three years. Additionally, the court approves the suggestion that the quarterly consultations be under the directions of the court-appointed Bi-racial Committee for the period of three years. By way of clarification that committeee is now composed of the following members:

[Names of Committee members omitted]

Mr. Derrick Belcher is hereby redesignated as Chairman until further order of the court. It is further directed that all disagreements between the parties over implementation of the plan, if any, be first presented to the Bi-racial Committee, or a subcommittee designated for such purpose, during said three year period at a quarterly or special meeting for such purpose. No issue will be considered by the court until such procedure is followed and the Bi-racial Committee certifies to the court that it is unable to resolve the dispute.

With these additions, there is no legal impediment to the adoption of the plan by this court.

Any plan, whether privately conceived, jointly proposed, or court imposed, contains features which are objectionable to certain individuals or certain groups; and there is no way known to the law to satisfy all the patrons of the separate schools. This plan, at least, appears to the court to satisfy the overwhelming majority of the plaintiff class. On the whole, the plan is deemed fair, adequate, and reasonable. Accordingly, upon due consideration of the motion, the stated objections and amicus briefs with the indicated changes, the proposed plan is approved both (a) as a proper settlement under Rule 23(e), and (b) insofar as lawful on its merits, and

IT IS HEREBY ORDERED AND ADJUDGED that said plan be and the same is hereby adopted as the final decree of the court with the additional provisions:

1. That the defendant furnish to the court a semi-annual report on October 1 and April 1 of the school years 1976-77, 1977-78, and 1978-79 covering the information set out in the Appendix to *Leonard v. Sacks*, 433 F.2d 611 (13th Cir. 1970).
2. That either party first present to the Bi-racial Committee any disagreement regarding the operation of this order prior to filing a motion with the court.

All prior orders in conflict with this decree are hereby superseded.

IT IS SO ORDERED

This the 27th day of October, 1975.

/s/_____
Timothy O. Sidney
United States District Judge

/s/_____
Edgar A. Albert, III
United States District Judge

United States District Court for the Northern
District of Douglass

National Association for the Advancement of Colored People,
Plaintiff
v.
The Transitional Desegregation Plan of Tuckahoe, et. al.,
Defendants

File Number 1014

NOTICE OF APPEAL

Notice is hereby given that the National Association for the Advancement of Colored People, Plaintiff above named hereby appeals to the United States Court of Appeals for the Thirteeenth Circuit from the Order of October 15, 1975 denying its motion to intervene under Federal Rule of Civil Procedure 24(a) in Cause No. 7511, denominated Calhoun, ET. AL. v. R.S. Coker, ET. AL.; and from the final judgment of October 27, 1975 ordering implementation of the Transitional Desegregation Plan, dated August 26, 1975.

Dated: October 31, 1975

Counsel for Plaintiff:

/s/ Augustus Washington
Frederick, Alexander
& Bailey
75 Piedmont, N.E.
Tuckahoe, Douglass 00303

/s/ Bernestine E. Walker
Legal Defense Fund, Inc.
10 Columbia Circle
Tuckahoe, Douglass 00303

United States District Court for the Northern District of Douglass

National Association for the Advancement of Colored People,
Plaintiff
v.
The Transitional Desegregation Plan of Tuckahoe, et. al.,
Defendants

File Number 1014

STIPULATION OF RECORD

It is hereby stipulated by the attorneys for the respective parties hereto pursuant to Federal Rule of Appellate Procedure 10(d) that the following shall constitute the record on appeal:

1—Pleadings before the District Court (omitted)

2—Summary statement of the case showing how the issues presented by the appeal arose and were decided in the district court

[Summation of STATEMENT OF FACTS and PROCEEDINGS AND FINDINGS BELOW OMITTED.]

3—Plan of Proposed Settlement (the Transitional Plan).

8—Plan of Proposed Settlement (the Transitional Plan).

4—Order re: amicus status

4—Order re: amicus status

5—Order re: intervention of NAACP
6—Order (Judgment) re: Transitional Plan
7—Notice of Appeal
8—This designation

Further, it is stipulated that for the purpose of this appeal, Plaintiff shall be designated appellant, and Defendants shall be designated appellees.

Dated November 4, 1975

Counsel for Defendants:

/s/ Warren C. Yancey
Case & White
First Nat'l Bank Tower
Tuckahoe, Douglass 03033

/s/ Prentiss Q. Fortson, Jr.
Case & White
First Nat'l Bank Tower
Tuckahoe, Douglass 03033

Counsel for Plaintiff:

/s/ Augustus Washington
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& Bailey
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Tuckahoe, Douglass 00303

/s/ Bernestine E. Walker
Legal Defense Fund, Inc.
10 Columbia Circle
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